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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2471 OF 2022**

VARSHA NARWANI AND ANR ...Petitioners
V/s
THE STATE OF MAHARASHTRA
& ANR ... Respondents

**WITH
WRIT PETITION NO.2473 OF 2022**

VARSHA NARWANI AND ANR ... Petitioners.
V/s
THE STATE OF MAHARASHTRA
AND ORS. ... Respondents

**WITH
WRIT PETITION NO.2472 OF 2022**

KUSUM NARWANIPetitioner
V/s
THE STATE OF MAHARASHTRA
AND ANR. ...Respondents.

**WITH
WRIT PETITION NO.2474 OF 2022**

DR. (MRS) SONI NARWANIPetitioner
V/s
THE STATE OF MAHARASHTRA
AND ANR. ...Respondents.

Mr. Ashok M. Saraogi for the Petitioner in all the above Writ Petitions.
Mr. Sidha Pamecha a/w Shailesh Prajapati i/b Dua Associates for
Respondent No.2 in Writ Petition No.2471 of 2022.

Mr. Shailesh Prajapati i/b Dua Associates for Respondent No.2 in
connected Writ Petition No.2472 of 2022, 2473 of 2022 and 2474 of
2022.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 09, 2022

P.C.:-

1] By consent, since all these Petitions involve same issue, they are
disposed of by this common order. For convenience, facts in Writ
Petition No.2471 of 2022 are taken into account.

2] Petitioners/Plaintiffs initiated S.C. Suit, thereby seeking
declaration and injunction in relation to the developed flat. It is the
case of the Petitioners that they had privity with Lok Housing &
Construction Ltd., which project was taken over by the Respondents/
Defendants.

3] Before trial in the suit commenced, Petitioners have taken out
Chamber Summons, seeking amendment thereby incorporating the
word "Predecessor" and amplifying existing pleadings by virtue of

insertion of para 7A, which prayer is rejected vide impugned order.

4] Submissions of Counsel for the Petitioners are, basic foundation as regards existence of contract between Petitioners and the predecessor of Respondents was very much pleaded. However, what is sought to be inserted by way of amendment is, clarification to the existing pleadings. According to him, since suit is at initial stage, amendment ought to have been granted.

5] The prayer is opposed by the Counsel for Respondents/Defendants. According to him, amendment is by way of afterthought and with an intention to coverup the lacunae which were existing in the pleadings in the plaint. Drawing support from the judgment of the Apex Court in the matter of *J. Samuel and Ors. vs. Gattu Mahesh and Ors* reported in **JT 2012(1) SC 169**, he would urge that typographical error cannot be permitted to be corrected at this stage of the proceedings as said pleading of the Petitioners/Plaintiffs is to the benefit of the Respondents/Defendants.

6] I have appreciated the said submissions.

7] Court is required to be sensitive to the fact that trial in the suit is yet to commence. Only pleadings are complete and issues are yet to be framed. Petitioners/Plaintiffs have already laid foundation in the plaint as could be noticed from the existing pleadings that the Petitioners/Plaintiffs have contract with Lok Housing & Construction Ltd. i.e. predecessor of the Respondents/Defendants and the project in question has been taken over by the Respondents/Defendants.

8] In that view of the matter, Court below, in my opinion, has committed an error in refusing amendment. That being so, order impugned passed in the Chamber Summons rejecting prayer for amendment is quashed and set aside. Chamber Summons stands allowed, subject to payment of costs of Rs 3000/- to be deposited in the Trial Court within a period of two weeks from today which the Respondents would be entitled to withdraw. Deposit of costs is condition precedent for carrying out amendment. Amendment be carried out after deposit of costs within one week. Needless to clarify that Respondents/Defendants shall be entitled to place on record consequential additional Written Statement or may carry out

amendment to the existing Written Statement within a period of three weeks from the date of carrying out amendment by the Petitioners/Plaintiffs.

9] All these Petitions stand allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)