

**KutbuddIn RiyazuddIn Shaikh Vs. Subhash Rangnath Wadane**

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**Court :** Mumbai

**Decided On :** Nov-28-1997

**Reported in :** 1998(3)ALLMR19; 1998(2)BomCR818

**Judge :** N.P. Chapalgaonker, J.

**Acts :** [Specific Relief Act, 1963](#) - Sections 22; [Code of Civil Procedure \(CPC\), 1908](#) - Order 6, Rule 17

**Appeal No. :** Civil Revision Application No. 337 of 1990

**Appellant :** KutbuddIn RiyazuddIn Shaikh

**Respondent :** Subhash Rangnath Wadane

**Advocate for Def. :** V.G. Mete, Adv.

**Advocate for Pet/Ap. :** V.C. Solshe, Adv.

**Judgement :**

ORDER

**N.P. Chapalgaonker, J.**

1. In a suit for specific performance, prayer for the alternate relief of refund of consideration in the event the performance is refused was not made. Subsequent application filed by the defendant to amend the written statement adding the

prayer for refund of consideration was rejected. This order of the Joint Civil Judge, S.D., Osmanabad dated 10-7-1989 in R.C.S. No. 145 of 1985 has been challenged in this Civil Revision Application.

2. Learned trial Judge dismissed the application observing that the claim of refund of the consideration has now become time barred, therefore, the amendment should not be allowed. It is true that when a relief has become time barred because of the law of limitation, an amendment claiming that relief should not normally be allowed. The amendment in question is governed by a special provision in the statute.

3. Section 22 of the [Specific Relief Act, 1963](#) reads as under :

22. Power to grant relief for possession, partition, refund of earnest money, etc. -

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for --

(a) possession, or partition and separate possession, of the property in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

(2) No relief under Clause (a) or Clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed :

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under Clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

4. Proviso to sub-section (2) makes it imperative for a Court to allow any amendment of the plaint claiming relief such as; possession or partition and separate possession or refund of any earnest money or deposit. This amendment can be made 'at any stage of the proceeding'. The word 'proceeding' used in section 22 was found to include execution proceedings also by the Supreme Court in the case of Babu Lal v. M/s. Hazari Lal Kishori Lal and others, : [1982]3SCR94 . Confirming the view taken by Allahabad High Court in the case of Rameshwar Nath v. U.P. Union Bank Ltd, : AIR1956 All586 , Supreme Court held:

'It is a term giving the widest freedom to a Court of law so that it may do justice to the parties in the case. Execution is a state in the legal proceedings. It is a step in the judicial process. It marks a stage in litigation.'

Supreme Court also quoted with approval the view taken by learned Single Judge of Delhi High Court in the case of Ex-Servicemen Enterprises (P) Ltd v. Sumey Singh, A.I.R. 1976 Del 56 holding that word 'proceeding' in section 22 includes execution proceedings also. Section 22 was enacted with specific performance. The purpose is to avoid multiplicity of the litigation and to put an end to all controversies and questions in a single proceeding arising out of a contract in which specific performance is asked for. Learned Single Judge of this Court in Lotu Bandu Sonavane v. Pundalik Nimba Koli, : AIR1985 Bom412 , has also taken the same view and held that the expression 'at any stage of the proceeding' gives widest permission to the Court to allow amendment at any stage of the proceeding including execution of the decree.

5. Section 22 of Specific Relief Act starts with non-obstante clause saying that notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a person suing for the specific performance of a contract may also claim certain reliefs and those additional reliefs cannot be granted by the Court without having been asked for. However, the amendment praying those reliefs can be made at any time during the proceeding. Therefore, right from the day on which the suit is filed till the day on which the execution is fully satisfied, plaintiff decree-holder can amend the plaint and pray for reliefs like partition and separate possession or refund of consideration or deposit. There is no question of any

limitation. This is a special provision which excludes operation in other rule on limitation so far as these prayers are concerned. In view of this, finding of the Trial Judge that the relief of the refund of consideration has become time barred will have to be rejected. The amendment prayed for should have been allowed by the learned Trial Judge.

6. I, therefore, set aside the order passed by the Jt. Civil Judge, S.D., Osmanabad on 10-7-1989 below Exhibit 69 in R.C.S. No. 145 of 1985 and allow the amendment prayed subject to the payment of cost of Rs. 100/- which Shri Solshe has paid to the Counsel for the respondent Shri Mete. Amendment should be carried out within a period of two weeks from the date of the receipt of the writ of this Court by the Trial Court. The Trial Judge shall dispose of the suit as expeditiously as possible and under any circumstance within a period of six months from today. Rule absolute to the above extent.

7. Appeal allowed.

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