

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8924 OF 2024**

Jai Ambe Manufacturers Ltd. and Ors. ... Petitioners
versus
Nawaz Sarif Shaikh, Prop. Of
S.G.Enterprises ... Respondent

WITH
WRIT PETITION NO.9444 OF 2024

Jai Ambe Manufacturers Ltd. and Ors. ... Petitioners
versus
Nawaz Sarif Shaikh ... Respondent

Mr. Devendra Tiwari i/by Law Chamber of Siddharth Murarka, for Petitioners.
Ms. N.S.Baig for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 24 APRIL 2025

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in WP No.8924 of 2024 is to an order dated 7 June 2023 passed by the learned Judge, City Civil Court in Chamber Summons No.1423 of 2022 in Commercial Suit No.1289 of 2021 whereby the Chamber Summons, taken out by the Plaintiff, to amend the plaint so as to incorporate the averments to the effect that the Defendants had changed their registered address and Defendant Nos.2 to 4, who are the directors of Defendant No.1, have cheated the Plaintiff and it was necessary to lift the corporate veil, came to be allowed.

3. The learned Judge, City Civil Court was of the view that since amendment was sought at a pre-trial stage, it was required to be liberally considered, and the proposed amendment was necessary for the determination of the real question in controversy between the parties.

4. Learned Counsel for the Petitioners submitted that in the Written Statement itself, Defendant Nos.2 to 4 had taken a stand that they are not liable to discharge the liability of Defendant No.1 company and they would seek their deletion from the array of Defendants. Accordingly, a Notice of Motion was filed by Defendant Nos.2 to 4 to delete them from the array of Defendants under the provisions of Order 1 Rule 10 of the Code of Civil Procedure, 1908. During the pendency of the said Notice of Motion, the Plaintiff filed Chamber Summons and an effort was made to unjustifiably rope in Defendant Nos.2 to 4.

5. Learned Counsel for the Petitioners submitted that there is no material to show even prima facie that Defendant Nos.2 to 4 were liable to discharge the liability of Defendant No.1. The averments, incorporated by way of amendment, materially change the nature of the suit. Therefore, the learned Judge, City Civil Court could not have allowed the Chamber Summons for amendment in the plaint. It is, therefore, necessary to interfere with the impugned order.

6. In opposition to this, learned Counsel for the Respondent-Plaintiff

invited attention of the Court to the averments in paragraph Nos.2 and 7 of the plaint to draw home the point that there is necessary foundation in the original pleadings to make out the liability of Defendant Nos.2 to 4.

7. I have perused the averments in the plaint, schedule of the amendment and the impugned order. Evidently, the amendment was sought at a pre-trial stage. Thus, the interdict contained in Order 6 Rule 17 was not attracted. The legal position as regards the amendment in the pleadings is well recognized. All amendments which are necessary for determining the real question in controversy between the parties are required to be allowed, keeping in view the principle of potentiality of prejudice to the opponent and the likelihood of change in nature and character of the suit. The Court is also required to be alive to the fact that the relief sought to be introduced by way of amendment may be barred by law of limitation. Ordinarily, the amendments which are sought at a pre-trial stage are required to be considered liberally as the potentiality of prejudice to the opponent is remote.

8. In the case at hand, in paragraph No.2 of the plaint, there are clear and categorical averments that the Defendant Nos.2 to 4 are the directors of Defendant No.1 Company. Defendant Nos.2 to 4 were managing, taking care and responsible for running of the Defendant No.1 Company. Copy of the record maintained by the Registrar of Companies (Exh. A) was sought to be produced along with the plaint.

9. It would be contextually relevant to note that, in the written statement, the Defendants have not disputed that they are the directors of Defendant No.1 Company. In paragraph No.8(ii), the Defendants have admitted the correctness of the contents in paragraph No.2 of the plaint, save and except the change in the registered address of the company. Moreover, in paragraph No.7 of the written statement, a categorical statement was made that the Defendants are and were always ready to pay the money to the Plaintiff but only after arriving at a consensual figure, after taking into account the wastage proportion that had been extracted from the goods.

10. In the face of the aforesaid pleadings, the nexus between Defendant No.1 and Defendant Nos.2 to 4 so as to lay claim against Defendant Nos.2 to 4, can be said to have been prima facie established. Viewed through this prism, the proposed amendment appears to be essential for determining the real questions in controversy between the parties.

11. At this stage, the Court need not delve into the merits of the averments sought to be incorporated by way of amendment. Whether Defendant Nos.2 to 4 can be called upon to discharge the liability of Defendant No.1 company is undoubtedly a matter for adjudication at the trial. However, the Court need not delve into the said aspect of the matter at the stage of consideration of the application for amendment.

12. The conspectus of aforesaid consideration is that the learned Judge,

City Civil Court was justified in allowing the Chamber Summons. Hence, no interference is warranted in the impugned order.

13. However, by way of indulgence, Defendant Nos.2 to 4 are granted 30 days time to file additional Written Statement to the amended plaint.

14. Subject to the aforesaid clarification, the Writ Petition No.8924 of 2024 stands dismissed.

15. In view of dismissal of Writ Petition No.8924 of 2024, WP No.9444 of 2024 does not survive and also stands disposed.

(N.J.JAMADAR, J.)