Ganesh

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 1459 OF 2019

Ravi Ashish Builders Ltd
A Company incorporated under the Companies Act of 1956, having its registered office at Laxmi Palace, 76, Mathuradas Road, Kandivali (W), Mumbai – 400 067. …Petitioner (Org. Defendant No.2)

*Versus*

1. Shardadevi Vikramjeet Yadav
Aged 53 years, Indian Inhabitant of Mumbai,
Residing at C-3 Building, Room/Shop No. 2, also known as Shop No.17, Kanyapada, Gokuldham, Goregaon (E), Mumbai – 400 063.

2. Ashish Developers Ltd.,
Having office at Rolex House, S. V. Road, Malad (W), Mumbai – 400 064. …Respondents

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**Mr Anuj N. Narula**, *i/b Jhangiani, Narula & Associates, for the Petitioner.*
**Mr Shrishail Sakhare,** *for the Respondents.*

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**CORAM** **Kamal Khata, J.**
**DATED:** **5th February 2024**

**ORAL JUDGMENT:-**

**1.** Rule. Rule is made returnable forthwith with the consent of the parties and the Petition is taken up for final disposal.

**2.** By this Petition, under Article 227, the Petitioner seeks to set aside the order dated 10th September 2018. By the order, the learned Judge has allowed the Chamber Summons No. 499 of 2015 that sought to amend the plaint on payment of costs.

**3.** To resolve the controversy, it is necessary to examine the schedule of amendments, which is annexed on page 21 of the Petition and is extracted below for convenience.

> *"15(a) The Plaintiff says that, the Plaintiff has been in use, occupation and possession of one room premises as mentioned in Para 3 of the Plaint and Defendants No.1 has entered into an agreement for allotment of permanent rehab accommodation in lieu of the said room premises as mentioned in Para 3, of the Plaint.*
>
> *15(b) The Plaintiff says that, the Plaintiff had also purchased one more room premises from One Mr. Baburam Jayshree Yadav, on date 01/03/1995. The Plaintiff says that, Defendants No.2 has entered into an agreement with the Plaintiff for allotment of permanent rehab accommodation in respect of the said another room premises which has been purchased by the Plaintiff from the said Mr. Baburam Jayshree Yadav. The Plaintiff says that, the Defendants No.2 has entered into an agreement dated 27/09/2000 for allotment of alternate permanent accommodation in lieu of the said another room premises by allotting Flat No.302, 3rd Floor, Building No. B-3, A-Wing, lying and being situated on the plot of land bearing*

*CTS No. 620 (pt.) of Village: Malad, Taluka: Borivali, MSD.*

*15(c) The Plaintiff says that, the Defendants have made attempt to dispossess the Plaintiff from the Suit Premises, forcefully without following the due process of the law and it is therefore necessary to restrain the Defendants by order and injunction of this Hon'ble Court. The Plaintiff says that, the Defendants cannot take law in their hand and dispossess the Plaintiff.*

*15(d) The Plaintiff says that, the Defendants have disconnected the Electricity supply to the Plaintiff in the Suit Premises. The Plaintiff says that, the Suit Premises is Transit Camp given by the Defendant No.1 and Defendants are bound to provide Electricity connection and other necessary facilities in the Transit camp. The Plaintiff says that, it is just and necessary to direct the Defendants to restore the Electricity connection to the Plaintiff in the said Suit premises being Transit camp in the otherwise event direction be given to the Electricity supplying company i.e. Reliance Energy Ltd. To give Electricity connection to the Plaintiff in the Suit Premises on the application of the Plaintiff.*

*2. Add the following prayers in the prayers clause after prayer (a) in the Plaint.*

*(aa) The Defendants be directed to restore the Electricity connection and Electricity supply in the Suit premises i.e. C-3, Building, Room/Shop No.2 also known as Shop No.17, Kanyapada, Gokuldham, Goregaon (East), Mumbai 400 063;*

*(bb) The Defendant No.3 be directed to provide Electricity connection and Electricity supply to the Suit premises on the application of the Plaintiff.*

