
(2013) 09 DEL CK 0360

In the Delhi High Court

Case No : I.A. No. 8859 of 2012 and I.A. No. 17901 of 2011 in CS (OS) 2501 of 2011

M/s. Sunshine India Pvt. Ltd.

APPELLANT

Vs

Bhai Manjit Singh (HUF) and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 1 Rule 10(2), Order 1 Rule 3, Order 2 Rule 2, Order 6 Rule 17
Contract Act, 1872 — Section 202
Specific Relief Act, 1963 — Section 4

Citation : (2013) 8 AD 189 : (2013) 202 DLT 777 : (2013) 138 DRJ 223

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : P.V. Kapur, Mr. Sudhir Makkar, Mr. Aman Anand and Mr. Sidhant Kapur, for the Appellant; Arvind Nigam, Mr. Arun Arora, Advocate for Defendants Nos. 1 and 3, Mr. Amit Sibal, Alok K. Aggarwal, Apoorv Karup, Advocates for Defendants Nos. 2 and 4, Mr. Pratyush Sharma, Ms. Sadhana Sharma, Advocate for Defendant No. 5, Mr. Jatan Singh, (CGSC), Mr. Tushar Singh, Jaswinder Singh, Advocates for UOI and L and DO, Mr. Vivek Sood, ASC for NDMC and Ms. Janhavi Mahane, for the Respondent

Final Decision : Disposed Off

Judgement

Hima Kohli, J.—The plaintiff company has filed I.A. No. 8859/2012 under Order VI Rule 17 of the CPC (for short "the Code") praying inter alia for permission to amend the plaint by incorporating fifteen paragraphs, after the existing para 27 of the plaint, by substituting the cause of action para with paras 28-A to 28-C and the existing para 30 pertaining to court fees and jurisdiction with the proposed para 30 and finally, by asking for additional relief and adding two prayer clauses, i.e., prayer clauses (C-1) and (C-2). In I.A. No. 17901/2011 filed by the plaintiff under Order 1 Rule 10 C.P.C., permission has been sought to implead L&DO and NDMC as defendants No. 6 & 7 in the memo of parties. As the present case has a chequered history, a brief reference to the relevant facts

leading to filing of this application by the plaintiff, is considered necessary.

2. On 27.9.2011, the plaintiff company had instituted the present suit against the defendant No. 1 [Bhai Manjit Singh (HUF)], defendant No. 2 (Mrs. Maheep Manjit Singh), defendant No. 3 (Mr. Vikram Jeet Singh), defendant No. 4 (Mr. Mohan Jeet Singh) and defendant No. 5 (Bhai Manjit Singh) praying inter alia for the relief of specific performance of an Agreement to Sell dated 29.7.2005 (hereinafter referred to as "the Agreement") in respect of premises bearing No. 61, Golf Links, New Delhi (hereinafter referred to as the suit premises") by directing the defendant No. 1/HUF to execute the sale deed/conveyance deed in its favour after the suit premises is converted from leasehold to freehold. Besides the above, the plaintiff company has prayed for a decree of declaration that the act of the defendant No. 1/HUF of cancelling the power of attorney dated 12.8.2005 executed by her on behalf of the defendant No. 2, in favour of Sh. Abhay Aggarwal (Director of the plaintiff company), be declared as null and void and for the relief of mandatory injunction, directing the defendants to take steps to have the suit premises converted from leasehold to freehold.

3. The plaint was registered as a suit on 12.10.2011 and summons were issued to the defendants, returnable on 1.12.2011. On the application filed by the plaintiff company for interim relief (IA No. 16121/2011), the defendants were restrained from selling, transferring or alienating the suit premises to any third person till further orders. Within one month from the date of issuance of summons in the suit, the plaintiff company had filed the following four applications:-

(i) IA No. 17899/2011 under Order VI Rule 17 of the CPC for permission to amend the suit.

(ii) IA No. 17900/2011 u/s 80(2) of the CPC for leave to maintain the suit against UOI.

(iii) IA No. 17901/2011 under Order I Rule 10 of the CPC for impleading L&DO and NDMC as defendants in the suit.

(iv) IA No. 17960/2011 u/s 151 of the CPC for issuance of directions to the L&DO to give a no objection to the plaintiff company to carry on construction of the suit premises.

4. Vide order dated 15.11.2011, notices were issued on the aforesaid applications to the non-applicants/defendants, as also to the proposed defendants in I.A. No. 17901/2011, returnable on 1.12.2011. IA No. 17899/2011 filed by the plaintiff under Order VI Rule 17 CPC was listed for hearing on 19.03.2012 and the said application was disposed of as not pressed with liberty granted to the plaintiff company to file an application giving subsequent events and the nature of the relief. The remaining applications mentioned hereinabove were adjourned to 17.5.2012.

5. The undisputed facts of the case are that in the records of the L&DO, the suit

premises stands mutated in the name of the defendant No. 1/HUF. On 21.1.2000, the defendant No. 5 had executed a power of attorney in favour of one Mr. P.C. Joshi and Mr. M. Naryana Kutty. On 10.3.2000, a Memorandum of Family Settlement was executed by the members of the defendant No. 1/HUF that included the defendants No. 2 to 4 herein. On 29.7.2005, the defendant No. 1/HUF acting through the defendant No. 2, had entered into an Agreement to Sell with the plaintiff company in respect of the suit premises, for a sale consideration of Rs. 9.25 crores. Out of the aforesaid total sale consideration of Rs. 9.25 crores, the plaintiff company claims to have paid for and on behalf of the vendor, a sum of Rs. 8,99,14,974/- on different dates to its various creditors, apart from depositing conversion charges in respect of the suit premises directly with the L&DO for its conversion from leasehold to freehold.

6. Under the terms and conditions of the aforesaid Agreement to Sell, the plaintiff company was to be put into possession of the suit premises and clause 7 of the Agreement entitled the plaintiff company to construct and have the plans sanctioned pending execution of the sale deed. Clause 9 of the Agreement stipulated that after execution thereof, the seller would not be left with any right, title or interest in the suit premises. Within a few days from the date of execution of the Agreement in favour of the plaintiff company, the defendant No. 1/HUF had executed a power of attorney in favour Mr. Abhay Aggarwal, a Director of the plaintiff company. It is an admitted position that pursuant to the execution of the Agreement to Sell, possession of the suit premises was handed over to the plaintiff.

