

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14104 OF 2024

1. Mr. Ali Akbar Asgarali Jariwala }
 Age: 53 years, Occ: Business R/at L }
 Baitulla Lane, Property No. 846, }
 Momin Pada, Mahatma Gandhi }
 Road Panvel, Tal Panvel, District- }
 Raigad. }

2. M/s. P.S. Developers }
 Registered Partnership Firm }
 Having its address at : Gala No. }
 11/B, Madhusmita Plaza, Plot No. }
 121, MCCH Society, Panvel Tal: }
 Panvel, Dist: Raigad through its }
 partner. }

2A Bhagaji Kondiba Sherkar }
 Age: 66 years, Occu: Business }
 2B Alim Amruddhin Patel }
 Age: 49 years, Occ : Business }
 having their office address at as }
 above. }

.....(Petitioners)
 / Ori. Applicants

Versus

Shri Rajendra Saheja Jeswani }
 Age: 60 years, Occ: Business R/at: }
 Gala No. 2 CTS No. 846, Momin }
 Pada, Mahatma Gandhi Road, }
 Panvel, Ta Panvel, District-Raigad. }
 }

Respondents
 (Ori. Plaintiff)

Mr. Sandesh Patil a/w Mr. Krishnakant Deshmukh, for the petitioner.

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CORAM : N.J. JAMADAR, J.

DATED : 19TH JUNE 2025

ORDER :

1. The challenge in this petition is to an order dated 24th July 2024 passed by the learned Civil Judge, Panvel whereby the learned Civil Judge was persuaded to allow the application preferred by the respondent/plaintiff seeking permission to amend the plaint in RCS No. 208 of 2022.
2. The petitioner instituted a suit seeking to restrain the defendant nos. 1 and 2 from causing obstruction to the possession of the plaintiff over the demised premises and dispossessing or otherwise demolishing the building in which the suit premises was situated. A mandatory injunction to restore the roof of the building and carry out the tenantable repairs was also sought.
3. During the pendency of the suit, the Panvel Municipal Corporation demolished the suit building as it had become dilapidated and dangerous to lives and property. The plaintiff, thus, sought an amendment in the plaint so as to bring on record the subsequent developments and seek further injunction to restrain the defendant from carrying out construction over the subject land without making

necessary arrangement to protect the tenancy rights of the plaintiff and not to create third party rights in the building to be constructed by the defendants on the said land.

4. The learned Civil Judge allowed the application observing, inter alia, that the matter sought to be brought on record related to subsequent event and proposed amendment was necessary for the determination of real questions in controversy between the parties.

5. Being aggrieved, the defendants have invoked the writ jurisdiction.

6. Mr. Sandesh Patil, the learned counsel for the petitioner, would urge that the proposed amendment completely alters the nature and character of the suit and, therefore, the learned Civil Judge committed an error in law in allowing the application for amendment. Though the learned Civil Judge extracted the observations of the Supreme Court in the case of '*Life Insurance corporation of India V/s Sanjeev Builders Private Limited and Anr.*¹ yet failed to apply the principles therein to the facts of the case, submitted Mr. Sandesh Patil.

7. Laying emphasis on the observations in Para 71.4.2, Mr. Patil would urge if the amendment changes the nature of the suit, it cannot be allowed.

¹ (2020) 7 SCC 366

8. I am unable to persuade myself to agree with the submissions of Mr. Patil. It is well neigh settled that demolition of the structure by planning authority for the reason that the structure was dilapidated and posed threat to lives and property, does not extinguish the tenancy rights of the tenants in such building.

9. Mr. Patil fairly submitted that he does not dispute the aforesaid proposition of law. However, according to him, the injunction sought by the plaintiff completely alters the nature of the suit. The tenant can seek protection of his right but cannot restrain the landlords from carrying out construction and/ or alienating the units in the building to be constructed.

10. The aforesaid submission does not merit countenance. It is well recognized that the merits of the amendment sought to be incorporated need not be delved into at the stage of consideration of application for amendment. Evidently, the amendment is necessitated on account of subsequent events. The plaintiff, in fact, seeks protection of his tenancy rights. The amendment, thus, emanates from very cause of action based on tenancy rights, which the plaintiff asserted in the plaint, and for the protection of which initially suit for injunction was instituted. By no stretch of imagination, it can be said that the

proposed amendment changes the nature of the suit, inexorably.

11. As the proposed amendment has the potentiality to promote the resolution of all the questions in controversy between the parties, no interference is warranted in the impugned order in exercise of writ jurisdiction.

12. The petition, thus, stands dismissed.

(N.J. JAMADAR, J)