



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.7022/2024

Shri. Subhash Nanakram Talda,
Aged about 59 years,
Occu: Business and Agriculturist,,
R/o Baba Hardasram Society,
Kanwar Nagar, Amravati

... PETITIONER

...VERSUS...

1. Smt. Rajshree W/o Rajdeep Meghe,
Aged about 65 years, Occu :
Household,
2. Shri. Rohandeep S/o Rajdeep
Meghe, Aged about 40 years,
Both R/o. 229, Hennessy Road,
Civil Lines, Nagpur

...RESPONDENT

Ms G.Venkatraman, Advocate for petitioner
Shri A.M. Sudame, Advocate for respondents

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 17/01/2025

DATE OF PRONOUNCING THE JUDGMENT: 28/01/2025

JUDGMENT

. Rule. Rule made returnable forthwith. Heard learned Counsel for both the parties.

2. Being aggrieved by the order dated 21.11.2024, passed by the learned 3rd Joint Civil Judge, Senior Division, Amravati in Special Civil Suit No. 203/2024, thereby rejected the application for amendment. The petitioner is the original plaintiff and the respondent Nos. 1 and 2 are the original defendants in the Special Civil Suit No. 203/2024 pending before the learned Trial Court at Amravati.

3. The subject matter of the suit is the Agricultural and (referred to as the suit field hereafter) admeasuring about 1H 58R (i.e. 1,70, 070 sq.fts) of Mouza Navsari, District Amravati. The suit field was ancestral property which devolved upon one Shri Rajdeep Meghe, who is the late husband of Defendant No.1 and father of defendant No.2. In the year 2016, Shri Rajdeep Meghe expired and the suit field devolved upon the defendant Nos. 1 and 2 being only legal heirs of Shri Rajdeep Meghe.

4. The said Shri Rajdeep Meghe without changing the purpose

of the suit field from agricultural to non – agricultural and without making any proper layout, executed agreement to sale of some plots out of the suit field. On the date of execution of the agreement of sale (MOU), seven cases were pending against the defendants for specific performance of contract. Their details are Special Civil Suit No. 121/2015, Special Civil Suit Nos. 129/2020, 106/2020, 183/2020, 77/2020, 78/2020 and 105/2020.

5. On 16.03.2024, the defendants executed an agreement of sale (MOU) in favour of the plaintiff in respect of the suit field for a total consideration of Rs.15,62,00,000/-. On the very same date i.e., 16.03.2024, in terms of the MOU, the plaintiff paid an amount of Rs.1,00,00,000/- to the defendants by RTGS, out of which Rs.50,00,000/- were remitted in the account of defendant No.1 and Rs.50,00,000/- in the account of defendant No.2. Thus, since 16.03.2024 the defendants were enjoying the said amount continuously.

6. Relevant conditions of MOU are as under :-

i) The plaintiff has to settle the pending litigation within six months from the date of MOU. (clause 4)

ii) If the plaintiff fails to settle the pending disputes within the prescribed period, the defendants will refund the said earnest amount and cancel the MOU. (clause 8)

iii) Plaintiff is permitted to do the work of leveling of the said field etc. (clause 10)

iv) The defendants were to execute the sale deed within 6 months of execution of the agreement once the plaintiff succeeded in settling all the seven claims within the stipulated period. It is pertinent to note that, the defendants had executed that agreement of sale (MOU) with the plaintiff dated 16.03.2024, voluntarily and without any duress and out of their free will.

7. On 28.03.2024, plaintiff in terms of MOU, compromised with 2 litigants and got assigned their rights in his favour and executed an agreement with the litigants.