7. Thereafter, the defendant No. 1/HUF had applied to the L&DO on two occasions seeking conversion of the suit premises from leasehold to freehold, but the first application was rejected on 20.12.2005 on the ground that a female could not be a karta of the HUF and the second application was rejected on 13.2.2009 on the ground that an injunction order was operating against the L&DO in a suit bearing No. CS(OS) No. 2373/1999 that had been instituted by F.M.I. Investment Pvt. Ltd. against Montari Industries Ltd. and the defendant No. 5 herein, wherein the aforesaid company had sought recovery of a sum of Rs. 67 lacs with interest thereon.

8. Upon coming to know about the aforesaid suit instituted by F.M.I. Investment (P) Ltd. and the ground taken by the L&DO for rejecting the second application filed by the defendant No. 1/HUF for conversion of the suit premises from leasehold to freehold, the plaintiff company had filed an application in CS(OS) No. 2373/1999 for permission to intervene and for modification/setting aside of the injunction order dated 10.1.2012 passed in the said proceedings. Vide order dated 1.4.2011 passed in the aforementioned suit, the intervention application filed by the plaintiff company was disposed of with permission granted to it to deposit a sum of Rs. 1.46 crores in Court by way of an FDR and it was directed that upon the plaintiff company making such a deposit, there would not be any restriction upon it to deal with the suit premises in any manner.

9. In the month of October 2008, the plaintiff company had applied to the NDMC through Mr. P.C. Joshi and Mr. M. Narayana Kutty, power of attorney holders of the defendant No. 1/HUF, for sanction of the building plans in respect of the suit premises that were finally sanctioned by the NDMC on 17.6.2010. In less than a week from the date of the NDMC sanctioning the building plans, on 25.06.2010, the defendant No. 1/HUF had proceeded to cancel the power of attorney dated 21.01.2000, executed in favour of Mr. P.C. Joshi and Mr. M. Narayana Kutty. It is the contention of the plaintiff company that the defendant No. 5 had intimated the L&DO of the aforesaid cancellation for the first time on 3.2.2011, which has been denied by the other side. In the month of July 2010, the old built up structure existing on the suit premises was demolished by the plaintiff company. On 9.12.2010, the L&DO issued a notice of re-entry to the defendant No. 1/HUF on the ground that construction was being undertaken in the suit premises without obtaining prior sanction from it. Contemporaneously, L&DO also wrote to the NDMC, calling upon it to take requisite action for permitting the construction without obtaining an NOC from it.

10. As a result of the aforesaid notices issued by the L&DO, correspondence was exchanged between Mr. P.C. Joshi & Mr. M. Narayana Kutty as power of attorney holders of the defendant No. 1/HUF and the L&DO/NDMC. On 26.4.2011, the defendant No. 2 proceeded to cancel the general power of attorney dated 12.08.2005, executed in favour of Mr. Abhay Aggarwal, Director of the plaintiff company. Three months thereafter, on 25.7.2011, the defendant No. 1/HUF intimated NDMC of the revocation of the general power of attorney executed in favour of Mr. Abhay Aggarwal and asserted that the HUF was the owner of the suit premises. As a result, the NDMC issued a notice dated 10.8.2011 to the plaintiff company calling upon it to stop the on going construction activity being undertaken by it at the suit premises.

11. Aggrieved by the aforesaid order passed by the NDMC, the plaintiff company filed a writ petition in this court, registered as WP(C) No. 6156/2011. Vide order dated 24.8.2011 passed in the writ proceedings, the L&DO was called upon to dispose of the representation dated 22.12.2010 made by the plaintiff company for issuance of an NOC, within two weeks from the date of passing of the said order. One month down the line, on 27.9.2011, the plaintiff company instituted the present suit for specific performance, declaration and permanent injunction etc. against the defendants. A day after that, on 28.9.2011, the L&DO rejected the representation made by the plaintiff company requesting for an NOC on the ground that the NOC for sanctioned building plans is given only to a recorded lessee.

12. The aforesaid decision taken by the L&DO was challenged by the plaintiff company who filed a second writ petition, registered as WP(C) No. 7777/2011. The said writ petition was listed on 1.11.2011 and the learned Single Judge observed that as the plaintiff company had already instituted a civil suit in this court for enforcement of the Agreement to Sell and disputed questions of facts

had been raised in the writ petition, it would be appropriate for it to approach the civil court to seek appropriate directions as had been sought in the said petition. In view of the aforesaid observations, the plaintiff company sought leave to withdraw the aforesaid writ petition with liberty to approach the civil court. Accordingly, the writ petition was dismissed as withdrawn on the very same date, i.e., on 1.11.2011 with liberty granted to the plaintiff company, as prayed for.

13. Within two weeks from the date of passing of the aforesaid order, the plaintiff company filed an application in these proceedings under Order VI Rule 17 of the CPC, registered as IA No. 17899/2011 praying inter alia for permission to amend the plaint, apart from the other applications as mentioned in para 4 hereinabove. As already noted in para 5 hereinabove, the aforesaid application was withdrawn by the plaintiff company on 19.03.2012, with liberty granted to it to file a fresh application incorporating subsequent facts and the nature of relief. Thereafter, the plaintiff company filed the present amendment application on 8.5.2012.

14. Mr. P.V. Kapur, learned Senior Advocate for the plaintiff company submitted that the amendment application has been necessitated to bring on record the subsequent developments that have taken place after the institution of the present suit, along with some consequential amendments required to be incorporated in the relief clause, by specifically including a prayer against the L&DO and seeking leave of the court to arraign L&DO as a co-defendant in the memo of parties. The application also refers to the pendency of another application filed by the plaintiff company under Order I Rule 10 of the Code, registered as IA No. 17901/2011, wherein impleadment of the L&DO and the NDMC has been sought and both the applications are being decided by this order.