*(cc) The Hon'ble Court be pleased to restrain the Defendants, their respective servants, agents or the either of them by injunction and order of this Hon'ble Court from disturbing the possession of the Plaintiff over the suit premises i.e. C-3, Building, Room/Shop No.2 also known as Shop No.17, Kanyapada, Gokuldham, Goregaon (East), Mumbai 400 063; in any manner without following the due process of law;*

*3. Add the Defendants named below as Defendants No.3 in the Title clause*

*M/s. Reliance Energy Ltd.*
*Near W. E. Highway, Dindoshi,*
*Malad (E), Mumbai – 400097. ...Defendants No.3*

*4. In the Title clause for Defendants No.2 replaced the words*
*"Ravi Ashish Builders Ltd." with words "M/s. Ravi Ashish Land Developers Ltd."*

**4.** The learned Judge allowed the amendments on the basis that are extracted as under for better appreciation:

4 It is significant to note that the earlier presiding officer under order dated 6-4-2017 had already made this Chamber Summons absolute in terms of prayer clause (a) and directed plaintiff to carry out amendment within prescribed period of limitation. However, on the same day advocate for defendant number 2 appeared and filed Review Application and therefore the earlier Presiding Officer by allowing the said Review Application again kept this Chamber Summons for hearing. It appears that under the proposed amendment, plaintiff

wants to bring the subsequent events on record which took place after filing of the suit. Moreover, it is also contended by the plaintiff that the proposed defendant no 3 disconnected electric supply of the suit premises at the instance of defendant no. 2. It is to be noted here that the proposed amendment appears to be the event subsequently took place after filing of the suit. Further, even after allowing the proposed amendment, plaintiff has to prove the same. No doubt, the defendants will be having every opportunity to discard the contentions of the plaintiff under the proposed amendment. Moreover, for restoration of electricity connection to the suit premises, defendant No. 3 being service provider needs to be incorporated. Otherwise, the proposed prayers in that respect will be infructuous. Therefore, I am of the opinion that irrespective of merits of proposed amendment, plaintiff can be permitted to amend the pleading and prayers as mentioned in schedule annexed to the Chamber Summons. The inconvenience if any caused to defendant no. 2 can be compensated by awarding suitable costs. Hence, I pass the following order.

**5.** Aggrieved by this order, the Petitioner has filed the present Petition. The facts that led to this Petition are as follows:

i. The Respondent No.1 filed an SC Suit No. 1682 of 2008 against the Petitioner and Respondent No.2 for a declaration that the Agreement dated 27th January

1995 purportedly executed by Defendant No.1 (Respondent No.2 herein) in favour of Respondent No.1 was valid, subsisting, and binding on the Petitioner. It also prayed for an injunction to restrain them from dispossessing the Respondent No.1 from the suit premises, namely, Room No.2, Building No. C-3 (Shop No. 17) constructed at Survey No. 261 (part), CTS No. 620 (part) situated at Kanyapada, Taluka-Borivali without following the due process of law. On 27th August 2012, the issues were framed. On 15th October 2013, the Plaintiff filed her Affidavit-in-lieu of Examination in Chief along with the compilation of documents. On 5th December 2013, the Petitioners filed their objections to those documents.

ii. There was no progress between December 2013 and February 2015. In February 2015, Respondent No.1 took out Chamber Summons No. 499 of 2015 for amendment to the plaint as extracted hereinabove. The Petitioners filed their reply on 29th July 2015 opposing the Chamber Summons, on the ground that the trial in the Suit had commenced. The Petitioners pointed out that the proposed amendments were in total deviation and contrary to the pleadings of the Plaintiff in the plaint that she was in use, occupation and possession of 'one room' premises on the suit property. The

