

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7434 OF 2023

Digambar Ramdas Dhane (Gaikwad)
 Age: 50 years, Occ; Agriculturist,
 R/at: at Post: Padali,
 Tal & Dist: Satara.

..Petitioner
 (Orig. Plaintiff)

Versus

1. Ramdas Narayan Jadhav,
 Age: 63 years, Occ: Service,
 R/o. 40, Ganga KVS, Complex,
 NCH Colony, Kanjurmarg,
 Mumbai.
2. Suman Shivaji More,
 Age: 66 years, Occ: Housewife,
 R/o. Kudal, tal. Jawali,
 Dist: Satara.
3. Anuradha Dipakrao Mane,
 Age: 51 years, Occ: Service,
 R/at: Lonand, Near Rajlaxmi,
 Talkies, Tal. Khandala, Dist: Satara.
4. Bharat Narayan Jadhav,
 Age: 42 years, Occ: Agriculturist,
 R/at: Pimpode,
 Tal & Dist: Satara.
5. Bhanudas Baburao Dhane,
 Age: 55 years, Occ: Agriculturist.
6. Anjana Bhanudas Dhane,
 Age: 45 years, Occ: Housewife.
7. Ajit Bhanudas Dhane,
 Age: 27 years, Occ: Education,
 Nos.5 to 7 are R/at: Padali,
 Tal & Dist: Satara.
8. Shila Satish Jadhav,
 Age: 44 years, Occ: Housewife,
 R/at: Kodoli, Tal & Dist: Satara.

..Respondents
 (Orig. Defendants)

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Mr. Shivaji A. Masal, Advocate for Petitioner.

Mr. Dilip Bodake a/w Mr. Amar Dhumal a/w Mr. Saiprasad Patil a/w

Ms. Sujata Lohar a/w Mr. Mohsin Khan, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 17th SEPTEMBER, 2025.

PRONOUNCED ON : 23rd SEPTEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The present Writ Petition takes exception to order dated 01.12.2021 passed by learned Civil Judge Senior Division, Satara below Exhibit-42 in Special Civil Suit No.142/2018, thereby rejecting application filed by petitioner (original plaintiff) seeking amendment in plaint. (Hereinafter, parties are referred to by their original status for the sake of convenience and brevity).
3. The plaintiff instituted Special Civil Suit No.142/2018 before Civil Judge Senior Division, Satara seeking decree of specific performance of contract with confirmation of defendant nos.5 to 8 in respect of suit property. It is contention of plaintiff that defendant nos.1 to 4 agreed to sell suit property to him for consideration of Rs.8,50,000/-. At the time of oral agreement, amount of Rs.50,000/- was paid as token. Thereafter, part of consideration amount was transferred by way of NEFT. On 07.03.2018, plaintiff paid stamp duty of Rs.42,500/- and registration fees of Rs.8500/-. The date for

execution of sale deed was fixed on 28.03.2018. However, defendant no.1 avoided to attend Registrar office under pretext of marriage ceremony of his son. It was agreed that sale deed would be executed on 13.04.2018. Although plaintiff and defendant nos.1 to 3 were present in office of Registrar, defendant no.4 was absent. Eventually, sale deed could not be executed. On 22.05.2018, defendant nos.1 to 4 transferred suit property in favour of defendant nos.5 to 8. Hence, Special Civil Suit No.142/2018 is instituted seeking specific performance of contract and execution of sale deed. The defendant no.5 refuted plaintiff's claim by filing written statement.

4. On 15.07.2020, plaintiff filed application below Exhibit-42 seeking amendment in plaint. The application was opposed by defendant nos.1 to 8. The learned Civil Judge Senior Division, Satara rejected plaintiff's application. Hence, present Writ Petition.

5. Mr. Shivaji Masal, learned Advocate appearing for petitioner (original plaintiff) submits that application for amendment in plaint was filed at pre-trial stage. The suit is at preliminary stage for hearing on application seeking temporary injunction. The petitioner wants to bring on record subsequent events and other factual aspect explaining conduct of respondent nos.1 to 4. Further pleading is required to be incorporated in plaint to clarify ambiguous part and bring on record complete transaction between parties. The learned Trial Court declined application on erroneous count.

6. Mr. Dilip Bodake, learned Advocate appearing for respondents (original defendants) supports impugned order.

7. The Supreme Court of India in case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr.***¹ laid down parameters/guidelines to be applied in matter of applications for amendment. In paragraph no.70 following guidelines are laid:

“(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).

¹ AIR 2022 SC 4256.

(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 pinpointedly 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.”

8. Looking to clause no.(xi) of aforesaid guidelines it is cleared that in case amendment is sought prior to commencement of trial, Court is required to liberally consider same, as opposite party would have chance to meet case set up by way of amendment. It is further clarified that where amendment does not result in irreparable prejudice to opposite party, or divest opposite party of an advantage, which it had secured as a result of an admission by party seeking amendment, amendment is required to be allowed. The Court is merely required to look into whether amendment is necessary for effectively adjudicate on main issues in controversy between parties.

9. In present case, if reasons adopted by Trial Court are perused, it can be observed that rejection of application is on examination of merits of proposed amendment. It is trite that, Court is not expected to delve into merits of proposed amendment while considering application. True test is that amendment must be relevant and necessary to effectively adjudicate upon controversy between parties.

One of the consideration is to avoid multiplicity of proceeding for allowing amendment.

10. In present case, petitioner has sought amendment to bring on record certain particulars regarding transaction, which is subject matter of suit. The suit is instituted for specific performance of contract. The petitioner wants to bring on record conduct of respondent nos.1 to 4 and certain events that took place during pendency of suit. Truthfulness of contentions of proposed amendment need not be gone into at this stage. The respondents are entitled to refute such contentions and put up their appropriate stand in respect of contents of proposed amendment. It is not discernible that petitioner wants to bring inconsistent pleading or want to withdraw any admission that would cause prejudice to respondents.

11. In that view of matter, this Court finds that Trial Court failed to exercise jurisdiction in judicious manner while dealing application for amendment filed by petitioner, particularly at preliminary stage of suit. No logical or legal ground is discernible for rejection of amendment from impugned order. In that view of matter, impugned order deserves to be quashed and set aside. Hence, following order:

ORDER

a. Writ Petition is allowed in terms of prayer Clause (b) with liberty in favour of defendants to file additional written statement to amended pleading.

- b. Rule is made returnable in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/September-2025