15. Replies in opposition to the present applications have been filed by the defendants No. 1 & 3 and the defendants No. 2 & 4, as also the proposed defendant No. 5, L&DO. Mr. Arvind Nigam, learned Senior Advocate appearing for the defendants No. 1 & 3 advanced an argument that the application for amendment, as filed is not maintainable for the reason that the plaintiff company had filed a previous application for leave to amend the plaint, registered as IA No. 17899/2011 that was based on identical facts as have been set out in this application and after extensive arguments were addressed thereon, the court had disposed of the aforesaid application since the plaintiff company had not pressed the same and as per the order dated 19.03.2012, only a limited liberty was granted to the plaintiff company, which was to file a fresh application mentioning "subsequent events and the nature of relief". He contended that the present application is only a reiteration of the averments made in the previous amendment application and since this application does not plead any subsequent events, the same is not maintainable and the plaintiff company is estopped in law from introducing events that had occurred prior to the institution of the suit. Learned counsel pointed out that in the suit as had been originally filed by the plaintiff company, it had chosen not to refer to the first writ petition filed by it, registered as WP(C) No. 6156/2011 that was disposed of prior to the institution

of the present suit and further, even by way of the proposed amendments, the plaintiff company is not seeking the reliefs prayed for in the second writ petition filed by it, i.e., WP(C) No. 7777/2011 and nor is it seeking any relief with regard to the cancellation of the power of attorney dated 21.1.2000 executed by the defendant No. 5 in favour of Mr. P.C. Joshi and Mr. M. Naryana Kutty.

16. On merits, it was canvassed on behalf of the defendants that the plaintiff company had originally instituted the present suit seeking the relief of specific performance of an Agreement to Sell and as per Section 4 of the Specific Relief Act, a suit for specific performance is for enforcement of an individual right and for seeking such a relief, no stranger to an Agreement can be impleaded as a party since such a party can neither be treated as a necessary party, nor a proper party. In support of the said submission, reliance was placed on the following judgments:

(i) Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru,

(ii) Kasturi Vs. Iyyamperumal and Others,

17. It was next argued by the learned Senior Advocate that the Agreement to Sell does not transfer any right, title or interest in the suit premises and it cannot be a substitute for a registered sale deed/conveyance/assignment of a lease etc. and therefore, any plea proposed to be taken by the plaintiff company that it has already acquired ownership rights in the suit premises, is impermissible. To fortify the submission that an Agreement to Sell does not confer title on a party, reference was made to the following decisions:

(i) Jiwan Dass Rawal Vs. Narain Dass & Ors. AIR 1981 Delhi 291

(ii) Sunil Kapoor Vs. Himmat Singh and Others,

(iii) Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another,

(iv) Raheja Universal Limited Vs. NRC Limited and Others,

18. Learned counsel contended that if the plaintiff company is permitted to incorporate the proposed amendments in the plaint, it would result in diluting/obliterating its admissions with regard to title of the defendants in the suit premises. Besides the above, he urged that the proposed amendments sought to be incorporated by the plaintiff company whereunder the defendants have been described at some place as "erstwhile owners" amounts to raising mutually destructive pleas in the plaint, which is impermissible. In other words, it was argued on behalf of the defendants that by the present application, the plaintiff company is seeking to change the entire nature and the scope of the existing suit and incorporate in the plaint, a plea to the effect that it is already vested with the ownership rights in the suit premises that ought to be recognized by the L&DO and other authorities, which is impermissible. Mr. Nigam, Senior Advocate urged that the two pleas, i.e., the existing pleadings as on record and the ones sought to be incorporated by way of the proposed amendments are directly

contradictory and the latter are completely destructive of the original pleadings and therefore, ought not to be allowed for the reason that it would cause irreparable prejudice to the defendants.

19. The fourth argument raised by the counsel for the defendants was that the real question in the suit as originally filed by the plaintiff company hinged on the true nature, scope, effect and enforceability of the Agreement to Sell and for deciding the said issue, neither the L&DO, nor the NDMC are necessary or proper parties and further, determination of issues arising from the purported cause of action qua the L&DO and the NDMC are not the real questions to be determined in the suit as had been originally filed by the plaintiff and in any case, such reliefs are independent of the original cause of action on which the suit was premised. In support of the aforesaid submission, reliance was placed on the following judgments:

(i) Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others,

(2) Alkapuri Co-operative Housing Society Ltd. Vs. Jayantibhai Naginbhai (deceased) Thr. LRs.,

20. Mr. Nigam had further canvassed that determination of injunctive reliefs as proposed to be sought by the plaintiff company qua the L&DO, presupposes the existence of a right, title or interest in the suit premises in its favour and the question of such a right existing in the suit premises would arise only if the plaintiff company succeeds in the suit that had been filed by it originally. It was thus contended that by adding the reliefs of declaration, the plaintiff company is trying to alter the true nature of the suit from one of specific performance, to one of declaration, which is impermissible. To fortify the said submission, learned counsel had placed reliance on a decision of the Supreme Court in the case of Steel Authority of India Ltd. Vs. Union of India (UOI) and Others, On the factors relevant for consideration, while dealing with applications for amendment, reference was made to the decision of the Supreme Court in the case of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others,

21. Lastly, it was urged on behalf of the defendants No. 1 & 3 that the relief of declarations, styled by the plaintiff company as proposed injunctive orders ought not to be allowed, being barred by limitation under Article 58 of the Limitation Act and procedurally impermissible, under Order II Rule 2 of the Code. To substantiate the said submission, learned counsel had relied on the decision of the Supreme Court in the case of Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Regd.) Vs. Ramesh Chander and Others,

22. The aforesaid submissions as made by the counsel for the defendants No. 1 & 3 were adopted by Mr. Sibal, counsel for the defendants No. 2 & 4, who had additionally asserted that there is no requirement to make L&DO a party in the present proceedings for the reason that the main grievance raised by the plaintiff company in the present application for justifying impleadment of L&DO, is that the said authority is insisting on grant of an NOC only to a recorded owner and if

prayer clause (C) of the original plaint is granted in favour of the plaintiff company, then as a consequence, it would be declared as the recorded owner of the suit premises and in that eventuality, its grievance against the L&DO would not survive. Thus it was urged that there is no need for incorporating the proposed amendments as suggested in prayer clauses (C1) & (C2) of the plaint as the said reliefs are purely consequential to the original prayer clause (C), that pertains to the relief of specific performance.

