

(2008) 04 BOM CK 0053

In the Bombay High Court

Case No : Chamber Summons No. 220 of 2008 in Suit No. 930 of 1990

Associated Breweries and Distilleries and Another	APPELLANT
Vs	
Shiv Smruti Investments and Services Pvt. Ltd. and Others	RESPONDENT

Date of Decision : 04-04-2008

Acts Referred:

Specific Relief Act, 1963 — Section 21, 21(1), 21(5), 22, 22(1)

Citation : (2008) 3 ALLMR 793 : (2008) 5 BomCR 926 : (2008) 4 MhLj 800

Hon'ble Judges : D.B. Bhosale, J

Bench : Single Bench

Advocate : Hiralal Thakkar, Rajesh Shah, Sanjay Jain and Rajesh Rathod, instructed by Bilawala and Co, for the Appellant; S.B. Prabhavalkar, for the Respondent

Judgement

D.B. Bhosale, J.—Heard learned Counsel for the parties.

This chamber summons is taken out by the plaintiffs seeking amendment of the plaint u/s 21(5) of the Specific Relief Act, 1963. By way of an amendment the plaintiffs intend to insert the following prayer in the plaint and make the other consequential amendments of paragraph 19 and 23 thereof:

(i) Order and decree the defendants No. 1 and 2 jointly and/or severally to pay to the plaintiffs and/or the 2nd plaintiff an amount of Rs. 9,00,00,000/- as per particulars of Claim annexed at Exhibit "UU" to the Plaint along with interest thereon @ 18% per annum till payment and/or realization.

2. So far as other proposed prayers, as seen in the schedule of amendment, being prayer Clause (ii) and (iii) are concerned, the learned senior Counsel for the plaintiffs, on instructions, prayed for withdrawal of these prayers from the schedule. These two prayers are accordingly allowed to be withdrawn. Mr. Thakkar, learned senior Counsel for the plaintiffs after inviting my attention to Section 21(5) of the Specific Relief Act and the judgment of this Court in Manohar Dhundiraj Joshi v. Jhunnulal Hariram Yadao 1983 Mh.L.J. 369 : 85 Bom.

LR 87 submitted that the plaintiffs are entitled to seek amendment as prayed and that such prayer for amendment cannot be rejected.

3. Mr. Prabhavalkar, learned Counsel for defendant Nos. 1 and 2 vehemently opposed the prayers made in the chamber summons. He submitted that if a suit for specific performance of a contract in respect of an immovable property coupled with other substantial reliefs for seeking its possession or the possession of any part thereof is filed then Section 22 will apply and the application seeking amendment, as prayed in the instant case, u/s 21 is not maintainable and deserves to be rejected. In other words, he submitted that the application for amendment u/s 21 is misconceived and is liable to be dismissed. He then submitted that in the present suit, the plaintiffs have prayed not only for specific performance but have also made other substantial prayers which are not envisaged u/s 21 of the Specific Relief Act and hence the application for amendment u/s 21 must be rejected. So far as the prayer for interest at the rate of 18 per cent from the date of institution of the suit till payment or realisation is concerned, Mr. Prabhavalkar submitted that such prayer, in the present case, cannot be granted in view of the fact that the suit was filed in 1990 and the amendment is sought after 17-18 years and, therefore, in any case the plaintiffs would not be entitled for interest on the amount of compensation, if awarded, at the existing market rate from the date of the suit.

4. In the light of the last submission advanced by Mr. Prabhavalkar, Mr. Thakkar, learned senior Counsel for the plaintiffs seeks leave to delete the following words from the prayer Clause (i) "from the date of institution of the suit". The leave, as prayed, is granted. Amendment is allowed to be carried out forthwith. The prayer Clause (i) in the paragraph 2 of this order is reproduced after deletion of these words. In view thereof the last submission of Mr. Prabhavalkar needs no consideration.

