

Nikita

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

WRIT PETITION NO.12136 OF 2023

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Date: 2023.10.06
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Siraj Mohammed Haji Adam and Ors. ... Petitioners

V/s.

Sanjar Enclave Premises Co-operative
Society Ltd. and Ors. ... Respondents

Mr. Sanjeev R. Singh a/w Siddharth Mishra a/w Mr.
Ritesh A. Singh for the Petitioners.

Mr. Ranjit Thorat, Sr. Adv. i/b Ms. Sukeshi Bhandari
a/w Mr. Akshay Chauhan for Respondent Nos.1 to 4.

Mr. R.Y. Sirsikar, for BMC Respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 5, 2023

P.C.:

1. The petitioner is challenging the order dated 4th August 2023, passed by the City Civil Court Mumbai, allowing the application for amendment of plaint.

2. It appears that the amendment application has been filed before framing of issues. It is well settled that is amendment application has been filed before framing of issues, the proviso to Order 6 Rule 17 is not applicable.

3. The learned advocate for the petitioner submitted that earlier application filed by the respondent for amendment was

allowed. The present application is second application for amendment. The events stated in the application for amendment were available to the plaintiff on the date of the filing of suit, therefore, such amendment ought to have been incorporated in the first amendment application.

4. It is well settled that the amendment to the plaint, needs to be allowed liberally, if such application is filed before the commencement of the trial. It is not the case of the petitioner, that amendment is barred by limitation or changes nature of the suit and introduces new cause of action. Merely because in earlier application for amendment, such averments were not incorporated can not a ground for rejection of amendment of plaint particularly when the issues are yet to be framed.

5. Therefore, no interference under Article 227 of Constitution of India is called for.

6. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)