23. Mr. P.V. Kapoor, Senior Advocate for the plaintiff had rebutted the arguments addressed by the counsels for the defendants No. 1 & 3 and the defendants No. 2 & 4 and had started by clarifying that the plaintiff company does not insist on the impleadment of the NDMC as a defendant in the suit, but considers it necessary to implead L&DO as a defendant in aid of the plaintiff's right to seek specific performance against the existing defendants and pending the said relief, for permission to carry out construction in the suit premises in accordance with terms of the Agreement to Sell, that was being impeded by the L&DO. He submitted that the presence of the L&DO in the present proceedings is also considered necessary to enable the Court to effectively and completely adjudicate upon all questions involved in the suit. Learned counsel had pointed out that both the decisions that were being cited by the counsel for the defendants in the cases of Anil Kumar Singh (*supra*) and Kasturi (*supra*) actually support the aforesaid stand taken by the plaintiff company.

24. As regards the contention of the counsels for the defendants that the Agreement does not transfer the right, title or interest in the suit premises and is not a substitute to a registered sale/conveyance deed etc., learned Senior Advocate had submitted that the plaintiff did not have any quarrel with the aforesaid legal proposition, except for the fact that clause 9 of the Agreement to Sell dated 29.5.2005 stipulates that after execution of the said document, the vendor would not be left with any right, title or interest in the suit premises and the said clause when read in conjunction with Section 202 of the Indian Contract Act, disentitles the defendants from unilaterally revoking the power of attorneys executed in favour of Mr. P.C. Joshi and Mr. Naryana Kutty and Mr. Abhay Aggarwal.

25. Learned counsel had submitted that the contention of the defendants that the amendment application filed by the plaintiff company presupposes that its application for impleadment of L&DO and NDMC as defendants in the suit proceedings (IA No. 17901/2011) stood allowed which was not the case, is incorrect as one follows the other. He had asserted that the contention of the defendants that the averments made in the proposed paras 27(g), (i) (n) and prayer clause (C-2) amounts to withdrawal of the admissions made by the plaintiff company in the original plaint with regard to D-1/HUF's ownership of the suit premises, is incorrect as no such withdrawal of any admission has been made and the plaintiff company stands by the averments made by it in paras 3, 6, 24, 26, 27 & 28 of the original plaint wherein ownership of the defendant No.

1/HUF in the suit premises has been duly admitted. The attention of the Court was also drawn to the original prayer clause (C) in the plaint to urge that the said relief presupposes that the title of the suit premises remains vested with the defendant No. 1/HUF. It was thus argued that the entire plaint has to be read holistically and not in a piecemeal fashion as was being done by the defendants. Learned counsel explained that the assertion of the plaintiff company that the amendments proposed to be inserted in the plaint to the effect that the defendant No. 1/HUF is not left with any right, title or interest in the suit premises have to be seen in the light of the recitals in clause 9 of the Agreement to Sell that governs the parties.

26. Learned counsel for the plaintiff company disputed the submission made by the other side that by seeking to add prayer clauses (C-1) & (C-2) to the plaint, the suit for specific performance as originally instituted would stand converted into one for declaration of title, which is impermissible. He submitted that none of the original reliefs have been given up by the plaintiff company and it is only on account of subsequent events that have occurred after the institution of the suit that the present application had to be filed for seeking amendments in the plaint and the said amendments, ought to be allowed to avoid multiplicity of litigation. To substantiate the said submissions, reliance was placed upon the following decisions:-

- (i) Iswar Bhai C. Patel @ Bachu Bhai Patel Vs. Harihar Behera and Another,
- (ii) Ragu Thilak D. John Vs. S. Rayappan and Others,
- (iii) Kedar Nath Agrawal (Dead) and Another Vs. Dhanraji Devi (Dead) by LRs. and Another,

27. Referring to the order dated 19.3.2012 passed in IA No. 17899/2011 and the effect thereof, Mr. P.V. Kapur, Senior Advocate contended that there cannot be any estoppel against the statute as the provisions of Order VI Rule 17 of the Code permit the plaintiff to amend its plaint at any stage, and even if the order dated 19.3.2012 had recorded a submission made on behalf of the plaintiff company that it wished to bring on record certain subsequent events, the same cannot debar it from bringing on record the earlier mentioned events as long as the same are relevant for adjudicating the suit. He disputed the submission made by other side that Article 58 of the Limitation Act would act as a bar to the amendments proposed by the plaintiff company and submitted that the events sought to be incorporated by the plaintiff company are subsequent events that had occurred after the institution of the suit, when the L&DO had despatched a letter rejecting the plaintiff company's request for an NOC. Learned counsel also disputed the submission made by the other side that no averments qua the first writ petition filed by the plaintiff company had been made in the plaint and that the reliefs prayed for in the second writ petition are still not being sought in the present suit. In this context, he had referred to one of the pending applications filed by the plaintiff, i.e., IA No. 17960/2011 and had submitted that the reliefs

sought therein are same as the reliefs that were prayed for in WP(C) No. 7777/2011.

28. Lastly, counsel or the plaintiff had submitted that the provisions of Order II Rule 2 CPC relied upon by the other side have no application to the facts of the present case and therefore, the judgment in the case of Van Vibhag (*supra*) would not be of any assistance to the defendants. He stated that in any case, the aforesaid decision is not an authority for the proposition that the provisions of Order II Rule 2 CPC would apply in a suit where a subsequent suit had not been filed. To elaborate the preconditions necessary for applying the provision of Order II Rule 2 CPC, learned counsel had cited a decision of the Supreme Court in the case of Dalip Singh v. Mehar Singh Rathee and Ors., (2004) 7 SCC 650 . He had also relied on the provisions of Order I Rule 3 CPC that prescribes as to who all may be joined in one suit as defendants on the principle that when a person is made a party in a suit, because there is a cause of action against him, then upon joining causes of action, the parties are also joined and had referred to the case of Iswar Bhai (*supra*). Counsel for the plaintiff company concluded by referring to the decision of the Supreme Court in the case of Rajesh Kumar Aggarwal (*supra*) to urge that the merits of the proposed amendments ought not to be examined by the court at the stage of deciding an application for amendment.

29. This Court has heard the counsels for the parties at considerable length and carefully considered their respective submissions in the background of the factual matrix of the case and the case law cited by both sides.