Petitioner pointed out that Respondent No.1 was seeking to allege that she has purchased one more premises from one Baburam J. Yadav on 11th March 1995 and Defendant No.1 i.e. Respondent No.2 hereinabove entered into Agreement dated 27th September 2000 and allotted the Flat No. 302 on the 3rd Floor of Building B-3 'A' Wing. This according to the Plaintiff was an entirely new case i.e., that the Respondent No. 1 entered into two agreements for allotment of two different Permanent Alternate accommodations. The Petitioner pointed out that Respondent No.1 was not entitled to do so. The case of the Petitioner is that they had already allotted and given possession of Permanent Alternate Accommodation i.e. Flat No. 302 on the 3rd Floor of Building No. B-3, 'A' wing in lieu of the original premises to Respondent No.1. This fact is neither disputed nor denied by Respondent No.1.

iii. Pursuant to the filing of this Suit, a Notice of Motion was taken out by Respondent No.1 to point out certain facts. By an order dated 13th January 2010, in the said Motion, the Court observed that Respondent No.1 had already obtained possession of the Permanent Alternate Accommodation in the new building and she had sold the same to one Mr. Mohan Kedarnath Singh and his

wife. The Court also observed that Respondent No.1 had not approached the Court with clean hands.

**6.** Mr. Narula, for the Petitioner, submits that in order to avoid proceedings of forgery against herself, Respondent No.1 decided to amend the plaint. He submits that by raising this new plea, that the allotted premises is in lieu of the second premises, the entire defence raised in his written statement, would be nullified. Mr. Narula submitted that the impugned order did not take into account these facts and allowed the Chamber Summons on the ground that *"it appears that under the proposed amendment Plaintiff wants to bring the subsequent events on record which took place of the filing of the suit,"* extracted from paragraph 4 reproduced hereinabove.

**7.** Mr. Narula strenuously points out that the Petitioners had filed a written statement as far as back as on 4th October 2010 i.e. 5 years prior to the filing of the Chamber Summons. He submits that the issues were framed on 27th August 2012. The evidence of the Plaintiff was filed on 15th October 2013. Thereafter, between 2013 and 2015, Mr. Narula submits that, Roznama of the Court would show, it was not the Petitioner but the Respondent No.1 who sought adjournments on some ground or the other and thus failed to proceed with the cross examination of the Plaintiff. He has tendered the compilation of documents wherein the relevant Roznama is annexed at page No. 219 onwards. Mr. Narula submits that having sought adjournments time and again at one stage, the Court also granted costs to the Respondents.

**8.** Mr. Narula then submitted that it was pertinent to note that the Affidavit in Support of the Chamber Summons made out no grounds whatsoever for the purpose of allowing amendment. Attention was brought to paragraph No.1 of the Affidavit in Support of the Chamber Summons i.e. at page 25 of the Petition. Paragraph 1 of the said Affidavit reads as under:

> *"1.I say that, I have filed above suit for the reliefs mentioned and prayed for therein. I say that, the Plaint which has been drafted by previous Advocate and he has due to oversight not mentioned certain vital facts which were required to be incorporated in the Plaint. I say that, even the prayer clause has not been drafted properly and the relief which were required to be claimed has not been claimed. I say that, there is also mistake in the name of Defendant No.2".*

**9.** Mr. Narula submitted that previous advocate was changed on 30th January 2012. Thereafter, the issues were framed on 27th August 2012, and the Affidavit of evidence was filed in 2013 as stated above. Mr. Narula argued that the new advocate who was appointed in 2012 was aware, or deemed to be aware, of the written statement filed in 2010. Thus, the defence of the Petitioners was known to Respondent No.1 since 2010. Mr. Narula emphasized that neither the earlier advocate nor the newly appointed advocate for Respondent No. 1 took any steps to bring on record that the allotted premises were against one of the two premises that she was in occupation of. These alleged facts, known to the Plaintiff prior to the suit, are now sought to introduced by the amendment after 5

years as subsequent events. He then pointed out that the order dated 13th January 2010, which brought out the entire case of the Petitioner, has not been challenged and thus became final. He submits that this order was also not taken into consideration by the learned Judge whilst passing the order of 10th September 2018.

