

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11923 OF 2022**

Ujawala Khanderao Pedgaonkar and Ors.Petitioners

V/s.

Neela Jaisingh Gohil and Ors.Respondents

Mr. Amogh Singh with Mr. Dhruv H. Joshi and Mrs. Nandini Joshi i/by Harish Joshi and Co., Advocate for the Petitioners

Mr. Prasad L. Gajbhiye, Advocate for the respondent nos.1 to 6.

CORAM : SANDEEP K. SHINDE, J.
DATED : 6TH OCTOBER, 2022.

P.C. :

1. Pending suit, petitioners-plaintiffs, after commencement of trial, sought leave to amend the plaint. The learned Judge, City Civil Court, refused the leave and dismissed the chamber summons, by order dated 13th July, 2022. That order is challenged in this Petition.

2. Heard learned counsel for the Parties.

3. **Brief facts of the case;**

Predecessor of the Petitioners instituted a Short Cause Suit No.3469 of 1983 against Shri Jaysingh Babubhai Gohil

(Defendant No.1), seeking a declaration that she is owner and entitled to all the rights, title and interest in respect of flat no.173, Building No.11, Rajendra Nagar, Datta Pada, Borivali (East) Mumbai- 66 ('Suit Flat' for short). Suit flat was allotted to the defendant by the Maharashtra Housing and Area Development Authority. Plaintiff's case is that since after allotment in 1979, she was in possession of the said flat till 2016 and, therefore, seeks a decree directing defendant execute and sign necessary documents in respect of Suit Flat in her name for perfecting her title thereto. Pending suit, plaintiff and the defendant both passed away. Their legal representatives have been brought on record. In the year 2016 building no.11, wherein Suit Flat situated, was demolished for re-development. Whereupon plaintiffs handed over possession of the Suit Flat to the developer, M/s. Keystone Realtors Private Limited, appointed by Rajendra Nagar Co-operative Housing Society Ltd. It appears, pending suit defendant instituted eviction suit under Rent Act against the plaintiffs in respect of the Suit Flat. Eviction decree was passed in the said suit on 20th March, 2010. Obviously, eviction decree was relating to Flat No.173, Building No.11 i.e., Suit Flat. Pending execution of the

decree, re-development of Building No.11 was complete. Whereupon new flat, in lieu of Suit Flat was handed over to the Plaintiffs. This fact is evident from the order dated 3rd November, 2018 passed in Notice of Motion No.520 of 2018. This order was challenged before this Court. However, not interfered with it. Therefore, fact remains, the plaintiffs are in possession of new flat, allotted to them in lieu of Suit Flat.

4. In consideration of the above facts, the plaintiffs moved a Chamber Summons in August, 2018 seeking leave to amend the plaint. The schedule of amendment broadly consists of ; (i) impleadment of M/s. Keystone Realtors Private Limited as defendant no.2 and Rajendra Nagar Co-operative Housing Society Ltd. as defendant no.3; (ii) events relating to development of building no.11 and (iii) prayers seeking directions to M/s. Keystone Realtors Pvt. Ltd. to hand over possession of new flat to the plaintiff no.2 alone.

5. The learned Trial Court declined the amendment, reason being amendment sought could not have been granted for want of 'due diligence'.

6. Learned counsel for the respondents would contend that subsequent events sought to be incorporated were within the knowledge of the plaintiffs before commencement of trial and since the application seeking amendment does not disclose exercise of 'due diligence' by the plaintiffs, which is essential jurisdictional fact for allowing amendment after commencement of trial. Learned counsel therefore, argued that impugned order calls for no interference.

7. I have perused the proposed amendment set out in Schedule appended to Chamber Summons. Part I and II relate to impleadment of M/s. Keystone Realtors Private Limited and Rajendra Nagar Co-operative Housing Society as Defendant Nos. 2 and 3. In consideration of the facts of the case, reliefs sought therein neither Keystone nor Rajendra Nagar Co-op. Housing Society are necessary or proper parties for adjudication of the suit. Therefore, impugned order rejecting to amend the plaint in terms of Part I and II of the Schedule calls for no interference. Part III of the Schedule relates to events concerning re-development of Building No.11. Part III consists of

paragraph 17(a) to 17(m). Out of these paragraphs, except paragraph 17(a), (b) and (k), other events detailed in remaining paragraphs do not have the bearing over a issue in the suit. Moreover, these paragraphs outline correspondence between the plaintiffs and M/s. Keystone Realtors Pvt. Ltd. relating to arrears of rent, deposit, repair charges. In so far as part IV of the Schedule is concerned, it may be stated that plaintiffs have been put in possession of new flat and, therefore, prayers seeking a mandatory order directing Keystone Realtors Private Limited to hand over possession of new flat to the plaintiff no.2 alone is rendered infructuous, being worked out.

8. Thus, it could be seen, the only amendment required for proper adjudication of the controversy is, that reference to the Suit Flat in the plaint be now referred to the said new Suit Flat (Paragraph No.17K of the Schedule).

9. The settled law is, all amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to other side. Thus, prayer for amendment is to be allowed;

- (i) If amendment is required for effective and proper adjudication of the controversy between the parties;
- (ii) To avoid multiplicity of proceedings provided;
 - (a) the amendment does not result in injustice to other side;
 - (b) by the amendment, parties seeking amendment does not seek to withdraw any clear admission made by the party, which confers a right on the other side as held by the Hon'ble Supreme Court in the case of **Life Insurance Corporation of India (Civil Appeal No.5909 of 2022)**. In the said decision, the Hon'ble Supreme Court has held that 'where the amendment merely sought to introduce an additional or new approach without introducing time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

10. In the case at hand, although the plaintiffs sought amendment without disclosing the 'due diligence', the fact remains, proposed amendment in terms of Part III 17(a) (b) and (k) are required for effective and proper adjudication of the controversy and it does not result in injustice to the plaintiffs.

11. For the reasons stated above, the petition is partly allowed, permitting the plaintiffs to amend the plaint by incorporating subsequent events described in paragraph 17(a) (b) and (c) of the Schedule appended to Chamber Summons No.1409 of 2018. To above extent, the impugned order is quashed and set aside.

12. Petition is partly allowed and disposed of in aforesaid terms.

(SANDEEP K. SHINDE, J.)