

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

WRIT PETITION NO. 1514 OF 2019

Rakesh Madanlal Anand

...Petitioner

V/S

Mohammad Jaffer mohammed Merchant
& Anr.

...Respondents

...

Ms. Sunita D. Sonawane for the Petitioner.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 16 JUNE 2023.

P.C.:

1. By this petition, Petitioner challenges order dated 12 September 2018 passed by the City Civil Court thereby allowing Plaintiff's Chamber Summons for amendment of the plaint.

2. I have gone through the Schedule-A and B to the Chamber Summons for amendment. In Schedule-A, the plaintiff desired impleadment of Defendants no.3a, 3b and 3c as party defendants. In Schedule-B, Plaintiff desired to add the words "Through its Partner Mr. Rakesh Anand and Mrs. Uma Anand,

Miss. Chandani Anand & Mrs. Gitanjali Shah” in the cause-title of the plaint in respect of the Defendant no.1.

3. The only objection that the learned Counsel for the Petitioner raises to the impugned order is to the assertion on the part of the petitioner-Defendant no.2 that he is a partner of Defendant no.1. She would submit that since Petitioner/Defendant no.2 is not a partner of Defendant no.1, the City Civil Court ought not to have permitted the Plaintiff to amend the plaint showing Petitioner/Defendant no.2 as the partner of Defendant no.1. This, in my view, would be a matter of evidence. The City Civil Court would decide the correctness of assertion on the part of the Plaintiff that Petitioner/Defendant no.2 is partner of Defendant no.1. It would also be open for Petitioner/Defendant no.2 to prove that he had ceased to be the partner of Defendant no.1.

4. The Supreme Court has laid down broad parameters relating to amendment of pleadings in para-70 of the judgment in the case of **Life Insurance Corporation of India V/s. Sanjeev Builders**, AIR 2022 SC 4256. It reads as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is,

thus, misconceived and hence negatived.

(ii) 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 the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs. (vi) Where the amendment would enable the court to pin-pointedly

consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the

amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

5. Considering the parameters laid down by the Apex Court, no case is made out by the Petitioner for interference by this Court. Petition is devoid of merits. The same is dismissed.

(SANDEEP V. MARNE, J.)