**10.** Mr. Narula submits that the plaint would disclose that in fact the electricity was cut out since 27th September 2007. Thus, the plea taken in the Chamber Summons in 2015, as more particularly stated in paragraph No.5 at page 26, is nothing else, but a malafide intention to mislead the Court. He submitted that not only has Respondent No.1 not challenged the accommodation so received by her against the suit premises, but she had also sold this accommodation on 24th April 2007 and has filed the present suit six months later sometime in October 2007. He thus submits that the Plaintiff has come with unclean hands.

**11.** Mr. Narula then points out that there is nothing in the Affidavit in Support of the Chamber Summons that would show that the Respondent No.1 acted with due diligence or that having acted diligently could not have brought these facts on record till 2015. He thus submitted that the impugned order is deserves to be set aside.

**12.** In support of his contention, Mr. Narula relies on judgment of Hon'ble Supreme Court in *M. Revanna vs. Anjanamma (Dead) by*

*Legal Representative & Others*[1]. He referred to paragraphs 6, 7 and 9, which read thus:

> *"6. Thereafter, on 1-9-2008, Plaintiffs 1 to 5 made an application being IA No. 22 under Order 6 Rule 17 of the Code of Civil Procedure ( for short "CPC") for amendment for amendment of the plaint, pleading that a prior partition had taken place as per the memorandum of partition dated 18-5-1972, as mentioned supra. Respondent 1 herein and the other two contesting defendants i.e. Defendants 4 and 5 objected to the amendment application, contending inter alia that the application for amendment of the plaint is not only highly belated but also not bona fide, and that at no point of time was there any partition among the family members. The trial court, however, proceeded to allow the application for amendment by the order dated 14-11-2008, which came to be set aside by the High Court by the impugned order dated 9-4-2010. Hence, this appeal by the unsuccessful Plaintiff 1. It is relevant to note that Plaintiffs 2 to 5 acting through Plaintiff 1 have accepted the order rejecting the amendment application.*
>
> *7.* ***Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage.*** *Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due*

1 (2019) 4 SCC 332.

> *diligence, such an amendment could not have been sought earlier.* ***There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances.*** *Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation,* ***the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money****.*
>
> *9. Having regard to the totality of the facts and circumstances of the case, we are of the considered opinion that the application for amendment of the plaint is not only belated but also not bona fide, and if allowed, would change the nature and character of the suit. If the application for amendment is allowed, the same would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiffs 1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier. Hence, to grant permission for amendment of the plaint at this stage would cause serious prejudice to Plaintiff 6 Respondent 1 herein.*

**13.** He relies on the judgment of the Hon'ble Supreme Court in the case of *Chander Kanta Bansal vs. Rajinder Singh Anand*[2] and more particularly paragraph 16 of the said judgment to point out what the Hon'ble Apex Court has stated about the words "due diligence". The paragraph reads as under:

> *"16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady*

**2** (2008) 5 SCC 117.

> *in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in conduct of his own affairs."*

**14.** He then refers to the judgment of Hon'ble Supreme Court in the case of *Revajeetu Builders & Developers vs. Naryanaswamy & Sons*[3]. He lays emphasis to paragraph No. 63 which reads thus:

> *"63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*
>
> *(1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
>
> *(2) whether the application for amendment is bona fide or mala fide;*
>
> *(3)the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
>
> *(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*

**3** (2009) 10 SCC 84.

> *(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
>
> *(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*
>
> *These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."*

**15.** He submitted that none of the amendments sought to be introduced can be stated to be subsequent events or facts that the Respondent No.1 (Plaintiff) did not know prior to the filing of the Plaint or even after filing of the Written Statement. He submitted that the amendment sought by the Plaintiff are not such that would be even equitable or such that it could be claimed as a matter of right and under the given circumstances. He submitted that if allowed, the amendments would only delay the trial and final adjudication. He submitted that this Court must consider whether the Respondent No.1's Application for amendment is bonafide or malafide, and whether it would cause prejudice to the Petitioners and whether it could be compensated adequately in terms of money. He submitted that Respondent No.1 has neither provided any particulars nor fulfilled any of the criteria laid down in the judgement of the Supreme Court. He submitted that the learned Judge had failed to consider these criteria and thus, the impugned decision deserves to be set aside.

