

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.3129 OF 2015**

**M/s. Amar Pratik Builders (I) Pvt ltd. ..Petitioner**  
**Vs.**  
**Kanjibhai Patel (deceased) through LRs & Ors. ..Respondents**

**Mr. Shardul Singh a/w Ms Shrutika Lakhan i/b B/ Amin & Co. for the  
Petitioner**  
**Mr. Anand shinde i/b Mrs. S. S. Kadam for the Respondent No.1E**

**CORAM : R. M. SAVANT, J.**  
**DATE : 4<sup>th</sup> SEPTEMBER, 2015**

PC.

1           The above Writ Petition takes exception to the order dated 19-1-2015 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order, Chamber Summons No.1812 of 2014 filed by the Defendant Nos.1(b) to 1(f) who are the heirs of the original Defendant No.1 Kanjibhai Patel, came to be allowed and the said Defendants were accordingly allowed to amend the Written Statement in terms of the schedule to the said Chamber Summons. The said Defendant Nos.1(b) to 1(f) as indicated above are the heirs of the original Defendant No.1 Kanjibhai Patel and had adopted the Written Statement of the original Defendant No.1 after they were brought on record in place of the original Defendant who expired. The said Defendants were brought on record in the year 2012.

2           It seems that an issue under Section 9A of the Civil Procedure Code was raised by the Defendants relating to Resjudicata which issue was answered by the Learned Judge of the Civil Civil Court, Greater Mumbai on 25-3-2014, against the Defendants, inter alia on the ground that the earlier adjudication has not reached a finality as an Appeal is pending and therefore it cannot be said that the principles of Resjudicata can be invoked. It is thereafter that the instant application i.e. Chamber Summons No.1812 of 2014 came to be filed for amendment of the Written Statement in terms of the schedule to the Chamber Summons, by which the Defendants want to incorporate paragraphs 1(a) to 1(r), amongst which are the paragraphs relating to the case of Resjudicata which the Defendants want to plead. The said Chamber Summons came to be allowed by the Trial Court by the impugned order dated 19-1-2015, as the Trial Court was of the view that the amendment was required to be allowed as the said Defendants have come in place of the original Defendant Kanjibhai Patel.

3           It is well settled that an amendment to the Written Statement stands on a different footing than an amendment to a plaint. It is also required to be noted that the Suit is at the stage where the affidavit of evidence is filed on behalf of the Plaintiff and therefore is not at the stage where the Suit has progressed substantially. The Trial Court deemed it appropriate to impose costs of Rs.12,000/- on the said Defendants in view of the delay caused. In my view

since the Trial Court has deemed it appropriate to allow the application for amendment of the Written Statement for the reasons mentioned in the impugned order, this Court does not deem it appropriate to interfere with the said order. The Writ Petition is accordingly dismissed.

4           The Learned Counsel for the Petitioner Mr. Singh submits that the Suit is of the year 1993 as originally filed in this Court, the same be expedited. Having regard to the fact that the Suit has been filed in the year 1993, the hearing of the Suit is expedited. Both the Learned Counsel assure this Court that their respective clients would not ask for unnecessary adjournments.

**[R.M.SAVANT, J]**