8. Plaintiff has made improvement on the suit field and spent Rs. 25 lakhs in view of the license given by the defendants in terms of MOU. Plaintiff handed over the copies of settlement agreements to the defendant No.1 and informed the defendant No.1 that remaining cases will be compromised upto 15.06.2024. Before

expiring of the period given for settlement of cases, the defendants deposited the amount of Rs. One Crore in his bank account and unilaterally terminated the MOU. The plaintiff came to know that the amount of Rs. One Crore was deposited by the defendants. The plaintiff approached the defendants but the defendants reluctantly refused to talk with the plaintiff and aggrieved by this conduct of the defendants, the plaintiff was constrained to file the suit for specific performance, declaration and injunction. Thereafter an application was filed for grant of permission to deposit Rs. One Crore in the Court, thus the plaintiff expressed his willingness and readiness to perform his part of the contract. A status-quo order was passed on the temporary injunction application, which was extended from time to time. Written statement of defendants was filed at Exh. 47. Plaintiff has filed an amendment application at Exh. 5. Say of defendants to the amendment application was filed at Exh. 55. The learned Trial Court vide its order dated 21/11/2024 rejected the amendment application. The aforesaid order is the subject matter of challenge in the present writ petition.

9. Learned Counsel for the petitioner contended that the

learned Trial Court failed to see that the amendment was sought at the earliest opportunity and was necessary to determine the real controversy between the parties. On the face of it, the proposed amendment did not amount to changing the nature of suit nor any fresh cause of action which could have been said to be barred by any law was sought to be brought in by way of the proposed amendment. As such, the learned Trial Court failed to see that the law laid down by the Hon'ble Apex Court directing the Trial Courts to have a liberal approach in allowing the amendments, unless they are malafide or change the nature of the suit, needs to be allowed.

10. It is further contended that by restraining the plaintiff from amending his plaint, the material relevant facts and documents could not have been brought on record for further fair and just adjudication of the issue involved. The reasons given for rejecting the amendment application are no reasons in law and the order is thus rendered illegal. As such, the impugned order needs interference by this Court and which also needs to be set aside.

11. Learned Counsel for petitioner relied on following citations:

- 1) *Abdul Rehman and another Vs. Mohd. Ruldu and others (2012) 11 SCC 341*
- 2) *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another (2022) 16 SCC 1*
- 3) *Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166*
- 4) *Mudra Salt and Chemical Industries Vs. Collector, Thane and others 2001 (3) Mh.L.J. 151*
- 5) *Firtiz T.M. Clement and another Vs. Sudhakaran Nadar and another (2002) 3 SCC 605*
- 6) *B.K. Narayan Pillai Vs. Parameshwaran Pallai and another (2000) 1 SCC 712*
- 7) *Ram Sahai Vs. Ramanand and others (2004) 13 SCC 40*
- 8) *Varca Sports Club, represented thr. Its General Secretary Jimreeves Rodriguese Rebello and others Vs. Aires D'costa thr. His POA and others 2021 SCC OnLine Bom 897*
- 10) *Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and Brothers (2010) 4 SCC 785*

12. Learned Counsel for the respondents contended that the learned Trial Court has rightly taken into consideration that the deletion of earlier paragraph No.3 will be withdrawal of the plaintiff's earlier admission against suit MOU as well as law, if the

proposed amendment is allowed, it will change the nature of suit. The defendants will lose a valid defence. Hence, such amendment cannot be allowed and rightly passed an appropriate order which needs to be confirmed.

13. Learned Counsel for respondents relied on following citations

1) *Walchandnagar Industries Ltd., Mumbai Vs. Indraprastha Developers, Pune and others 2015 (3) Mh.L.J. 786*

2) *Shobha w/o Wasudeo Tadas and others Vs. Namdeo s/o Balaji Tadas and others 2016 (2) Mh.L.J. 178*

14. After filing of this petition, the learned Counsel for petitioner filed Pursis whereby the proposed amendment vide para 8-F to 8-N of the amendment application were not pressed. Now only paragraphs of proposed amendment i.e. paragraph Nos.3, 8-A to 8-E are required to be considered.

15. I have heard both the parties at length, considered impugned order and citations relied on by the parties. The learned

Civil Judge Senior Division rejected the contention of defendants that there cannot be any application of Order 6 Rule 17 of the C.P.C. to interim injunction application. It was held that the Court in appropriate cases, even in absence of any specific provision, allowed the amendment in petition for injunction by exercising the power under Section 151 of C.P.C. There is no bar to allow amendment to the application for interim injunction. The plaintiff filed amendment application to the plaint as well as application for interim injunction as in written statement, as per plaintiff some false statements were made without there being any supportive documents, unless it is denied, those will be deemed to be accepted by the plaintiff.