30. It has been settled in a plethora of decisions of the Supreme Court and the High Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court. A perusal of the provision of Order VI Rule 17 CPC makes it manifest that the Court is conferred with the power to allow alterations and amendments of the pleadings at any stage of the proceedings, if it is of the view that such amendments may be necessary to determine the real question in controversy between the parties. Proviso to Order VI Rule 17 CPC stipulates that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, a party could not have raised the matter before the commencement of trial. In the present case, proviso to Rule 17 CPC has no application as trial of the suit has not yet commenced and the first amendment application was filed in less than one month from the date of registration of the suit and on withdrawal of the said application on 19.3.2012, the present application came to be filed in May 2012.

31. The provision of Order VI Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. As held by the Supreme Court in the case of B.K.N. Narayana Pillai Vs. P. Pillai and Another, while deciding a prayer for amendment, the courts should not adopt a hyper-technical approach

for the simple reason that technicalities of law should not be permitted to hamper the administration of justice between the parties and effort shall be made to avoid uncalled for multiplicity of litigation. The basic test which must govern the grant or refusal of amendment is whether such amendments are necessary for determining the real questions in controversy between the parties, and for proper and effective adjudication of the case.

32. The general rule is that pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof since in the former case, it can be assumed that the defendant would not be prejudiced as he would have the complete opportunity to counter the stand of the plaintiff/applicant post amendment. However, in cases where amendment is sought at a post-trial stage, the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case.

33. The object of the aforesaid provision is that the Courts should try the merits of the case that come before them and should allow all amendments that may be necessary for determining the controversy between the parties provided that it does not cause any injustice or prejudice to the other side. It is also settled law that while considering whether an application for amendment should be allowed or disallowed, the Court should not go into the correctness or the falsity of the case set up in the amendment, and nor should it record a finding on the merits of the amendment sought to be incorporated. [Refer: Rajesh Kumar Aggarwal (supra)].

34. In the case of Ragu Thilak D. John Vs. S. Rayappan and Others, the Supreme Court had observed that even if the amendments sought would change the nature of the suit as originally filed, the same could not be a reason for refusing the application for amendment and that the dominant purpose of Order VI Rule 17 CPC was to minimize the litigation and that the plea taken in opposition that the relief sought by way of amendment was barred by time, is arguable in the circumstances of the case.

35. On the scope of Order VI and Rule 17 CPC and the approach of the court in considering whether the proposed amendment is necessary, the Supreme Court had observed in the case of Rajesh Kumar Aggarwal (supra), as under:

Para 18: As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is

settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

Para 19: While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

(Emphasis added)

36. The aforesaid decision had also considered a number of judicial precedents on the said issue, including the following:-

- (i) L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.,
- (ii) Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon,
- (iii) Smt. Ganga Bai Vs. Vijay Kumar and Others,
- (iv) Ganesh Trading Co. Vs. Moji Ram,
- (v) B.K.N. Narayana Pillai Vs. P. Pillai and Another,
- (vi) Ragu Thilak D. John Vs. S. Rayappan and Others,

37. In the case of Revajeetu Builders (supra), after critically analysing both, English and Indian law on amendments, the Supreme Court had culled out the relevant factors that must be taken into consideration by courts while dealing with applications for amendments, which are as below:-

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona fide or mala fide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

38. Similarly, while discussing that the courts have ample power to allow an application for amendment of the plaint if it is satisfied that the same is required in the interest of justice and for the purpose of determining the real question in controversy between the parties, in a recent decision in the case of State of Madhya Pradesh Vs. Union of India (UOI) and Another, the Supreme Court had considered the principles applicable in the case of amendment of a plaint and had noted with approval, the decision in the case of Revajeetu Builders (supra) and several other decisions including the following:-

(i) Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others,

(ii) North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.,

(iii) Usha Devi Vs. Rijwan Ahamd and Others,

(iv) Surender Kumar Sharma Vs. Makhan Singh,

39. While discussing the scope of permitting amendments, it has also been held that the proposed amendment should be examined to see whether it introduces a totally different, new and inconsistent case or that the application for amendment has not been made in good faith. It has been consistently held that a pleading can only be amended if it is to substantiate, elucidate and expand the pre-existing facts already contained in the original pleadings, but a new cause and a case cannot be substituted under the guise of an amendment, and the courts cannot be called upon to decide the alternative case instead of the original case. In other words, the court must not refuse bonafide, legitimate, honest and necessary amendments and at the same time, it should not permit malafide, worthless and dishonest amendments. The guiding factor in dealing with such applications is that all rules and procedures are intended to subserve the ends of justice and technicalities of law should not be permitted to hamper or impede the courts in dispensing justice and therefore, the approach of the courts ought to be liberal.

40. It is an equally well settled principle that the prayer for amendment of the plaint and the prayer for amendment of the written statement stand on a

different footing and different yardsticks are applicable. As against the general principle that amendment of pleadings cannot be allowed so as to materially alter or substitute the cause of action or the nature of claim, in the case of amendment to the written statement, the said principle is inapplicable and addition of new grounds of defence or substituting or altering a defence by taking inconsistent pleas in the written statement is permissible for the reason that there is lesser likelihood of prejudice being caused in such an event.

41. Now keeping in mind the real controversy involved in the present case, the test that is held to be the cardinal test for exercise of discretion to allow or disallow the amendments to the plaint is whether such amendments are necessary for deciding the real dispute between the parties or are necessary for the proper and effective adjudication of the case.

