

(2003) 01 BOM CK 0108

In the Bombay High Court

Case No : Writ Petition No. 4641 of 2002

Ghanshyam New Andram Parwani

APPELLANT

Vs

Nandlal Nagardas Vora

RESPONDENT

Date of Decision : 22-01-2003

Acts Referred:

Citation : (2003) 01 BOM CK 0108

Hon'ble Judges : R.G. Deshpande, J.

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.G. Deshpande, J.

1. Rule returnable forthwith. Taken up for final hearing and disposal by consent of the parties.

2. Present respondent - Nandlal initiated a suit claiming a declaration of dissolution of partnership, rendition accounts and injunction. During the pendency of the suit, an application, Exhibit-23, came to be filed at the instance of the present respondent-plaintiff claiming amendment to the Plaint by addition of parties as also claiming possession of the property in question. This application was rejected by the learned Judge of the trial Court, who dealt with the matter, by his order dated 24th November, 2000, and a revision against that order also came to be dismissed. The Judgment and Order passed in the Revision, since appeared to have not been challenged any further, can be said to have been concluded. It is pertinent to note that in the earlier amendment application, which stood rejected by order below Exhibit-23 on November 24, 2000, a specific amendment was sought for amongst other, claiming a decree for possession of the suit premises, and further challenging the alleged transaction dated 1-3-1995 between the trustees and the present petitioner/original defendant No. 2. That application was rejected by the above mentioned order which was confirmed in the Revision.

3. Yet another application came to be filed for amendment on October 23, 2002, under Order VI, Rule 17, of the Code of Civil Procedure, whereby an amendment is again sought in prayer clause 5 by adding the words "or in the alternative, a decree for possession be passed." Surprisingly, the learned Judge of the trial Court, who dealt with the matter, by his order dated November 16, 2002, allowed the same, observing that : the question whether premises were taken by either of the party as a tenant earlier to the formation of the partnership firm or was taken on lease by the firm is to be seen." Fact, as is mentioned by the learned Judge is that the present petitioner/original defendant is held to be in exclusive possession and further that the application of the plaintiff for temporary injunction was rejected. In spite of such specific observations by the learned Judge himself the learned Judge allowed the application for amendment. For what better purpose is a matter for one's consideration.

4. Shri Chandurkar, learned advocate appearing on behalf of the petitioner-original defendant contended that in the earlier application an order of rejecting the application was passed and which order was later on confirmed by the High Court in Revision, and same type of prayer was made by the second application, which earlier stood rejected and, therefore, it could be said that it was nothing but an effort on the part of the respondent/plaintiff to circumvent the earlier orders passed and get introduced again the same prayer which earlier stood rejected by order dt. 24th November, 2002.

5. Shri Bhangde, learned advocate appearing on behalf of the respondent scathingly attacked the arguments of Shri Chandurkar, contending that there is substantial difference between the two applications of amendment. In the earlier application, the trustees were sought to be joined as parties to the suit; and further consequential reliefs were asked for by narrating the subsequent events, which had occurred during the pendency of the suit, and precisely pertinent to the alleged transactions between the trustees and the present petitioner-original defendant No. 2. This Court, at this stage, need not go into niceties of that application, as that stood concluded because of the decision in the Revision by the High Court. The only point that needs to be considered here is: as to whether the learned Judge of the trial Court was right in allowing the present amendment application; and if it is so allowed, would any prejudice cause to the petitioner/defendant? Shri Bhangde, invited my attention to a decision of the Supreme Court, reported in Prem Bakshi and Others Vs. Dharam Dev and Others, Placing reliance on the observations made in paragraph 6 thereof, Shri Bhangde contended that by allowing the amendment, it cannot be said that failure of justice has been caused or any irreparable injury is inflicted on the petitioner. So far as regards the propositions in paragraph 6 of the aforesaid Judgment are concerned, there cannot be any reason to deviate therefrom for anyone. However, the matter does not stop there. The question is in the Plaint itself, in paragraph V clearly suggests that through this paragraph, the plaintiff/present respondent has virtually asked for the possession and an attempt is being made to suggest that through the present amendment application just a clarification to

this prayer clause is being made. The Court cannot lightly brush aside prayer clause No. 3 made in that Plaint itself, wherein surprisingly and contrary to prayer clause V, the plaintiff has sought for a declaration that plaintiffs is the sole tenant and is in exclusive possession of the suit premises. If such a prayer is already made for declaration claiming possession over the property, whereby plaintiff wanted to establish his possession, even on the date when the suit was filed, in the opinion of this Court, filing of the present application is nothing but a futile exercise. It is the case of the plaintiff himself, as is argued by Shri Bhangde, and I reproduce the words used by Shri Bhangde in his arguments that: "the present amendment for possession is nothing but a clarification to remove any ambiguity in the original prayer clause V". In my opinion, provisions in the enactment and procedure of the law cannot be used for such purposes just for the sake of the satisfaction of the litigant. In the opinion of this Court, therefore, the learned Judge of the trial Court definitely committed an error in allowing the amendment application, which in fact, virtually stood concluded by the earlier order dated 24th November, 2002 and confirmed by the High Court in Revision application.

6. Shri Bhangde, invited my attention to yet another decision reported in 1963 Mh.LJ. 942, Lakhiram Ramdas v. Vidyut Cable and Rubber Industries. Shri Bhangde, placed heavy reliance on the observations in paragraph 6 thereof. With all curiosity and with the help of the learned advocate, I have gone through this judgment, D.V. Patel, J. as he then was, while speaking for the Court observed:

"In our view the principles are well settled and do not admit of doubt. The Court has to see the substance of the plaint and not to go by the mere form. Now, the substance of the plaint though cleverly drafted is that the defendants should remove themselves from the premises and should not thereafter interfere with the plaintiffs possession either by entering or interfering with the same. This is merely putting in a very ingenious form the substantive prayer for possession and cannot be regarded as merely a prayer for injunction." Rest of the observations for the purposes of the present petition, in the opinion of this Court, are not relevant. However, after having gone through the above said observations of the Division Bench, and applying the same test here, I am of the firm opinion that this judgment, in fact, is more in favour of the petitioner than that of the present respondent/original plaintiff. Shri Bhangde, had taken me through the Plaint also and precisely prayer clause made therein. If we look at the matter in the background of observations referred to above, the present amendment virtually, in no way, can be related to the substance of the Plaint, when particularly, substantive prayer is already made in the original Plaint. In the opinion of this Court, what purpose is being served by amending the same thing which has already said, the Court is at disadvantage to understand the same. Suffice it is to observe that in prayer clause 3 of the original plaint, a specific prayer is made for declaration of the possession of the plaintiff himself. In such circumstances and keeping in view the original prayer clause V the proposed amendment, whether it causes any prejudice to the defendant or not, is an

amendment which really did not deserve to be allowed. I see substance in the arguments of Shri Chandurkar and merit in the petition filed before this Court. I have no slightest hesitation and without slightest vacillation of mind, the order passed by the learned trial Court, allowing the amendment application, is quashed and set aside. The amendment application of the respondent/original plaintiff stands dismissed. However, in the circumstances of the case, there would be no order as to costs. Rule made absolute accordingly.