

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 4015 OF 2015***

1. Mr.Rajesh Thakurbhai Patel  
2. Mrs.Ila Rajesh Patel,  
Both residing at – Flat No.304,  
B-Wing, 3<sup>rd</sup> flr., Vidhi Apartment CHS Ltd.,  
Bhayander (E), Thane. ... Petitioners  
v/s

1. State of Maharashtra  
2. Mr.Bharat R. Pandey  
At E/304, Riddhi Siddhi CHS Ltd.,  
New MHB Colony, Boriwali (W). ... Respondents

Mr.Prashant Aher i/by P.V.Dhopatkar for the petitioners.  
Ms.Vaishali Nimbalkar, A.G.P. for Resp. No.1.  
Mr.Rajiv Singh i/by D.L.Gupta for Resp. No.2.

***Coram: N.M. Jamdar, J.***  
***Dated: 19 September 2016***

***ORAL ORDER:***

The Petitioners challenge the order passed by the learned Civil Judge, Senior Division, Thane, dated 2 February 2015, whereby an amendment to the plaint has been allowed. Respondent No.2/Plaintiff has sought to add a prayer for alternate relief for compensation, which has been granted by the learned Civil Judge. The learned counsel for the Petitioners submitted that since the Petitioners had not sought for this relief at the time of institution of

the suit, it is barred in view of Order II Rule 2 and having not sought relief at the inception, cannot be sought now.

2 As far as the merits of the amendment are concerned, this is not a stage for considering the rival contentions on merits. The learned Civil Judge has found that, in the facts and circumstances of the case, the amendment was necessary to avoid multiplicity of proceedings. The learned Civil Judge is right in holding so as the Petitioner would have to file another suit. Merely because the Petitioner had not sought for this relief at the time of institution of the suit, it is not an absolute proposition of law that in no circumstances by way of amendment an alternate relief cannot be sought. There is no such absolute embargo and it is left to the discretion of the learned Civil Judge, which he has exercised in the facts and circumstances of the case. It cannot be said that the order is without jurisdiction. As regard the contention of the Petitioners on merits of the amended portion, it is always open to the Petitioners to file an additional written statement and take all grounds that are available in law and on facts, to contest the amended portion.

3 Keeping all contentions of the parties as regard the amendment on merits open, the writ petition is disposed of.

*(N. M. Jamdar, J.)*