42. The first and foremost objection taken by the defendants to the amendment application is that the same is not maintainable in view of the order dated 19.03.2012 passed in I.A. No. 17899/2011 (the previous amendment application) filed by the plaintiff company, granting it limited liberty to file a fresh application mentioning "subsequent events and nature of relief". The Court has carefully considered the aforesaid order dated 19.03.2012 and is of the opinion that the said order does not debar the plaintiff from filing the present application merely because no subsequent events find mention therein. Had the previous amendment application of the plaintiff been decided on merits, it would have been a different matter. In those circumstances, it would not have been open for the plaintiff at a later stage of the proceedings, to seek the relief of amendment on the selfsame ground by invoking the provisions of Order VI Rule 17 CPC, except in situations where subsequent events/changed situation/fresh facts would have emerged. The said rule is not founded on the principles of res judicata, but on the principles of propriety. The decisions of such a nature are also not decisions that can be treated as final in the suit, rather they remain interlocutory in nature. As held by the Supreme Court in the case of Satyadhyan Ghosal and Others Vs. Sm. Deorajin Debi and Another, and reiterated in the case of United Provinces Electric Supply Co. vs. T.N. Chatterjee reported as AIR 1972 SC 1201, interlocutory judgments which have the force of a decree must be distinguished from other interlocutory judgments which are a step towards the decision of the dispute between parties by way of a decree or a final order. Relevant in this context is the decision of the Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar and Others, wherein it was held as below:-

21. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the Court usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent

applications for the same relief, though normally only on proof of new facts or new situations which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation, the principle of *res judicata* does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of, the court would be justified in rejecting the same as an abuse of the process of Court. There are other orders which are also interlocutory, but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the status quo, or to preserve the property pending the final adjudication, but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under Order IX, Rule 7, would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be canvassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to "set the clock back" does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound to that order at later stages, so as to preclude its being reconsidered. Even if the rule of *res judicata* does not apply, it would not follow that on every subsequent day on which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the Court does not however necessarily rest on the principle of *res judicata*.

(Emphasis added)

43. In the present case, there is no doubt that the proposed amendments set out in paras 19 to 23 of the second application are a virtual reproduction of the amendments prayed for by the plaintiff company in its first amendment application except for some additions made in the proposed paras 27-A, 27-C, 27-G, 27-K, 27-M, 27-O, 28-C and additional reliefs sought by adding paras C-1 and C-2 in the prayer clause. However, this fact alone cannot be a ground to disallow the second amendment application.

44. It is a matter of record that the present suit was instituted on 27.09.2011, whereas the rejection letter was issued by the L&DO on 28.09.2011. As a result, there was no occasion for the plaintiff to have referred to the said event in the original pleadings. The aforesaid subsequent event was apparently the basis on which the plaintiff company had filed its first amendment application. While it is the submission of the counsel for the defendants No. 1 to 3 that the said application was withdrawn after extensive arguments were addressed thereon,

the order dated 19.03.2012 is silent on that aspect. Instead, a perusal of the said order reveals that the earlier amendment application filed by the plaintiff company was simply disposed of with a cryptic one line observation that it was being disposed of as not pressed "with liberty granted to the plaintiff to file an application giving subsequent events and nature of the relief".

45. By no stretch of imagination can the aforesaid order dated 19.03.2012 be treated as an order on merits and nor can the principles of res judicata come into play. Had the said order decided the first amendment application of the plaintiff on the merits of the controversy raised therein, then any subsequent application for the same relief based on the same facts as had been mentioned in the earlier application, would not have been maintainable. In the given facts of this case, the order dated 19.03.2012 permitting the plaintiff company to withdraw its first amendment application with liberty to file a fresh application does not impinge upon its right to file a fresh application for seeking amendments in the suit, including those that had been sought earlier.

46. Simply because the subsequent amendment application does not refer to any new facts or new situation but largely confines itself to the facts that were set out in the earlier amendment application, cannot be a ground to hold that the present amendment application is forbidden. In the light of the observations made hereinabove, this court is of the opinion that mere reiteration of the averments that were made by the plaintiff company in its previous amendment application and the absence of any subsequent event pleaded in the present amendment application cannot be treated as a ground to hold that the subsequent application is not maintainable, when the previous amendment application had admittedly not been decided on merits, but was simply dismissed with liberty granted to the plaintiff company to file a fresh application.

47. The next objection taken on behalf of the defendants that the Agreement to Sell dated 29.07.2005 executed in favour of the plaintiff company did not transfer any right, title or interest in the suit premises and therefore, the pleas proposed to be incorporated by the plaintiff company in the suit that it has already acquired ownership rights in the suit premises is impermissible and the judgments cited in support of the said submission, do not need to detain this Court for too long for the simple reason that in the course of rejoining to the arguments of the defendants, learned counsel for the plaintiff had clearly stated that the plaintiff did not have any quarrel with the proposition that the Agreement to Sell is not a substitute for a registered Sale/Conveyance Deed. In fact, Mr. P.V. Kapoor, Senior Advocate had specifically drawn the attention of the court to the averments made by the plaintiff in paras 3, 6, 24, 26, 27 and 28 of the original plaint to point out that the ownership of the defendant No. 1/HUF in the suit premises had been duly acknowledged by the plaintiff company and it did not seek deletion of any of the said acknowledgements.

48. In view of the aforesaid candid admission made on behalf of the plaintiff company that it did not propose to withdraw any of the admissions made by it in

the original plaint with regard to the ownership of the defendant No. 1/HUF in the suit premises and it acknowledges the fact that the title of the suit premises rests with the defendant No. 1/HUF, the apprehension expressed by the other side that the plaintiff company seeks to change the entire scope of the original suit or dilute the admissions with regard to the defendants' title to the suit premises, stand duly allayed. In such circumstances, it cannot be said that the proposed amendments are destructive of the original pleadings or seek to change the very nature and scope of the original suit and therefore, ought to be disallowed. However, to assuage any such apprehension, the plaintiff company is declined the permission to use the words "erstwhile owners" wherever they find mention in the proposed amendments including in para 27-I, while permitting it to use the words "recorded owners", in lieu thereof, as has been used elsewhere in the plaint.

49. Coming to the next argument raised by the counsels for the defendants that a stranger to an Agreement to Sell cannot be impleaded as a party in a suit for specific performance, it is necessary to appreciate the provision of Order I Rule 10(2) of the CPC, which is reproduced hereinbelow for better appreciation:-

(2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

50. As is apparent from a perusal of the aforesaid provision, wide discretion has been conferred on the courts to decide as to whether to strike off the name of any party, who has been improperly joined either as plaintiff or defendant in a suit, or to include the name of any person, whose presence is found to be necessary for effective and complete adjudication and settlement of all the questions involved in the suit. The powers vested in the court for substitution/addition of parties at any stage of the proceedings can be exercised suo moto even in the absence of any application in that regard. However, such a discretion is not unfettered and ought to be exercised on sound judicial principles of law while keeping in mind the facts of a particular case. It is also relevant for the court to examine that a party sought to be impleaded in the suit is a necessary party in whose absence, no effective decree can be passed by the court and failure to implead such a party would result in dismissal of the suit. Similarly, a party can be treated as a proper party in a suit, even if he/she is not a necessary party as long as his/her presence shall enable the court to completely and effectively adjudicate upon the questions involved in the suit.

