



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1847 OF 2025

Ajaykumar Bhalchandra Gajare	}	
Age: 60 years, occu: Service,	}	
Residing at Gaurinandan Co-Op Hsg,	}	
Plot No. B/8, 2 nd floor, Vidyanagar,	}	Petitioner
Alibag, Raigad.	}	(Orig. Plaintiff)

V/s.

Jagdish Devendra Rele	}	
Age: 76 years, Occu: Builder	}	
Residing at 101, M.J. Raod,	}	
Shetty House, Mumbai- 400 023.	}	
Mr. Ketan Pravin Shroff	}	
Age : 66 Years, Occu: Business	}	
Residing At Varsoli Burumakhan,	}	Respondents
Tal: Alibag, District: Raigad.	}	(Orig. Defendants)

 Mr. Rohit Joshi, for the petitioner.

Mr. Karl Tamboli with Shaila Taware, for the respondents.

CORAM : N.J. JAMADAR, J.

DATE : 8TH APRIL 2025.

JUDGMENT:

1. Rule.
2. Rule made returnable forthwith and with the consent of the counsel for the parties heard finally.
3. The petitioner-plaintiff/appellant takes exception to an

order dated 19th June 2024 passed by the learned District Judge, Raigad, Alibag in Civil Appeal No. 89 of 2016 whereby an application preferred by the appellant to amend the plaint so as to incorporate the averments to the effect that eight days prior to the filing of the said application the defendants had demolished the bungalow no. 1, in respect of which the suit for specific performance of the contract came to be instituted, and the consequential relief of reconstruction of the said bungalow, and in addition compensation of Rs. 50 lakh, came to be rejected.

4. The background facts leading to this petition can be summerised as under:

4.1 The defendant nos. 1 and 2 were builders and developers. The defendant nos. 1 and 2 had proposed to develop a project, “Sea Breeze” at Survey No. 187, Village Varsoli. Under the said project the defendant nos. 1 and 2 were to develop 12 bungalows with facilities and amenities. The plaintiff agreed to purchase bungalow no. 1 with built up area of 1500 sq.ft, on a land admeasuring 425 sq.mtrs. An agreement for sale was executed on 1st July 1999. The defendants were to construct the said bungalow no. 1 with the defined specifications for a consideration of Rs. 9 lakh. The plaintiff claimed to have paid a

substantial consideration of Rs. 8,25,000/-. Though, the plaintiff was ready and willing to pay the balance amount of Rs. 75,000/-, the defendant nos. 1 and 2 did not fully perform their part of the contract in accordance with the true terms thereof. Though, the possession of the bungalow no. 1 was delivered to the plaintiff, yet, no document or possession receipt was executed in favour of the plaintiff. Later on, the defendants surreptitiously obtained the possession of bungalow no. 1 from one of the associates of the plaintiff. By the passage of time, the condition of the said bungalow no. 1 and the land on which it stood deteriorated. Hence the suit for specific performance of the contract to deliver bungalow no. 1 constructed in accordance with the specifications agreed to, by the defendant nos. 1 and 2, and execute a registered instrument in favour of the plaintiff.

5. By a judgment and order dated 5th March 2016, the learned Civil Judge was persuaded to dismiss the suit for specific performance.

6. Being aggrieved, the petitioner preferred an appeal before the District Court. During the pendency of the appeal, the petitioner filed an application seeking amendment in the plaint asserting, *inter alia*, that eight days prior to the filing of the application, the defendants had completely demolished the bungalow no. 1, illegally.

Hence, the reliefs of reconstruction of the bungalow no. 1 and additional damages of Rs. 50 lakh were sought to be incorporated by way of amendment.

8. The learned District Judge rejected the application observing, *inter alia*, that initially the suit was for specific performance of the contract and by the proposed amendment the plaintiff - petitioner was seeking the relief of restoration of the suit property and damages and, thus, the proposed amendment would completely change the nature and character of the suit. In the view of the learned District Judge, the proposed amendment was not necessary to decide the real question in controversy as the appeal was required to be decided as per extant pleadings.

