

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

WRIT PETITION NO. 15803 OF 2022

M/s. Vijay Enterprises .. Petitioner
Versus
M/s Sab Developers & Anr. .. Respondents

Mr Bhavik Lalan i/b. G P & Associates for Petitioner
Adv. Sandeep D. Shinde for the Respondent No. 2

CORAM : M. M. SATHAYE, J.

DATED : 8 MARCH 2024

P.C.:

1. **Rule.** Learned Counsel for the Respondent No. 2 waives service. Learned Counsel for the Petitioner states that he has privately served the Respondent No. 1 and service affidavit is filed. In any case, perusal of the impugned order shows that Respondent No. 1/Defendant No. 1 had granted no objection to the proposed amendment, which is the subject matter of this Petition. Rule made returnable forthwith. Heard finally by consent.

2. By this Petition under Article 226 & 227 of the Constitution of India, the Petitioner/Original Plaintiff is challenging the Order dated 13 June 2022 passed by the Civil Judge, Senior Division, Kalyan below Ex. 48 in Special C. S. No. 188 of 2018 (“the impugned Order ” for short), by which the

Petitioner's application for amendment to the Complaint is rejected.

3. Heard learned Counsel for the Petitioner, who submitted that the impugned order, in essence proceeds on the footing of rejection of the Petitioner's earlier application for amendment below Ex. 42 on 24 February 2022. He submitted that if the earlier amendment application Ex. 42 and present amendment application Ex. 48 are perused, it is clear that present application is filed due to certain new documents in respect of the suit property being made available, which were not available when the earlier application was filed. He submitted that the suit is at per-trial stage and issues are yet to be framed and therefore the proposed amendment based on new documents received ought to have been allowed. He submitted that the proposed prayer in respect of the public notice dated 6 February 2018 issued by the Respondent No. 2 is referable to said notice mentioned in original pleadings.

4. Learned Counsel for the Respondent No. 2 supported the impugned order and submitted that the earlier application for amendment was rejected and the alleged change in the circumstances and the documents referred in the new application can be considered during evidence and proposed amendment is not required for the same. He has however fairly, not disputed

the position that issues are not yet framed.

5. I have carefully considered the rival submissions and perused documents on record. Perusal of the earlier application Ex. 42 shows that it was filed on the premise that due to inadvertence certain paragraphs have been missed by the Petitioner's earlier lawyer. However, perusal of the present application Ex. 48 shows that it is a detailed application making reference to the applications made by the Petitioner to the Village Talathi and the Corporation after the earlier application was filed. The earlier application was filed on 18 September 2021 and the present application is based on applications dated 6 October 2021 and 8 October 2021 made to Talathi and Corporation Ward Office. Present application Ex. 48 shows that Petitioner wants to include averments about application to the Talathi of the concerned village and reply received from him, as also the RTI Application to the Ward Office of the Respondent No. 2-Corporation and reply received therefrom. Perusal of the proposed amendment also shows that the prayer is made in respect of notice dated 6 February 2018, which indeed finds place in the paragraph no. 19 of the plaint i.e. original pleadings. Therefore this Court does not see any reason why the earlier order below Ex. 42 should be a relevant reason for rejection of the present Application Ex. 48. Admittedly

the trial has not commenced and issues are not yet framed.

6. The merits of the averments sought to be amended and the proposed prayers are a matter of evidence and consideration by the Trial Court at appropriate stage, which is yet to come. However, at the stage where the suit stands today, the Plaintiff cannot be precluded from amending the plaint.

7. Further it is seen from the perusal of the impugned order that the Trial Court has proceed on the footing that neither the Plaintiff nor the Defendant No. 1 has preferred any Municipal Appeal challenging the taxation of the suit property. This consideration, again, is a matter of merits and should not detain the Court from allowing the amendment. The Respondents/Defendants will be obviously at liberty file their additional written statement to the amendment. Also an omnibus observation in the impugned Order that 'subject matter involved in the suit is different than proposed amendment' is found to be made without consideration on merits, which is not even the stage reached.

8. In that view of the matter, the petition is allowed and the impugned order is quashed and set aside. The Petitioner's Application at Ex. 48 is allowed. Necessary amendment in the suit be carried out within a period of 4 weeks from today with copy served upon the other side simultaneously.

The Respondents shall be at liberty to file their additional written statement to the proposed amendment within 4 weeks thereafter.

9. Rule is made absolute in above terms. No order as to costs.

10. All the concerned to act on duly authenticated/digitally signed copy of this order.

(M. M. SATHAYE, J.)