

MANU/MH/0747/2009

IN THE HIGH COURT OF BOMBAY

Chamber Summons No. 182 of 2009 in Writ Petition No. 1132 of 2002

Decided On: 07.08.2009

Appellants: **Dr. Anahita Pandole**
Vs.

Respondent: **The State of Maharashtra and Ors.**

Hon'ble Judges/Coram:

Bilal Nazki and A.R. Joshi, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: I.M. Chagla, Sr. Adv. and D.J. Khambata, Adv., i/b., Dastur Dadhich and Kalambi

For Respondents/Defendant: Shama Gupta, Adv., i/b., S.I. Memon, Adv. for Respondent No. 14 and D.A. Nalawade, Government Pleader

For Interveners: Navin Parekh, Sr. Adv.

Case Note:

Civil - Grant of permission - Permission granted to erect hoardings, allegedly in breach or contrary to guidelines - Hence, present petition filed - Held, in the case of Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Ors., it was pointed out that the Supreme Court was interpreting Section 141 of the Code of Civil Procedure, 1973 (CPC) in the context of Article 226 of the Indian Constitution - From the date of the judgment, even Section 141 of CPC had undergone a material change, and an Explanation was added by the Code of Civil Procedure (Amendment) Act, 1976 - Another objection had been taken that a fresh cause was being tried to be made out - It was not found that any fresh cause of action was being tried to be made out at this stage - Chamber summons allowed.

JUDGMENT

Bilal Nazki, J.

1. The Writ Petition is pending in this Court from year 2002. Various reliefs have been claimed in the Writ Petition, but the main reliefs with which we are concerned in this Chamber Summons are the reliefs by which the petitioner sought quashing of permission granted to erect hoardings, allegedly in breach or contrary to the guidelines, particularly paragraphs 22 and 23 of the guidelines, which were in force.

2. Various orders were passed from time to time. The matter went even up to the Supreme Court. One of the orders passed in the Supreme Court was in Civil Appeal No. 6360 of 2005 on February 19, 2009, when the Supreme Court found that this case was of significant importance, and gave direction to dispose of the case as early as practicable, preferably by the end of October, 2009.

3. Now, the present Chamber Summons has been filed by the petitioner seeking amendment of the Writ Petition. A schedule is annexed to the Chamber Summons,

and according to this schedule, as many as 41 amendments are sought. Notice was given to the respondents and interveners. Some of the interveners have filed their replies, and have opposed some of the amendments. The main respondents have not resisted the application for amendment.

4. The learned Counsel for the interveners has submitted that he has no objection to the amendment mentioned in paragraphs 1, 2, 3, 6, 10, 12, 13, 16, 25, 26, 31, 34, 35, 39 and 41 of the schedule. However, he has seriously resisted the amendment mentioned in paragraphs 27, 30, 33 and 36 of the schedule. With respect to other amendments, no submissions were advanced by the learned Counsel for the respondents-intervenors. Therefore, there is no difficulty in allowing the amendments in the schedule, except the amendments sought in paragraphs 27, 30, 33 and 36.

5. After allowing the amendments other than sought in paragraphs 27, 30, 33 and 36, we will now examine whether those amendments can be allowed.

6. By paragraph 27, the following amendment is sought:

Add the following before the words 'Hereto annexed and marked as Exhibit LL' in paragraph 23(v) at page 23:

All hoardings in violation of the abovementioned provisions of the Guidelines and/or the Mumbai Municipal Corporation Act, 1888 are liable to be removed or caused to be removed by Respondent Nos. 2 and 3.

7. The learned senior Counsel appearing for the petitioner has informed that during the pendency of this petition, new Guidelines came into force. Therefore, the hoardings are in violation of the Guidelines.

8. The learned Counsel for the respondents, on the other hand, has submitted that these Guidelines would be prospective, and not retrospective. The Writ Petition was filed in 2002, and the Guidelines operative in 2002 would be the Guidelines which would be applicable to the present case.

9. In our view, the Guidelines, which have been subsequently framed, would be taken note of by the Court even without a formal amendment, and by allowing the amendment in the nature of amendments sought in paragraph 27, this Court is not holding that the Guidelines framed in 2008 would be applicable to the present case. That will be a question which will be open, and which will have to be decided while the matter is finally decided by this Court. Therefore, we do not find that this amendment cannot be allowed.

10. With respect to amendment sought in paragraph 30, we, again, do not find any ground not to allow such an amendment, because it merely says that-

No hoarding shall be permitted near beaches, parking lots or on any land adjacent to seacoast on seaward side of the road.

It will have to be seen, at the final stage of the case, whether erection of hoarding is permissible near beaches, parking lots or on any land adjacent to seacoast on seaward side of the road.

11. Paragraph 33 has only reference to an order of the Supreme Court in case related to Delhi. Whether the Supreme Court order was relevant for the purpose of the

present case or not can otherwise be taken note of by the Court at the time of final arguments. Therefore, there cannot be any reason for not allowing such an amendment.

12. Amendment sought in paragraph 36 is also formal.

13. The other objections taken by the other side are that the amendments cannot be allowed in view of proviso to Order 6, Rule 17, of the Code of Civil Procedure. Rule 17 of Order 6 gives the power to the Court to allow either party to amend the pleadings at any stage of the proceedings. The proviso restricts this power to a stage before the trial has commenced, but, again, it has an exception that if the Court finds that in spite of due diligence, a party could not have raised the matter before the commencement of the trial, it can allow an amendment even after the trial starts. We understand that in every case, the trial starts after the issues are framed, and parties are called to adduce evidence.

14. Generally speaking, the C.P.C. does not apply to a Writ Petition however the principles laid down in C.P.C. are adhered to by the Courts. We cannot envisage a stage where it can be said in a Writ Petition that the trial has started, because the cases are generally decided on the basis of affidavits of the parties. Therefore, we do not feel that proviso to Order 6, Rule 17, creates a bar for this Court to allow the Chamber Summons seeking amendment.

In this connection, we refer to a judgment of the Supreme Court in Babubhai Muljibhai Patel v. Nandlal Khodidas Barot and Ors. reported in MANU/SC/0404/1974 : AIR 1974 Supreme Court 2105. It may also be pointed out that the Supreme Court was interpreting Section 141 of the Code of Civil Procedure in the context of Article 226 of the Constitution of India. From the date of the judgment, even Section 141 of C.P.C. has undergone a material change, and an Explanation is added by the Code of Civil Procedure (Amendment) Act, 1976, which became effective from 1st February, 1977 which reads as under:

Explanation. - In this section, the expression 'proceedings' includes proceedings under Order IX, but does not include any proceeding under Article 226 of the Constitution.

15. Another objection has been taken that a fresh cause is being tried to be made out. We have gone through the Chamber Summons, and we do not find that any fresh cause of action is being tried to be made out at this stage.

16. For these reasons, we allow the Chamber Summons. The petitioner shall make the necessary amendments within a week from today, with a copy to the other side, and the respondents shall file their reply to the amended petition within two weeks thereafter. We expect that the schedule fixed by the Court will be adhered to by the parties, so that the matter is decided in terms of the Supreme Court's order well before October, 2009.

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