

Mount Mary Enterprises vs M/S.Jivratna Medi Treat Pvt Ltd on 30 January, 2015

Author: Anil R. Dave

Bench: Kurian Joseph, Anil R. Dave

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1323 OF 2015
(Arising out of Special Leave Petition (Civil) No.10161 of 2014)

Mount Mary Enterprises . . . Appellant

Versus

M/s. Jivratna Medi Treat Pvt. Ltd. . . . Respondent

J U D G M E N T

ANIL R. DAVE, J.

Leave granted.

1. The appellant, the original plaintiff has been aggrieved by the Judgment delivered in Writ Petition No.12099 of 2013 dated 10th March, 2014 by the High Court of Judicature at Bombay.
2. The facts giving rise to the present litigation in a nutshell are as under:

The appellant, who has been described as a plaintiff hereinafter, filed a suit against the present respondent, who has been hereinafter described as a defendant, for specific performance of a contract in relation to the suit property. The suit property was initially valued at Rs.13,50,000/- (Rupees Thirteen lacs and fifty thousand only). The plaintiff, thereafter, realized that market value of the property in question was around Rs.1,20,00,000/- (Rupees One Crore and Twenty lacs only) and therefore, filed an application for amending the plaint. The said application for amendment was rejected by the trial court and thereafter, the aforesaid writ petition was filed by the plaintiff challenging the order rejecting the amendment application. The said petition has also been dismissed and therefore, the plaintiff has approached this Court and prayed that the impugned judgment confirming the order rejecting the amendment of the plaint be set aside and the plaintiff be permitted to amend the plaint so as to state correct value of the property in question, which is Rs.1,20,00,000/-.

3. The learned counsel appearing for the appellant-plaintiff had submitted that the amendment application had been rejected by the trial court for the reason that the said amendment was made at a belated stage and by virtue of the said amendment, the suit was to be transferred to the High Court on its original side. It had been further submitted that the amendment was made in good faith and by virtue of the said amendment no harm was to be caused to the defendant and the nature of the suit was also not going to be changed. It had been further submitted that the appellant was also prepared to affix additional court fee stamp as valuation of suit was increased to Rs.1,20,00,000/-.

4. It had been also submitted by the learned counsel that in normal circumstances an amendment application is always granted unless by virtue of the amendment, nature of the suit is changed or some irreparable harm is caused to the defendant. According to him, in the instant case neither nature of the suit was changed nor was the defendant being put to any hardship. The amendment was also not likely to cause any prejudice to the defendant. The amendment which was sought to be made was just and proper because actual market value of the said property was Rs.1,20,00,000/-. For the aforesaid reasons, it had been submitted by him that the impugned judgment confirming the order rejecting the amendment application should be set aside and the appellant should be permitted to amend the plaint.

5. On the other hand, the learned counsel appearing for the respondent- defendant had submitted that the amendment application was filed at a belated stage with an oblique motive. According to him, in pursuance of the said amendment, the suit was to be transferred to the High Court and only with an intention to see that the suit is transferred to the High Court on its original side, the plaintiff wanted to amend the plaint. It had, therefore, been submitted by him that the amendment application was rightly rejected by the trial court and the High Court had rightly confirmed the said order.

6. We have heard the learned counsel and have also considered the facts of the case.

7. In our opinion, as per the provisions of Order 6 Rule 17 of the Civil Procedure Code, the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. In the instant case, the nature of the suit was not to be changed by virtue of granting the amendment application because the suit was for specific performance and initially the property had been valued at Rs.13,50,000/- but as the market value of the property was actually Rs.1,20,00,000/-, the appellant-plaintiff had submitted an application for amendment so as to give the correct value of the suit property in the plaint.

8. It is also pertinent to note that the defendant had made an averment in para 30 of the written statement filed in Suit No.1955 of 2010 that the plaintiff had undervalued the subject matter of the suit. It had been further submitted in the written statement that the market value of the suit property was much higher than Rs. 14 lacs. The defendant had paid Rs.13.5 lacs for the said premises in the year 2002 when the said premises had been occupied by a tenant bank. Even according to the defendant value of the suit property had been undervalued by the plaintiff in the plaint. If in pursuance of the averment made in the written statement the plaintiff wanted to amend the plaint so as to incorporate correct market value of the suit property, the defendant could not

have objected to the amendment application whereby the plaintiff wanted to incorporate correct value of the suit property in the plaint by way of an amendment. The other contention that the valuation had already been settled cannot also be appreciated since the High Court has held that the said issue was yet to be decided by the trial Court.

9. The main reason assigned by the trial court for rejection of the amendment application was that upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected. With regard to amendment of plaint, the following observation has been made by this Court in the case of North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (D) by LR. (2008) 8 SCC 511 :

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others (1957) 1 SCR 595 which still holds the filed, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

10. In our opinion, on the basis of the aforestated legal position, the amendment application made by the plaintiff should have been granted, especially in view of the fact that it was admitted by the plaintiff that the suit property was initially undervalued in the plaint and by virtue of the amendment application, the plaintiff wanted to correct the error and wanted to place correct market value of the suit property in the plaint.

11. For the aforestated reasons, we are of the view that the amendment application should not have been rejected by the trial court and the High Court should not have confirmed the order of rejection. We, therefore, set aside the impugned judgment delivered by the High Court and the order dated 22nd November, 2013 of the trial court, whereby the amendment application had been rejected.

12 We allow the appeal and direct the trial court to permit the appellant-plaintiff to amend the plaint as prayed for in the amendment application so as to change valuation of the suit property. There is no order as to costs.

.....J (ANIL R. DAVE)J (KURIAN JOSEPH) NEW DELHI;

JANUARY 30, 2015