10. Being aggrieved, the plaintiff/appellant has invoked the writ jurisdiction.

11. Mr. Joshi, learned counsel for the petitioner, strenuously submitted that the learned District Judge completely misconstrued the scope of the provisions contained in Code of Civil Procedure, 1908 which permit the amendment in the pleadings. It was submitted that there was no dispute that, bungalow no. 1 was agreed to sold to the plaintiff and a substantial consideration of Rs. 8,25,000/- was already

paid to the defendants and the said bungalow no. 1 was demolished by the defendants few days prior to the filing of the application for amendment in the plaint. In the backdrop of the fact that the proposed amendment referred to the subsequent events, the learned District Judge could not have rejected the application on the premise that the proposed amendment would change the nature and character of the suit. The approach of the learned District Judge was completely erroneous, urged Mr. Joshi.

13. In opposition to this, Mr. Tamboli, learned counsel for the respondents/defendants, made an endeavour to support the impugned order.

14. Mr. Tamboli would urge that the very fact that the plaintiff was put in possession of the bungalow no. 1 was put in contest. Once the primary fact of the plaintiff being in possession of bungalow no. 1 is not established to the hilt, the plaintiff cannot seek the relief of reconstruction of bungalow no. 1 on the premise that the defendants unlawfully demolished the bungalow no. 1. An endeavour was made by Mr. Tamboli to urge that the bungalow no. 1 has been in possession of the defendants all along.

15. Mr Tamboli further submitted that though the proposed

amendment referred to an event which took place during the pendency of the appeal, yet, the Court cannot lose sight of the stage of the proceedings. Ordinarily, no amendment in the pleading should be allowed in appeal which raises fresh factual questions as it would reopen the trial, urged Mr. Tamboli. To buttress this submission, Mr. Tamboli placed reliance on the judgments of Allahabad High Court in the cases of *Rajesh Kumar Agrawal Vs. Virendra Kumar Agrawal Ors.*¹ and *Rama Shankar Dixit, son of Sheo Balak Dixit vs. The VIIth Additional District Judge*²

17. Lastly Mr. Tamboli would urge, at any rate, the plaintiff would not be entitled to seek compensation in addition to the relief of the reconstruction of bungalow no. 1. If the plaintiff succeeds in the appeal, at best, the plaintiff would be entitled to construction of the bungalow no. 1 and the appurtenant land, and, in no case, the plaintiff would be entitled to compensation for alleged demolition of the bungalow.

18. To begin with, it is necessary to note that there is not much controversy over the fact that the defendant nos. 1 and 2 had entered into a registered agreement to construct and sell bungalow no. 1, with

1 (1993) SCC Online All 160

2 (1995) SCC Online ALL 131

a built up area about 1500 sq. ft to the plaintiff with the defined specifications, for a consideration of Rs. 9 lakhs. By and large, there is not much controversy over the fact that substantial consideration of about Rs.8,25,000/ was paid by the plaintiff to the defendants. On account of the alleged failure on the part of plaintiff to pay the balance consideration and perform his part of the contract, the defendants had purportedly repudiated the contract. The plaintiff had, thus, instituted the suit for specific performance of the contract, *inter alia*, seeking a direction to construct the bungalow no. 1 in accordance with the agreement between the parties and execute an instrument to covey the same to the plaintiff.

20. The aforesaid nature of the suit, it seems, weighed with the learned District Judge in observing that the proposed amendment would substantially alter the nature of the suit as by way of proposed amendment the plaintiff was seeking a direction for reconstruction of the bungalow no. 1 and also damages for the alleged demolition of the bungalow. The learned District Judge, however, missed to take note of the special features of a suit for specific performance, especially, the special and liberalized rules of pleadings which govern a suit for specific performance.

22. Under section 21 of the Specific Relief Act, 1963, the Court is empowered to grant compensation for breach of contract in addition to such performance and also compensation in lieu of the specific performance of the contract. Sub section (5) of Section 21, however, provides that no compensation shall be awarded under the said Section unless the plaintiff has claimed it in his plaint. The proviso to sub-Section (5) of section 21 further mollifies the rigour of the main part of sub-Section (5) of Section 21. The proviso provides that where the plaintiff has not initially claimed compensation in the plaint, the Court shall, at any stage of the proceeding, allow the plaintiff to amend the plaint to include a claim for compensation. Likewise, Section 22 of the Specific Relief Act, 1963 empowers the Court to grant relief for possession, partition and refund of earnest money. Sub-section (2) of Section 22, contains an interdict against grant of such relief unless it has been specifically claimed. The proviso to sub-Section (2) of section 22 again emphasises the liberalized approach in the matter of pleadings, by providing that the Court shall permit the plaintiff to amend the plaint, at any stage of the proceeding, to seek the relief of possession, partition and refund of earnest money.

