

V/s.

Alfa Mana Reltors P Ltd and Anr. ... Respondents

Ms. Snehal S. Jadhav, for the respondent no. 3.

DATE : 23RD JUNE 2025.

PC:

1. Heard the learned counsel for the petitioner.
2. The challenge in this petition is to an order dated 15<sup>th</sup> February 2025, whereby the learned Judge, Court of Small Causes, was persuaded to allow an application for amendment in the written statement preferred by the defendant no. 1 so as to bring on record the fact that the defendant no. 1 has executed an agreement for permanent alternate accommodation dated 27<sup>th</sup> December 2022 in favour of defendant No. 2 and, pursuant thereto, the defendant No.2 was put in possession of Flat No. 601.

3. The petitioner has instituted the suit for declaration of tenancy in respect of the suit premises and that the agreement for surrender of tenancy executed by the plaintiff is null and void. During the pendency of the suit the defendant no. 1 executed the agreement for permanent alternate accommodation on 27<sup>th</sup> December 2022 in favour of defendant no. 2.

4. The learned counsel for the petitioner would urge that, the learned Judge committed an error in allowing the amendment as the interdict contained in proviso Order VI Rule 17, came into play since the trial had commenced and plaintiff had filed an affidavit in lieu of Examination-in-chief in the month of March 2021. Secondly, it was urged that the said instrument is hit by the principle of *lis pendens*.

5. The submission of learned counsel for the petitioner that interdict contained in the proviso to Order VI Rule 17 of the Code came into play, does not merit acceptance, as the instrument came to be executed subsequent to the filing of the affidavit in lieu of Examination-in-chief. In effect, the defendant no. 1 professed to bring on record the subsequent events.

6. It is true, the transfer effected by the defendant no. 1 in favour of defendant no.2 during the pendency of the suit would be subject to the

outcome to the suit. However, that does not imply that the instrument is void. Nor would it preclude the Court from permitting the defendant no.1 from amending the written statement to bring the said fact on record.

7. A useful reference in this context can be made to the decision of the Supreme Court in the case of Khemchand Shankar Choudhari V/s. Vishnu Hari Patil and Ors.<sup>1</sup> wherein the following observations were made :

“6. Section 52 of the Transfer of Property Act no doubt lays down that a transferee pendente lite of an interest in an immovable property which is the subject matter of a suit from any of the parties to the suit will be bound in so far as that interest is concerned by the proceedings in the suit. Such a transferee is a representative in interest of the party from whom he has acquired that interest. Rule 10 of Order 22 of the Code of Civil Procedure clearly recognises the right of a transferee to be impleaded as a party to the proceedings and to be heard before any order is made. It may be that if he does not apply to be impleaded, he may suffer by default on account of any order passed in the proceedings. But if he applies to be impleaded as a party and to be heard, he has got to be so impleaded and heard. He can also prefer an appeal against an order made in the said proceedings but with the leave of the appellate court where he is not already brought on record. The position of a person on whom any interest has devolved on account of a transfer during the pendency of any suit or a proceeding is somewhat similar to the position of an heir or a legatee of a party who dies during the pendency of a suit or a proceeding, or an official receiver who takes over the assets of such a party on his insolvency. (emphasis supplied)

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<sup>1</sup> (1983) 1 SCC 18

8. In a recent pronouncement in the case of Yogesh Goyanka V/s. Govind and Ors.<sup>2</sup> the Supreme Court clarified the position as under :

“18. Similarly, we also find fault with the order of the ADJ and its misplaced reliance on Bibi Zubaida (supra). The only principle emerging from the judgment of this Court in Bibi Zubaida (supra) is that transferees pendente lite cannot seek impleadment as a matter of right and to that extent, we agree with the ADJ. However, Bibi Zubaida (supra) does not place a bar on impleadment of transferees who purchase property without seeking leave of the Court. The decision of the Court in Bibi Zubaida (supra) turns on its own facts; the Court rejected the application for joinder therein noting that the underlying suit was pending since 1983 and upheld the finding of the Trial Court that the subsequent purchaser was not bona fide and attempted to complicate and delay the underlying suit. Therefore, the judgment in Bibi Zubaida (supra), being distinguishable on facts, does not assist the Respondents herein.”

9. The aforesaid being the position in law, as the proposed amendment appears to be necessary for the determination of the real question in controversy between the parties, this Court does not find any infirmity in the impugned order.

10. The petition stands dismissed.

(N.J. JAMADAR, J)

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<sup>2</sup> (2024) 7 SCC 524