

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11277 OF 2024

Anandrao Sopan Kadam and Ors.

.. Petitioners

Versus

Vishal Properties

.. Respondent

-
• Mr. R. B. Huded a/w. Mr. M. V. Chavan, Advocates for Petitioners.

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 12, 2024

P.C.:

- 1.** Mentioned out of turn at the time of rising of the Court.
- 2.** Heard Mr. Huded, learned Advocate for Petitioners.
- 3.** By virtue of the impugned order dated 06.02.2023, Application filed below Exhibit-56 in Regular Civil Suit No.920 of 2016 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') came to be allowed by permitting the Plaintiff to implead amended case for seeking specific performance of an Agreement.
- 4.** Suit is originally filed for seeking declaration and injunction on the basis of a release deed. Suit is originally filed in the year 2016 whereas amendment which is now been allowed permitting the Plaintiff to implead relief for specific performance of a completely different document is allowed in the year 2023. Mr. Hudad would submit that allowing this amendment would change the nature and

cause of action of the suit proceedings and it ought not to have been allowed. He would submit that the original suit filed for declaration and injunction itself would be not maintainable, if the Plaintiff did not have title to the Suit property. This is because by virtue of the amendment he seeks specific performance of an agreement so as to confer title on to the Plaintiff seven years after filing the suit proceedings.

5. An arguable case has been made out by Mr. Hudad for issuance of notice to Respondents.

6. Hence, issue notice to the Respondent. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve the Respondent a copy of this order and copy of the Writ Petition and inform it about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondent is directed to file Affidavit-in-Reply to the Writ Petition on or before the next date. Proceedings before the Trial Court shall stand stayed in the Suit, in the meanwhile.

7. Stand over to **19th August, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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