23. In the case of '*Vesta Building Products Pvt. Ltd vs Shri.*

Balasaheb Kashinath Rasa^B, this Court had an occasion to consider the nature and the import of the provisions contained in Section 22 of the Specific Relief Act, 1963. The following observations in Para Nos. 18, 19 and 20 of the said decision are material and hence extracted below:

18 Evidently, in order to avoid multiplicity of proceedings, the legislature, in its wisdom, had provided that the plaintiff may claim a decree for possession, partition and separate possession, in addition to specific performance and further provided that the plaintiff be allowed to claim such relief, at any stage of the proceedings. It is imperative to note that Sub- section (1) of [Section 22](#) gives an overriding effect to the said WP2389-2017.DOC Section by incorporating a non-obstante clause as against the provisions contained in the Code. Moreover, the words, "in an appropriate case" and "at any stage of the proceeding" are of material significance and further expand the scope and ambit of the provisions contained in [Section 22](#). The words, "in an appropriate case" indicate that it is not obligatory for the plaintiff to seek such relief in every case. The relief envisaged by Clauses (a) and (b) of Sub-section (1) can be sought and granted provided the case is susceptible of or conducive to grant of such relief. Whereas the words, "at any stage of the proceeding" underscore the fact that the stage of the proceeding does not matter and if a case is made out for seeking those reliefs, stage of the proceedings would not be a hindrance. The expansive nature of this provision stems from the principle that the equitable relief of specific performance to be complete and effective ought to encompass in its fold all that which a party had agreed to perform".

19 . Since the learned District Judge had declined to permit the plaintiff to amend the plaint in view of the bar contained in the proviso to Rule 17 of Order VI, it would be advantageous to make a reference to a judgment of this Court in the case of Lalchand Sheetalsing Pardeshi died through heirs and WP2389-2017.DOC LRs vs. Ramkrishna

3 (2019) SCC online Bom 1695

Kashinath Jadhav & others, 5 wherein a learned Single Judge had considered the effect of the amended provision on an application for amendment falling under the provisions of [Section 22](#) of the Act, 1963. After referring to the provisions contained in [Section 22](#) and Order VI Rule 17 of the Code and the apparent conflict therein, it was observed as under:

"8.[Section 22\(1\)](#) has an overriding effect over the provisions contained in Civil Procedure Code. [Section 22](#) is also a law dealing with pleadings, as is the case in relation to Order VI, Rule 17 of Civil Procedure Code. [Section 22](#) deals with pleadings in regard to specific type of cases and, as such, the said statute viz. [Specific Relief Act](#) is a special statute, in contradistinction to the provisions in [the Code of Civil Procedure](#) which are general in nature. Provision in a special statute which has been given an overriding effect by introducing a non-obstante clause has to prevail over the provisions contained in [the Code of Civil Procedure](#) and, in this view of the matter, the submission canvassed on behalf of the petitioners, that [Section 22](#) overrides the provisions contained in the proviso to Rule 17 of Order VI of Civil Procedure Code, has to be accepted.

9. Once it is held that [Section 22](#) of the Specific Relief Act has an overriding effect over the provisions contained in Order VI, Rule 17, then it is amply clear that the plaintiff has a right to seek amendment claiming possession, in a suit for specific performance of contract, for the transfer of immovable property and the Court has no option and/or choice but to allow the said amendment. The proviso to Sub-section (1) of [Section 22](#) of the Specific Relief Act enables the plaintiff who has not claimed the relief of possession in the plaint, to seek an amendment and claim the same at any stage of the proceedings and the said right of the plaintiff cast an obligation on the Court to allow the said amendment. The relevant words used in the proviso "the Court shall", clinches the issue. The word "shall" used in the proviso is mandatory."

