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**(2018) 03 BOM CK 0101**  
**In the Bombay High Court**  
**Case No : WRIT PETITION NO.5310 OF 2017**

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| PRAVEEN S/O CHAMPATAO REVATKAR   | APPELLANT  |
| Vs                               |            |
| SHRI HANUMAN S/O SURAJMAL SHARMA | RESPONDENT |

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**Date of Decision :** 15-03-2018

**Acts Referred:**

Code of Civil Procedure, 1908 — Order 6 Rule 17  
Indian Contract Act, 1872 — Section 73  
Specific Relief Act, 1963 — Section 21, 21(5), 22(2)

**Citation :** (2018) 03 BOM CK 0101

**Hon'ble Judges :** A.S. CHANDURKAR, J

**Bench :** Single Bench

**Advocate :** R. T. Anthony, S. Raisuddin,

**Final Decision :** Dismissed

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## Judgement

A.S. CHANDURKAR, J.

1.The question that arises for consideration in this writ petition is whether in a suit for specific performance the plaint can be permitted to be amended

for incorporating the relief of compensation disregarding the aspect of limitation.

2.Rule. Rule made returnable forthwith and heard finally with consent of the learned Counsel for the parties.

3.The respondent is the original plaintiff who had filed suit for specific performance of agreement dated 15-9-2007. According to the plaintiff, the suit

property was agreed to be sold by the petitioner herein to the respondent pursuant to that agreement. As the transaction was not completed by the

petitioner, suit for specific performance came to be filed in July, 2009. The petitioner filed his written statement opposing the prayers made in the

plaint. After commencement of the trial the plaintiff led his evidence. At that

stage the plaintiff filed an application under provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 ( for short, the Code) seeking permission to amend the plaint. By the said amendment, a prayer for grant of compensation as contemplated by the provisions of Section 21 of the Specific Relief Act, 1963 (for short, the said Act) was sought to be incorporated as an alternate relief. The prayer was opposed by the defendant and by the impugned order, the trial court granted the said amendment subject to payment of costs of Rs.1500/-Being aggrieved, the defendant has challenged the said order.

4. Shri R. T. Anthony, learned Counsel for the petitioner-defendant submitted that the trial Court committed an error in allowing a time barred claim to be incorporated by way of amendment. According to him, the suit was filed in July, 2009. After commencement of the trial and a lapse of almost eight years, the said amendment was being sought. In the light of provisions of Article 55 of the Limitation Act, 1963 the claim as made for grant of compensation was barred by limitation. According to the learned Counsel such amendment could not have been granted in the light of provisions of Section 21 of the said Act. Without considering these aspects, the trial Court allowed that application. In support of his contentions the learned Counsel placed reliance on the judgment of learned Single Judge of the Patna High court in Bhagwati Prasad Jalan vs. Smt. Prem Lata Devi Kedia and Ors. 1997 (1) BLJR 592. He, therefore, submitted that the impugned order was liable to be set aside.

5. Shri S. Raisuddin, learned Counsel for the respondent plaintiff opposed the aforesaid submissions. According to him, in view of provisions of Section 21(5) of the said Act, the alternate relief of compensation could be claimed at any stage of the proceedings and therefore the trial Court was within its jurisdiction when it permitted the the plaint to be amended to incorporate said relief. There was no bar to seek the alternate relief in the light of the fact that specific performance of the agreement had been sought within limitation. He, therefore, submitted that the impugned order was liable to be maintained.

6.After hearing the learned Counsel for the parties and after giving due consideration to their respective submissions, I am of the view that the trial Court was legally correct in permitting the plaint to be amended for seeking the

alternate relief of compensation.

7. Under the provisions of Section 21(5) of the said Act, no compensation can be awarded in a suit for specific performance of a contract unless such

a claim for compensation has been made in the plaint. If such claim has not been made in the plaint, the Court shall at any stage of the proceedings

allow the plaintiff to amend the pleadings on such terms as it deems fit to include a claim for compensation. The proviso to Section 21(5) of the said

Act is couched in mandatory form and it stipulates that the Court shall at any stage of the proceedings allow the plaintiff to amend the plaint. In the

light of aforesaid proviso, the question to be considered is whether the law of limitation would come in the way of the plaintiff while seeking such

amendment for grant of compensation?

8. A somewhat similar contention was considered by learned Single Judge in *Manohar Dhundiraj Joshi v. Jhunnulal Hariram Yadao and others* 1983

Mh.L.J. 369. It was held that the provisions of Order VI Rule 17 of the Code were already existing when the said Act was enacted in 1963. It was

not the intention of the legislature to allow such amendment to be left to the discretion of the Court in view of the enactment of proviso to Section

21(5) of the said Act. It was thus held that the legislature did not intend to merely confer discretionary power on the Court to permit the plaintiff to

amend his pleadings to introduce the relief of compensation at any stage of the proceedings. It was therefore held that it was obligatory on the part of

the Court to permit such amendment.

Similarly, in *Lotu Bandu Sonavane vs. Pundlik Nimba Koli* 1985 Mh.L.J. 359, learned Single Judge while considering the provisions of Section 22(2) of

the said Act and especially words "'at any stage of the proceedings'" held that the term 'proceedings' was wide enough to include even execution

proceedings. Reference was made to the decision in *M/s Ex-Servicemen Enterprises Ltd. Vs. Sumey Singh* AIR 1976 Delhi 56 and it was observed

that the expression "'at any stage'" in its literal and actual meaning means without limitation either in duration or length of time.

9. Reference in this regard can also be made to the observations in paragraph 16 of the judgment of the Hon'ble Supreme Court in *Jagdish Singh V.*

*Natthu Singh* (1992) 1 SCC 647. Said observations read thus:

16. So far as the proviso to sub-section (5) is concerned, two positions must be

kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the proceeding. That is a claim for compensation falling under Section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case Section 73 of the Contract Act is invoked.

This amendment is under the discipline of Rule 17 Order 6, CPC. The fact that sub-section (4), in turn, invokes Section 73 of the Indian Contract Act for the principles of qualification and assessment of compensation does not obliterate this distinction.

10. In the light of the aforesaid legal position, if the application for amendment is perused, it is clear that the relief of compensation was being sought as an alternate relief. The cause of action for filing the suit was when the defendant refused to complete the contract and therefore as the plaintiff sought the amendment as an alternative relief, no error was committed by the trial Court while allowing the same. In the light of the earlier decisions of this Court holding otherwise, the decision relied upon by the learned Counsel for the petitioner which holds that the amendment seeking the relief of refund of earnest amount if barred by the law of limitation cannot be permitted cannot therefore be followed.

11. As a result of the aforesaid discussion, there is no merit found in the writ petition. The same is accordingly dismissed. Rule stands discharged with no order as to costs.