16. The substitution of paragraph No.3 was rejected on the ground that the facts mentioned in substituted paragraphs are within the knowledge of plaintiff. However, in my considered opinion, it fails to take into account that in view of written statement, it is alleged that the said contract was terminated orally and thus it was necessitated to the plaintiff to substitute these paragraphs. At the stage of amendment, there is no need to go into

the merits of the amendment. It appears that the suit is filed in June 2024 and written statement filed on 02.10.2024. What is contended by the applicant that on 04.06.2024, amount was unilaterally deposited by the defendants without any intimation or without any talk specifically when the sale-deed was to be executed on 16.09.2024. This fact came to the knowledge on 12.06.2024. The facts pleaded by the applicant in the proposed amendment, it can be substantiated after leading evidence. As such, the learned Trial Court ought not to have rejected the proposed amendment in paragraph No.3 as well as (ii) to (iv).

17. After going through the impugned order, it also appears that the learned Trial Court only adjudicated upon paragraph No. 8-F to 8-N and paragraph No.8-C. As paragraph No.8-F to F-N are not pressed by the petitioner, there is no need to go into the reasons rejecting the application. There is no discussion at all in respect of paragraph No.8 A, B, D and E. The learned Courts below has not considered any of the citations relied on by the plaintiff, nor discussed it. So far as reason given on rejection of paragraph No.8-C, it is held by the learned Trial Court that

settlement of 2 suits are the events, which are matter of record and those can be introduced at the stage of evidence.

18. It is also held that the proposed amendment sought in paragraph No.8-C is not sustainable as the plaintiff in absence of such pleadings can lead evidence on same and held that the proposed amendment is not necessary to be allowed. The learned 3rd Civil Judge Senior Division cannot simply brush aside the citation relied on by the parties. It is admitted fact that the Trial is yet to be commenced and application for amendment filed at the earlier stage.

19. The learned Counsel for the petitioner relied on ***Abdul Rahman and another (supra)***, wherein the Hon'ble Apex Court held as under:

“10.

It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such

application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

20. Learned Counsel for the petitioner also relied on ***Life Insurance Corporation of India (supra)***, in the said matter, the Hon’ble Apex Court laid down certain guiding principles while dealing with the amendment application, which can be summarised as under:

“A) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word 'shall', in the latter part of Order 6 Rule 17CPC. The prayer for amendment is to be allowed.

B) If the amendment is required for effective and proper adjudication of the controversy between the parties.

C) To avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and (c) the amendment does not raise a time-barred

claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

D) A prayer for amendment is generally required to be allowed unless, by the amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration. The amendment changes the nature of the suit. The prayer for amendment is malafide, or, by the amendment, the other side loses a valid defence.

E) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party be compensated by costs.

F) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

G) Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

H) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

I) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for

amendment could be allowed and the issue of limitation framed separately for decision.

J) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.

K) Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

L) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate On the main issues in controversy between the parties, the amendment should be allowed.”

21. Similar is the view taken in ***Gajanan Jaikishan Joshi*** (*supra*).

22. Learned Counsel for petitioner also relied on ***Mudra Salt and Chemical Industries (supra)***, in support of her contention that it is well settled while considering application for amendment, merits of the amendment need not be and should not be considered. It is held that “*it is well settled that when considering whether the amendment should be allowed, the Court need not or ought not to go into the alleged falsity of the case in the amendment nor Court ought to give its findings on the merits of the amendment sought for without first allowing the amendment, frame the issue therein and allowing both the sides to adduce evidence*”.

23. Learned Counsel for respondents relied on ***Noorul Hassan (supra)***, however in my considered opinion, it is in respect of amendment in election petition, it was held that only particulars of that corrupt practice of which germ exists in election petition can be amended or amplified but no new corrupt practice can be introduced. As there is provisions under the Representation of the Peoples Act under Sections 80 to 87 and 100 to give detail material facts, upon which plaintiff’s cause of action or defendant depends.