5. Section 21 of the Act empowers the Court to award compensation in certain cases. Sub-section (5) thereof provides that no compensation shall be awarded under this Section unless the plaintiff has claimed such compensation in his plaint. Proviso appended to Sub-section (5) provides that where the plaintiff has not claimed any such compensation in the plaint the Court shall, at any stage of the proceedings, allow him to amend the plaint, on such terms as may be just, for including a claim for compensation. The explanation appended to Section 21 explains the circumstance that "the contract" has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section. Under Sub-section (1) of Section 21 in a case for specific performance of "a contract", the plaintiff is given a right to claim compensation for its breach, either in addition to, or in substitution of, such performance. The words "a contract" or "the contract" are found in almost all the Sub-sections of Section 21 without specifying whether it pertains to movable or immovable property.

6. Section 22 deals with the power of the Court to grant relief for possession,

partition, refund of earnest money etc. Section 22 empowers the Court to grant these reliefs in a suit for specific performance of a contract for the transfer of "immovable property". Sub-section (2) thereof provides that no relief under Sub-section (1) shall be granted by the Court unless it has been specifically claimed. Proviso appended to Sub-section (2) allows the plaintiff to amend the plaint and seek such relief, at any stage of the proceedings. Sub-section (3) of Section 22 provides that the power of the Court to grant relief under Clause (b) of Sub-section (1) shall be without prejudice to its powers to award compensation u/s 21. Clause (b) of Sub-section (1) provides that any person suing for the specific performance of a contract may ask for "any other relief to which the plaintiff may be entitled", including the refund of any earnest money or deposit paid or made by him, in case his claim in the suit is refused.

7. The expression "any other relief to which he may be entitled", in Clause (b) of Sub-section (1) of Section 22, in my opinion, would not cover "compensation" as contemplated by Section 21 of the Act. In fact, Sub-section (3) of Section 22 provides that the power of the Court to grant relief under Clause (b) of Sub-section (1) shall be without prejudice to its powers to award compensation u/s 21. Thus, the power to award "compensation" u/s 21 and the power to grant "any other relief to which the plaintiff may be entitled" u/s 22 of the Act are independent and they operate in a different sphere. u/s 21 the Court can award compensation in a suit for specific performance of a contract, whereas u/s 22 the Court can grant relief for possession, partition, refund of earnest money, besides any other relief to which the plaintiff may be entitled under Clause (b) of Sub-section (1) in a suit for specific performance. The reliefs, that can be granted by the Court, under these two Sections are different in nature. It cannot be stated that the Court has power to award compensation u/s 21, only in a suit for specific performance of a contract for the transfer of property other than immovable property. There is no such indication in Section 21. In other words, it cannot be stated that the power to award compensation u/s 21 can be exercised only in a suit for specific performance of a contract in respect of movable property. The words "a contract" or "the contract" employed in Section 21 cannot be construed to mean the contract in respect of properties other than "immovable property". As a matter of fact, Section 22 does not confer the power on the Court to award compensation in such suit and the Court can exercise the power to award compensation only u/s 21 of the Act. In the circumstances, the first submission of Mr. Prabhavalkar must be rejected.

8. It is true that in the present suit the plaintiffs have prayed for other substantial reliefs. However, bare perusal of the suit shows that the main prayer in the suit is for specific performance and in view thereof I do not find any difficulty in allowing the plaintiffs to amend the plaint as per the schedule except the portion deleted from prayer Clause (i) so also the other two prayers, namely, prayer Clause (ii) and (iii) which have been withdrawn by learned Counsel for the plaintiffs. Besides this, in my opinion, no prejudice would cause to the defendants if this amendment is allowed at this stage.

9. In the result, the chamber summons is made absolute in terms of prayer Clause (a). The plaintiffs to carry out amendment within three weeks from today. After the amendment is carried out by the plaintiffs it will be open for them to seek further reliefs in the suit, if they so desire, by taking out appropriate proceedings at appropriate stage, and if any such proceedings is taken out, the same shall be considered on merits in accordance with law. The chamber summons is disposed of. It is needless to express that the defendants shall have a right to file additional written statement, if they so desire, within ten weeks from today. While allowing this chamber summons I shall not be understood to have expressed any opinion on the contents of the amendment sought. The chamber summons is disposed of.