**16.** *Per contra*, Mr. Sakhare, for Respondent No.1, lays emphasis on the judgment of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited***[4] particularly on paragraph Nos. 66 and 70 of the judgment which reads thus:

> *"66. The two provisos referred to above, deal with the question of permitting the plaintiff to amend his plaint.* ***It is not, as if, in the absence of these two provisos, it is not permissible in law for the plaintiff to carry out an amendment in his pleading by introducing a relief for enhanced compensation.*** *Rule 17 of Order VI of the CPC does confer power on a Court to allow a party to alter or amend his pleading in such manner and on such terms as may be just. This rule does not stop at that, but it further says that all such amendments should be made as may be necessary for the purpose of determining the real question in controversy between the parties. It is pertinent to note that this provision which empowers the court in its discretion to permit a party to amend his pleadings, was already on the statute book, when the Specific Relief Act, 1963 was enacted. It can, there-fore, be presumed that when the latter legislation was on the anvil, the Parliament was aware of this power of the court to permit amendment of pleadings. Therefore, it cannot be successfully urged that a suit for specific performance falling under the provisions of the Act, 1963 would not be governed by the provisions of the CPC. It is, therefore, clear that to such a suit the provisions contained in Order VI Rule 17 of the CPC would apply and a plaintiff who has earlier failed to incorporate the reliefs for compensation or who has incorporated the reliefs for compensation but seeks amendment in the same, could seek*

4 AIR 2022 SC (Civil) 2737.

*the permission of the court to introduce these reliefs by way of amendment.*

*70. Our final conclusions may be summed up thus:*

*(i) Order II Rule 2 CPC operates as a bar, against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*

*(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*

*(iii) The prayer for amendment is to be allowed*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side,*

*(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*

*(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*

*(iv) A prayer for amendment is generally required to be allowed unless*

*(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*

*(ii) the amendment changes the nature of the suit,*

*(iii) the prayer for amendment is malafide, or*

*(iv) by the amendment, the other side loses a valid defence.*

*(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

*(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*

*(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*

*(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

*(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*

> *(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*
>
> *(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi and Ors., 2022 SCC OnLine Del 1897) : (AIROnline 2022 Del 1797).”*

**17.** He submitted that this judgment supported the Respondent No.1 ‘s case and the impugned order passed by the learned Judge. It is his case that the claim was not time-barred, the changes sought were not such that would alter the prayers that are sought in the suit. The amendment sought was certainly not mala fide. The Petitioner would be entitled to file an additional written statement, and thus no defense would be lost or denied to the Petitioners. He further submitted that a hyper-technical approach ought not to be

taken as the Petitioner could be compensated by costs if he succeeds. According to him, the amendment only introduced an additional or a new approach and was not introducing a time-barred cause of action. Thus, in his view, the trial Court was right in allowing the amendment, assuming whilst denying that it was done after expiry of limitation.

**18.** He further submitted that a mere delay in applying for an amendment would not be a ground to disallow the prayer of amendment. According to him, the amendment sought was only with respect to the relief in the plaint and was predicated on the facts that were already pleaded in the plaint. Thus, in his view, the amendment also was required to be allowed. He submitted that it was not that the Petitioner would not get a chance to meet the case made out in the amendment sought by Respondent No.1; and thus, there will be no irreparable prejudice caused to the Petitioners. According to him, the amendment was necessary for the Court to effectively adjudicate the main issue in controversy between the parties, and therefore, he submitted that the learned Judge rightly allowed the amendment. The learned advocate submitted that pursuant to the said order dated 10th September 2018, the plaint was amended, and the reverification of the plaint was done on 18th September 2018. He further submits that Affidavit of Examination-in-Chief has also been filed on 2nd July 2022. To this, Mr. Narula submitted that prayer clause (b) of the Petition seeks to strike off and/or discard the amendment so carried out in the plaint.

