

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1236 OF 2023

IN

COMMERCIAL SUIT NO. 60 OF 2023

Peerless Construction Pvt.Ltd.

...Applicant/
Plaintiff

Versus

Borivali Om-Shri Krishna Co-op. Housing
Society Ltd. & Ors.

...Defendants

Kayval Shah for the Applicant/Plaintiff.

Charles De Sooja a/w Apoorva Kulkarni i/by M/s. U. Deshpande and
Co. for the Defendant Nos. 1 to 34.

Nemit Pansare for Proposed Defendant Nos. 35 to 39.

CORAM : R.I. CHAGLA J

DATE : 21 April 2023

ORDER :

1. The learned Counsel appearing for the
Applicant/Plaintiff has tendered schedule of draft amendment which
is taken on record and marked "X" for identification.

2. The amendment sought is in respect of substituting address of Defendant Nos. 35 to 39 in the Interim Application with the new address.

3. Accordingly, the Applicant/Plaintiff shall carry out the amendment in the cause title of the Plaint in accordance with the schedule marked X forthwith. Re-verification is dispensed with.

4. By this Interim Application, the Applicant is seeking pre-trial amendment in respect of the subsequent events, which have transpired after filing of the present Suit which events include new developer being appointed by the Defendant No. 1-Society and Development Agreement executed pursuant to which development is being carried out by the new developer.

5. There are proposed prayers to be incorporated in the Plaint which are against the Defendants/proposed Defendants including deposit of an amount Rs. 7,37,46,703/- against the Defendants/proposed Defendants.

6. Learned Counsel appearing for the proposed Defendants

also submits to the orders of this Court subject to rights and contentions of the proposed Defendants including their right to deal with the amended Plaint and interlocutory proceedings being kept open.

7. Learned Counsel appearing for the Defendant No. 1-Society submits to orders of this Court.

8. Accordingly, considering that the amendment is the pre-trial amendment and in relation to subsequent events which includes the development by the new developer pursuant to execution of the Development Agreement which is sought to be challenged, for a proper determination of the present Suit as well as for completion of proceedings, the amendment is allowed. Hence, the following order is passed. :-

- (i) The Applicant/Plaintiff is permitted to carry out the amendment of the Plaint and consequential amendment as per schedule annexed to the Interim Application.

- (ii) Amendment shall be carried out on or before 5th May 2023.
- (iii) All rights and contentions of the Defendants including the newly joined Defendants are kept open.
- (iv) The Defendants including the newly joined Defendants are at liberty to file their Written Statement/additional Written Statement dealing with the amended Plaint and which shall be filed within a period of four weeks from being served with the amended Plaint.
- (v) Applicant/Plaintiff shall serve the amended Plaint on the Defendants simultaneously upon carrying out of amendment.
- (vi) Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]