

Shabnoor

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

WRIT PETITION NO.1813 OF 2024

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Ashwini Dattaram Tirlotkar & Ors. ... Petitioner
V/s.
Rajaram Babala Manjavkar & Ors. ... Respondent

Mr. Prashant P. Kulkarni a/w Gairaj Shah with Ms.
Rachna Mamnani for petitioner.

Mr. Yatin R. Shah for respondent No.6.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 23, 2025

P.C.:

1. The petitioner is the plaintiff in a suit seeking a declaration that the development agreement executed by the promoter of the co-operative society in favor of the remaining defendants is null, void, and illegal.

2. In the suit, after the commencement of the trial, the petitioner filed a Chamber Summons under Order VI Rule 17 of the Code of Civil Procedure, 1908, seeking leave to amend the plaint to include averments relating to proceedings between the parties, to which the plaintiff was not originally a party. One of the proceedings was a civil suit initiated by a third party, and the other was an arbitration proceeding between the society and the developer. The petitioner seeks to incorporate specific averments regarding these proceedings, including their initiation, status, and

implications on the subject matter of the present suit, along with additional averments pertaining to the legal consequences of their separation.

3. It appears that the petitioner, at the time of filing the suit, was unaware of the pendency of the aforementioned proceedings. The knowledge of these proceedings came to his attention only subsequently, following which he acted with promptitude and filed the application for amendment. In this context, the test of "due diligence" prescribed under the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, is satisfied.

4. Consequently, the Trial Court, in its judicial discretion, ought to have allowed the Chamber Summons to the extent that it seeks to incorporate the proposed amendments contained in Paragraphs 27(A) to 27(D) of the plaint. These paragraphs are pivotal for adjudicating the issues comprehensively.

5. Insofar as the rejection of the prayer for addition of proposed defendant Nos. 6 and 7 is concerned, the issue involved in the suit relates to the validity of the development agreement executed by the promoter. The petitioner has failed to demonstrate any direct nexus between the proposed defendant No. 7 and the central issue of the validity of the development agreement.

6. Upon perusal of the record, it is observed that the Trial Court had, by a previous order, already directed the plaintiff to implead the co-operative society as Defendant No. 6 to the suit. However, the petitioner has not complied with the said direction and has failed to carry out the amendment as ordered.

7. In light of the foregoing, the petitioner is at liberty to approach the Trial Court afresh for seeking permission to carry out the amendment as per the earlier order. Any such application, if filed, shall be considered on its own merits and in accordance with law.

8. Accordingly, the Chamber Summons, to the extent of Paragraphs 27(A) to 27(D), is made absolute, as such amendments are in the interest of justice and do not cause prejudice to the opposing parties. The relief sought under Order I Rule 10 of the Code of Civil Procedure, 1908, for impleading proposed defendant No. 7, is hereby rejected.

9. For the reasons stated hereinabove, the writ petition is disposed of in the above terms. No order as to costs.

(AMIT BORKAR, J.)