**19.** I have heard both counsels. In my view, the trial Court has erred on many counts. It has failed to consider the order dated 13th January 2010 in the Notice of Motion taken out by Respondent No.1, which considered the Petitioner's defence was made absolute and is not challenged. The said order took into consideration that the Respondent No.1's old structure was handed over and the said structure was in fact demolished in lieu of the transit accommodation. The order also recorded that by an allotment letter dated 24th November 2000 issued to the Respondent No.1, the Respondent was to be given a Permanent Alternate Accommodation in building No. B-3 'A' wing instead of the 'C' wing that was sought to be given by the earlier agreement. The Court also took into consideration that the old premises was earlier in the name of Baburam J. Yadav and the Plaintiff; thus, the development agreement was executed jointly in favour of both of them. The order also considered that the said Baburam Yadav had relinquished and released his rights and interests from the old premises, and thus the Respondent No.1 alone was entitled for the said permanent alternate accommodation. The said order also took into consideration newly allotted premises to the Respondent No.1 and was sold by Respondent No.1 for the consideration of Rs.5,50,000/-. All throughout the order proceeds on the footing that the Respondent No.1 had only one premises. The amendment seeks to change the factual position that the Respondent No.1 had two premises. These facts are entirely ignored by the trial Court in the impugned order; it could not have been. These are relevant findings. There is no appeal

from that order. Thus, that order attained finality. The judgement of the Apex Court in the case of *M. Revanna vs. Anjanamma (Dead) by Legal Representative & Others (Supra)* would squarely be applicable to the facts of this case, and leave to amend would deserve to be refused. The judgement of the Apex Court in the case of *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited (supra)* does not assists the Respondent. Paragraph 70 expressly refers to the exceptions where the amendment is to be disallowed. In my view the present case falls in the exceptions where amendment is to be disallowed.

**20.** In my view, the Respondent No.1 could only sustain an amendment Application if he met the criteria as laid down by the judgments of the Supreme Court. However, Respondent No.1 has failed to disclose in her Affidavit how the amendment sought were not known and could not have been known even by due diligence or even after filing of the written statement. The only defense raised by the Respondent No.1 is that the plaint was drafted by the previous advocate and due to his oversight, vital facts were not mentioned, which were required to be incorporated in the plaint.

**21.** The purchase of another room premises from Baburam J. Yadav on 1st March 1995, and therefore being entitled to another Permanent Alternate Accommodation for the same, is entirely a new case that is sought to be introduced. This was not and could not have been unknown to the Respondent No.1 prior to the filing of the

suit. There is no explanation even sought to be given by Respondent No.1. Absolutely no particulars stated as to why these purported facts could not have been brought on record since the filing of the suit, i.e., 2008 till the filing of the Chamber Summons in 2015. In any event, the trial Court could not have ignored the proposed amendments whilst deciding the issue of whether or not they have to be allowed.

**22.** It appears that the entire endeavour of the Respondent No. 1 is to continue holding onto the transit accommodation. She has already sold the allotted premises six months prior to the filing of the suit in 2008. This fact, recorded in the Court's Order, is not challenged and thus stands. The Respondent No. 1's action clearly smacks of malfeasance.

**23.** Additionally, the utility provider, namely Reliance Energy Limited, is neither a necessary or proper party to the suit. No reliefs are claimed against them in the suit. Directions would suffice. Therefore, I am of the view that the entire Chamber Summons ought to have been rejected.

**24.** When asked about how the Respondent No.1, a slum occupant, would compensate the Petitioners, the learned advocate submitted that some reasonable costs could be awarded to the Petitioners. In my view, that would not suffice. The entire slum rehabilitation project would be adversely affected, and huge costs

(which would run into crores) would be incurred by the Petitioners. It cannot be expected that Respondent No. 1, originally a trespasser on the property (public or private), would be able to compensate such costs.

**25.** Thus, the Petition is made absolute in terms of prayer clauses (a) and (b).

**26.** I am inclined to also grant cost in the sum of Rs.50,000/- which is to be paid by the Respondent No.1 to the High Court Legal Aid Fund payable to Secretary High Court Legal Services Committee within a period of two weeks from the date of this order.



**(Kamal Khata, J)**