24. The learned Counsel for respondents also relied on *Shobha w/o Wasudeo Tadas and others (supra)*, in support of his contention that by filing subsequent pleadings under the provisions of Order 8 Rule 9 of the C.P.C., a new case cannot be permitted to be introduced by the plaintiff, but he can be permitted to explain additional facts that have been pleaded in the written statement. However, in my considered opinion, unless the proposed amendment will not be allowed, no evidence could be laid on subsequent events.

25. The learned Counsel for respondents also relied on *Walchandnagar Industries Ltd., Mumbai (supra)*, wherein it is held as under:

“97. The challenge to an order granting or refusing to grant an amendment can be entertained by the High Court in its jurisdiction under Article 226 or 227 of the Constitution of India, essentially on the grounds:

(i) that the Court has failed to record its findings on the relevant aspects and the findings recorded are based upon certain irrelevant aspects;

(ii) that the findings recorded by the Court on the

conditions to be satisfied are erroneous and against the well-settled principles of law or on misreading of the averments in the plaint and the proposed amendment; and

(iii) that the Court has committed an error or an irregularity in the decision-making process, which has resulted in failure of justice.”

There is no dispute over the proposition of law laid down in the above referred citation.

26. Admittedly suit was filed for specific performance, declaration and injunction. In the very judgment, it is observed in paragraph No.96(a) as under:

“96. The law on the question of introducing a claim for specific performance of contract by way of amendment is summarized as under :

(a) In a suit for specific performance of contract, an amendment introducing a plea of readiness and willingness in terms of section 16(c) of the Specific Relief Act proposed at an appropriate stage, can be permitted for the purposes of deciding the real controversy involved in the matter.”

27. In paragraph No.85(a) of the said judgment, it is

observed by the Hon'ble Apex Court as under:

“85. There is no change in the law laid down by the Apex Court prior to an amendment introducing the proviso to Order VI, Rule 17 of Civil Procedure Code and even after an amendment, the criteria to be applied remains the same to the extent that the Court must be satisfied on the following conditions when it allows an amendment:

(a) The amendment necessary for determining the real controversy involved in the matter and to avoid multiplicity of the litigation should be liberally allowed.”

The learned Civil Judge Senior Division failed to record the findings in respect of the proposed amendment in paragraph No.8-A, B, D and E and finding recorded against paragraph No.8-C as already discussed cannot sustain in the eye of law.

28. Considering this law position, it is well settled that if amendment application is moved prior to commencement of trial, it has to be granted liberally. Even after commencement of trial, amendment can be allowed which are necessary for determining the real question in controversy provided, it does not cause injustice

or prejudice to other side.

29. In my considered opinion, the learned Civil Judge Senior Division has not considered all these aspects and very cursorily decided the application. There is no reasoning given by the learned Civil Judge Senior Division for rejecting proposed amendment in paragraph Nos.8-A, B, D and E. As such, as trial was yet to commence, the proposed amendment in the paragraph Nos. 3 and 8-A to 8-E, in my considered opinion, is ought not to have rejected, whether there was unilateral termination of MOU and there was breach of contract are the issues to be decided after adducing the evidence. There will be no prejudice is going to cause to the defendant as proposed amendment does not change the nature of contents and defendants are also having opportunity to lead and cross examine to substantiate their defence. At present, the Court need not to go into the merits of the amendment. As such, the order passed by the learned Civil Judge Senior Division is patently erroneous, contrary to the well settled principles of law and is liable to be quashed and set aside. Accordingly, I proceed to pass the following order:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The order dated 21.11.2024 passed by learned 3rd Joint Civil Judge, Senior Division, Amravati, in Special Civil Suit No.203/2024 is hereby quashed and set aside.
- (iii) The application of amendment Exhibit-51 is allowed to the extent of proposed amendment for substitution of paragraph No.3, paragraph Nos.8-A to 8-E. The rest of the proposed amendment has not been pressed by the petitioner, hence it is rejected.

The Writ Petition stands disposed of in above terms. No orders as to costs.

(SMT. M.S. JAWALKAR, J.)

R.S. Sahare/Jayashree..