



Special Civil Suit No. 245/2019

Mr. Sumit S. Kotian & Anr.

Vs.

Mr. Suman Jagdish Dhabas.

CNR No. MHRG040012482019

ORDER BELOW EXH. 19

Plaintiff filed the present application for amendment in plaint as per Order 6 R 17 of CPC and claiming to add a prayer to return the earnest consideration amount of Rs. 7,00,000/- alongwith interest @ 18% p.a. from filing of the suit till realization of the said amount from the defendant.

02) The defendant has objected the application by filing his say at Exh. 27 and contended that he was and is always been ready and willing to perform the MOU dated 20/10/2018. But, plaintiff did not pay the balance amount and did not show his willingness to perform his part of performance as per said MOU. Therefore, the plaintiff is not entitled to relief as sought. Hence, it is prayed to reject the application.

03] Perused the record. Heard both the side at length. The suit is filed for specific performance of contract i.e. MOU, declaration and permanent injunction. So far as, the proposed amendment is concerned, the plaintiff is claiming refund of earnest amount paid by him to the defendant. As the suit is for specific

performance of contract, the plaintiff will be entitled to refund the earnest amount only after making averment and prayer in the plaint. Therefore, the proposed amendment is necessary to decide real controversy between the parties. Whether the plaintiff had paid an earnest amount of Rs.7,00,000/- or not and whether he is entitled for specific performance or not, are triable issues.

04] The proposed amendment will help to resolve the real controversy between the parties. Trial of the case is yet to be begun. Therefore, considering the provisions under Order 6 Rule 17 of C.P.C., I have no hesitation to allow the application subject to costs. No nature of suit will be changed due to proposed amendment. No prejudice will cause to the defendant, if the application is allowed. In the result, I proceed to pass the following order :

ORDER

- 1] The application at **Exh. 19** is hereby allowed subject to the costs of Rs. 3,000/- (Rs. Three Thousand Only) paid to the Legal Aid.

- 2] The plaintiff to pay requisite court fees as per rules. The amendment be carried out within statutory period.

Panvel.
Dt. 26/07/2023

(A.R. Gunnal)
Jt. Civil Judge, Sr. Dn., Panvel.