51. Another principle that cannot be overlooked is that the plaintiff is dominus litis and he may choose a party against whom the relief may lie or whose

impleadment is considered necessary for the Court to effectually and completely adjudicate upon and settle all the questions involved in the suit, even though no relief is directed against such a party. While discussing the general rule with respect to impleadment of parties in a suit, the Supreme Court had made the following pertinent observations in the case of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre and Hotels Pvt. Ltd. and Others,

8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of CPC (Code" for short), which provides for impleadment of proper or necessary parties.

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The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

(Emphasis added)

52. In the instant case, the plaintiff company has explained in the amendment application that its request for impleadment of the L&DO as a co-defendant in the suit proceeding is based on a letter dated 28.09.2011 issued by the L&DO, a day after the institution of the present case, whereunder its application for grant of an NOC to undertake construction activity at the suit premises had been turned down. It is the stand of the plaintiff that the aforesaid request was made in the light of clauses (7) and (9) read with clause [1(iv)] of the Agreement to

Sell, whereunder the parties had agreed that pending execution and registration of the Sale Deed in favour of the purchaser, it would be entitled to deal with the suit premises in all respects.

53. Having regard to the aforesaid parameters laid down for considering an application for impleadment of a defendant, this Court finds considerable merit in the submission of the learned counsel for the plaintiff that impleadment of the L&DO in the present suit would obliterate the need to initiate a second round of litigation by the plaintiff and at the same time, would help in complete and effective adjudication of all the questions raised in the present suit. Thus, even if it is contended that the L&DO is not a necessary party in the present proceedings, its presence shall enable the Court to completely and effectively adjudicate the issues raised in the suit.

54. The objection raised by the other side that the plaintiff company is seeking specific performance of an Agreement to Sell, where L&DO is not required to be impleaded as a party, is answered by the fact that in addition to the relief of specific performance, the plaintiff company has also sought leave to incorporate the relief of permanent and mandatory injunction that is directed against the L&DO, and given the fact that the perpetual lease deed of the suit premises had been executed by the L&DO on behalf of the President of India as a principal lessor, for as long as the plot of land is not converted into a freehold property, L&DO can hardly be treated as a stranger in a suit where reliefs are sought in respect of such a property.

55. Furthermore, the prayer clauses sought to be incorporated by the plaintiff company by way of the proposed amendments and directed against the L&DO (the proposed defendant in I.A. No. 17901/2011), are consequential in nature to the reliefs sought by it in the original suit and the same cannot be treated as amendments of such a nature that if permitted, would change the very nature of the suit and that too, to the detriment of the defendants. If it is held at the conclusion of the trial that the plaintiff is not entitled to the relief of specific performance in respect of the suit premises, then the consequential injunctive/declaratory reliefs directed against the L&DO would not survive.

56. As for the reliance placed by the learned counsel for the defendants on the case of *Kasturi (supra)* to contend that in a suit for specific performance of an Agreement to Sell, no stranger can be impleaded as a party, the answer lies in following observations made by the Supreme Court in the case of *Mumbai International Airport (supra)*:-

9. The learned counsel for the appellants relied upon the following observations of a two-Judge Bench of this Court in *Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others*, to contend that a person need not have any subsisting right or interest in the suit property for being impleaded as a defendant, and that even a person who is likely to acquire an interest therein in future, in appropriate cases, is

entitled to be impleaded as a party:

Learned counsel for the respondent relied on a three-Judge Bench decision of this Court in *Kasturi Vs. Iyyamperumal and Others*, He has submitted that in this case it has been held that in a suit for specific performance of a contract for sale of property a stranger or a third party to the contract cannot be added as defendant in the suit. In our opinion, the aforesaid decision is clearly distinguishable. In our opinion, the aforesaid decision can only be understood to mean that a third party cannot be impleaded in a suit for specific performance if he has no semblance of title in the property in dispute. Obviously, a busybody or interloper with no semblance of title cannot be impleaded in such a suit. That would unnecessarily protract or obstruct the proceedings in the suit. However, the aforesaid decision will have no application where a third party shows some semblance of title or interest in the property in dispute.... It cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. If C can show a fair semblance of title or interest he can certainly file an application for impleadment.

10. The learned counsel for the first respondent on the other hand submitted that the decision in *Sumtibai* is not be good law in view of an earlier decision of a three-Judge Bench decision of this Court in *Kasturi Vs. Iyyamperumal and Others*, In *Kasturi*, this Court reiterated the position that necessary parties and proper parties can alone seek to be impleaded as parties to a suit for specific performance. This Court held that necessary parties are those persons in whose absence no decree can be passed by the court or those persons against whom there is a right to some relief in respect of the controversy involved in the proceedings; and that proper parties are those whose presence before the court would be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person. Referring to suits for specific performance, this Court held that the following persons are to be considered as necessary parties: (i) the parties to the contract which is sought to be enforced or their legal representatives; (ii) a transferee of the property which is the subject matter of the contract. This Court also explained that a person who has a direct interest in the subject matter of the suit for specific performance of an agreement of sale may be impleaded as a proper party, on his application under Order 1 Rule 10 CPC. This Court concluded that a purchaser of the suit property subsequent to the suit agreement would be a necessary party as he would be affected if he had purchased it with or without notice of the contract, but a person who claims a title adverse to that of the defendant-vendor will not be a necessary party. The first respondent contended that *Kasturi* held that a person claiming a title adverse to the title of defendant-vendor, could not be impleaded, but effect of *Sumtibai* would be that such a person could be impleaded; and that therefore, the decision in *Sumtibai* is contrary to the larger bench decision in *Kasturi*.

11. On a careful consideration, we find that there is no conflict between the two decisions. The two decisions were dealing with different situations requiring application of different facets of sub-rule (2) of Rule 10 of Order 1 . This is made clear in Sumtibai itself. It was observed that every judgment must be governed and qualified by the particular facts of the case in which such expressions are to be found; that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision and that even a single significant detail may alter the entire aspect; that there is always peril in treating the words of a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. The decisions in Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Others, and Anil Kumar Singh Vs. Shivnath Mishra alias Gadasa Guru, also explain in what circumstances persons may be added as parties.