"20. A profitable reference can also be made to the judgment of the Supreme Court in the case of [Babu Lal vs.](#)

*Hazari Lal Kishori Lal⁴ and others,⁶ wherein the true import of provision contained in Section 22 of the Act, 1963, was expounded by the Supreme Court. It was, *inter alia*, observed that the proviso to sub-section (2) of Section 22 provided for amendment of the plaint on such terms as may be just for including a claim for such relief "at any stage of the proceeding". The term "proceedings" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word "proceeding" in Section 22 includes execution proceedings also. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It is thus clear that the legislature has given ample power to the Court to allow the amendment to the plaint at any stage, including the execution proceedings".*

24. The aforesaid position in law would indicate that notwithstanding the interdict contained in the proviso to Order VI Rule 17 of the Code of Procedure 1908, in a suit for specific performance of contract, the Court is enjoined to permit a plaintiff to amend the plaint so as to incorporate the relief covered by Sections 21 and 22 of the Specific Relief Act, 1963, at any stage of the proceeding.

25. It is trite, an appeal is a continuation of the suit. As enunciated by the Supreme Court in the case of '**Babulal**' (supra,) the plaintiff would be entitled to seek amendment in the plaint even at the

4 (1982) 1 SCC 525

stage of execution of the decree passed in a suit for specific performance. Therefore, the fact that the amendment was sought at the Appellate stage was of no consequence.

26. The submission of Mr. Tamboli that normally no amendment of the pleading should be allowed in appeal which raises fresh factual question, does not merit acceptance when the appeal is against a decree passed in a suit for specific performance, and proposed amendment is covered by the provisions contained in Sections 21 and 22 of the Specific Relief Act, 1963.

27. Even otherwise, it is imperative to note, it could not be controverted that amendment was necessitated on account of the subsequent developments. On the contrary, it was the stand of the defendants that the plaintiff was never in possession of the bungalow no. 1 and, therefore, plaintiff cannot seek the reliefs on the premise that the defendants unlawfully demolished the bungalow no. 1. If the amendment is referable to subsequent developments, the same was required to be considered as the Court is enjoined to take cautious cognizance of the developments which take place during the pendency of the proceeding.

28. The rejection of the amendment by the learned District

Judge on the ground that the amendment, if allowed, would alter the nature and character of the suit, simply does not merit acceptance. Undoubtedly, the plaintiff would be required to substantiate his entitlement to seek the specific performance of the contract. However, that does not imply that the plaintiff's endeavour to seek the specific performance of the contract in accordance with its true terms, upon the alleged demolition of bungalow no. 1 by the defendants, could be questioned as a change in the nature of the suit.

30. In the considered view of this Court, the amendment proposed by the plaintiff was necessary to determine all the questions in controversy between the parties, and to advance the legislative object behind liberalised rules of pleadings in the matter of a suit for specific performance so as to grant all that to which a party is entitled to, under a contract, or for that matter, to compel the defendants to perform all that they had agreed to perform under the terms of the contract.

31. The submission of Mr. Tamboli that the plaintiff cannot seek compensation in addition to the relief of reconstruction of bungalow no. 1 is required to be stated to be repelled. The plaintiff, in a suit for specific performance, is entitled to seek damages in lieu of as

well as in addition to the specific performance of the contract. In addition, in the case at hand, the alleged unlawful act of demolition of bungalow no. 1 itself furnishes a sustainable ground for damages. Whether the plaintiff is entitled to damages, as claimed, or not is, however, a matter for adjudication at the trial.

32. The conspectus of aforesaid consideration is that, the learned District Judge committed an error in rejecting the application for amendment in the plaint. Resultantly, the impugned order deserves to be quashed and set aside.

33. Hence, the following order:

ORDER

- i) The petition stands allowed.
- ii) The impugned order stands quashed and set aside.
- iii) The application for amendment stands allowed.
- iv) Necessary amendment in accordance with the text of draft amendment be carried out and its copy served on the defendant-respondents within a period of four weeks from the date of uploading this order.
- v) The defendants-respondents shall be at liberty to file an additional written statement within a period of 30 days from the date of service of the copy of the amended plaint.

vi) By way of abundant caution, it is clarified that the consideration was confined to determine the legality, propriety and correctness of the impugned order and this Court may not be understood to have expressed any opinion on the merits of the matter and learned District Judge shall not be influenced by any of the observations made hereinabove, while deciding the appeal.

vii) No costs.

34. Rule is made absolute in the aforesaid terms.

(N.J. JAMADAR, J)