

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12796 OF 2019**

Kantilal Kalyanji Gogri (HUF) being Karta of Kantilal Kalyanji Gogri (HUF) & Ors.	...Petitioners
Versus	
Jayesh Dharamdas Jhaveri	...Respondent

Mr. Cherin N. Lapashiya i/b M/s. Niranjan & Co. for the Petitioners

Mr. Kishor Patil for the Respondent

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 12th DECEMBER 2019

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioners have impugned the order dated 23rd November 2019 passed by the learned Judge, City Civil Court, in Chamber Summons No. 1765/2019 filed in Commercial Suit No. 39/2019.

3 Learned counsel for the petitioners submits that the learned Judge ought not to have entertained and allowed the respondent's Chamber Summons seeking amendment of the plaint. He submits that the amendment is filed belatedly i.e. after the written statement was filed by the

petitioners (original defendants) and that the said amendment would change the basic nature of the Suit.

4 Learned counsel for the respondent opposes the petition. He submits that no interference is warranted in the impugned order. He submits that the respondent had initially filed the Suit as a Summary Suit under Order XXXII of the Code of Civil Procedure (`CPC'), pursuant to which, writ of summons was issued to the petitioners (original defendants). He submits that thereafter the Suit which was filed as a Summary Suit was registered as a Commercial Suit, which necessitated amendments to the original plaint in terms of Order VI Rule 15A and Order XI Rule 3 of CPC. He submits that in view of the registration of the Suit from Summary Suit to Commercial Suit, the amendment was imperative and necessary. He submits that the amendment does not change the basic nature of the Suit and only seeks to bring on record two documents which bear the signatures of the petitioners (original defendants).

5 Perused the papers. Admittedly, the respondent (original plaintiff) had filed a Summary Suit under Order XXXII of the CPC in the Court of the learned City Civil Court, Greater Mumbai. It appears that on 6th August 2019, the said case was adjourned at the behest of the learned

counsel for the defendants for advancing arguments for the procedure to be applied under Order XXXII or as per the Commercial Courts Act and the matter was adjourned to 16th August 2019. On 16th August 2019, the Suit was registered as a Commercial Suit. The Roznama indicates that as the parties had not represented before the Court whether the Suit be tried as Commercial Suit or Summary Suit, the same was registered as Commercial Suit and the matter was adjourned for filing written statement to 11th September 2019. Admittedly, the said order dated 16th August 2019 registering the Suit as Commercial Suit has not been challenged by either of the parties i.e. the petitioners or the respondent. Thereafter the petitioners (original defendants) filed the written statement on 11th September 2019.

6 It appears that as the Suit was registered as a Commercial Suit, the defendants took out a Chamber Summons along with an affidavit in support of the Chamber Summons in October 2019 and prayed for amendment of the plaint. The proposed amendment was annexed to the chamber summons. The said schedule of amendment to plaint is at page 60 of the aforesaid petition along with the statement of truth, as contemplated under order VI rule 15A and order XI Rule 3. The said Chamber Summons was allowed by the learned trial Judge vide order dated 23rd November 2019 and the respondent (original plaintiff) was permitted to carry out

necessary amendment. The learned trial Judge has rightly held that initially the Suit was filed as a Summary Suit, however, was registered later as Commercial Suit and that the procedure of both i.e. Summary and Commercial Suit being different, amendment is required to be carried out, so that, there is compliance of the necessary provisions. A perusal of the schedule of amendment to the plaint does not show that the said amendment would change the basic nature of the Suit and cannot be said to be either malafide or prejudicial to the interest of the petitioners (original defendants).

7 No infirmity or perversity can be found in the impugned order. Accordingly, the petition is dismissed.

REVATI MOHITE DERE, J.