12. Let us consider the scope and ambit of Order I of Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo moto or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice. This Court in Ramji Dayawala and Sons (P) Ltd. Vs. Invest Import, reiterated the classic definition of "discretion" by Lord Mansfield in R. vs. Wilkes - 1770 (98) ER 327, that "discretion" when applied to courts of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, "but legal and regular".

(Emphasis added)

57. Having regard to the fact that the suit property remains a leasehold property vested with the L&DO, the Court is inclined to accept the submissions made by the counsel for the plaintiff that L&DO had a direct interest in the property in dispute and is therefore a proper party in the present proceedings and its impleadment as a co-defendant ought to be allowed for the proper and effective adjudication of the suit. Further, joining of the L&DO as a defendant in the suit cannot adversely affect the interests of the present defendants for the reason that the L&DO's interest is not adverse to the title of the defendants in the suit premises since they derive their title from the L&DO itself.

58. At the same time, a note of caution is added here that while deciding the present applications, this Court does not propose to express any opinion on the

scope, effect and meaning of clauses [1(iv)], (7) and (9) of the Agreement to Sell as have been referred to by the counsel for the plaintiff to urge that the said clauses stipulate that after execution of the documents, the vendor would not be left with any right, title or interest in the suit premises, for the reason that any observation made as to the correctness or falsity of the case set up by the plaintiff, would tantamount to examining the merits of the case, which the Court ought to forbear from doing while dealing with an amendment application.

59. Another objection raised by learned counsel for the defendants that under the garb of seeking additional reliefs, the plaintiff company is actually trying to alter the very nature of the suit, from one of specific performance as originally filed, to one of declaration, has to be examined in the light of the averments made in the original plaint and the amendment application. The suit instituted by the plaintiff company is based on the Agreement to Sell dated 29.7.2005 in respect of the suit premises and the alleged illegal revocation of the Power of Attorneys dated 21.1.2000 and 12.8.2005 executed by the defendants in respect of the suit premises, whereas the amendments sought in the plaint are based on a subsequent rejection letter issued by the L&DO in respect of the suit premises. This Court is of the opinion that by virtue of the proposed amendments, the plaintiff company is not proposing to substitute the earlier reliefs prayed for, which are for specific performance, declaration and permanent injunction, but it is seeking leave to expand the scope of the reliefs sought in the present suit in respect of the suit premises. This by itself cannot be treated as an attempt on the part of the plaintiff company to set up an alternative case for the Court to disallow the proposed amendments outright as has been urged by the defendants. As already observed, the scope and effect of the peculiar terms and conditions of the Agreement to Sell for the plaintiff to claim the injunctive reliefs proposed to be incorporated in the plaint shall be a subject matter of consideration at the appropriate stage. But at the stage of deciding an application under Order VI Rule 17 CPC, the Court ought not to entangle itself in the merits or demerits of the respective stands of the parties, which is best left for adjudication after pleadings are completed and issues are framed in the suit.

60. The Court is also not expected to remain oblivious to the subsequent events that may have taken place in a pending lis as the endeavour is not only to avoid multiplicity of litigation, but also to ensure that the length of the litigation is shortened and complete and substantial justice is rendered between the parties. As was held by the Supreme Court in the case of *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, if a fact, arises after the lis has come to the court and it has a fundamental impact on the right to relief or the manner of moulding it and the same is brought to the notice of the court, the court ought to take notice of such subsequent events and developments on the condition that the rules of fairness to both sides are scrupulously obeyed. In other words, minimization of litigation is an important facet of discretion exercised under Order VI Rule 17 CPC.

61. In the present case, the letter dated 28.09.2011 issued by the L&DO is admittedly, a subsequent event and based on the said subsequent development, the plaintiff has proposed the amendments in the plaint and sought some additional reliefs apart from seeking impleadment of the L&DO as a co-defendant. The Court ought not to turn a blind eye to the said subsequent development, when it appears to be a relevant event, more so when the suit is still at the nascent stage of completion of pleadings and the defendants have yet to file their written statements. The aforesaid subsequent event is clearly interlinked with the rights sought to be exercised by the plaintiff company that purportedly emanate from the Agreement to Sell which forms the bedrock of the present suit. Therefore, it cannot be stated that the subsequent event referred to by the plaintiff in the present application, does not have any material bearing on the issues that arise for adjudication in the suit.

62. Coming to the last objection taken by the counsel for the defendants that the relief of declaration couched as injunctive orders by the plaintiff is barred under Article 58 of the Limitation Act and is impermissible under Order II Rule 2 CPC and the negation thereof by the other side by relying upon the provisions of Order I Rule 3 CPC, at the cost of repetition, it may be stressed that at the stage of examining an amendment application, the Court must abjure from expressing an opinion on the maintainability of the suit post amendments. At this stage, the court is not required to record any findings on the merits of the amendments sought to be incorporated by a party. The aforesaid pleas shall be available to the defendants when they get an opportunity to file their written statement to the amended plaint and at that stage, they shall be well entitled to amplify their objections with regard to limitation, procedural impropriety or any other plea that may be available to them both, in law and on facts.

63. In view of the aforesaid exhaustive discussion, this Court is of the opinion that the amendments proposed by the plaintiff company are necessary to determine the real controversy between the parties and refusing them would in fact lead to multiplicity and prolongation of the litigation, which is avoidable. Neither shall the proposed amendments cause any prejudice to the defendants, who shall have the opportunity to meet the case of the plaintiff company in their written statements, nor do the proposed amendments amount to substituting one cause of action for another, much less result in altering the very nature/character of the suit. Consequently, the amendment application filed by the plaintiff company is allowed, subject to the condition imposed in para 49 hereinabove. Similarly, the application for impleadment is also allowed by granting permission to the plaintiff to implead L&DO as a co-defendant.

64. Needless to state that the observations made hereinabove are confined to the decision of the aforesaid applications and shall not be treated as an expression on the merits of the case set up by the plaintiff company or the objections taken by the defendants. The applications are disposed of, while leaving the parties to bear their own expenses.