IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14890 OF 2024

Boman Adi Bharucha and Another ...Petitioners
vs.
Prem Kaliandas Daryanani and Others ...Respondents

VISHAL SUBHASH PAREKAR
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Date: 2025.03.25 18:43:34 +0530

Mr. Rohaan Cama a/w. Mr. Abhay Dhadiwal, Mr. Milind Joshi and Mr. Rohit Jain i/b. Jayakar & Partners, for the Petitioners.
Mr. Amit Shroff a/w. Mr. Vijay Mulchandani, Mr. Rajendra Daundkar and Mr. Ganesh Narula i/b. Harish Shroff & Co., for Respondent No. 1.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 25, 2025

ORDER:

1. Rule. Rule made returnable forthwith and with the consent of the counsels for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioners take exception to an order dated 16th October, 2024 passed by the learned Civil Judge, Vadgaon-Maval, Pune on an application seeking permission to amend the plaint (Exh.125), in Special Civil Suit No. 84 of 2022 whereby the said application preferred by the petitioners/ plaintiffs came to be rejected.

3. The background facts leading to this petition can be stated in brief as under:-

3A. Homi Dadabhai Bharucha was the uncle of the plaintiffs. It is the claim of the plaintiffs that the suit properties, situated at village

Akurdi, Tal. Maval, Dist. Pune, were acquired by Homi Bharucha. On 8th August, 1980 Homi Bharucha executed a Sale Deed in respect of some of the suit properties in favour of defendant No. 6 and/or defendant No. 7. Homi Bharucha passed away on 24th December, 1992. Under a Will dated 27th August, 1991 late Homi Bharucha had bequeathed all his properties including the suit properties, to the plaintiffs.

3B. The plaintiffs averred late Homi Bharucha had instituted a suit Special Civil Suit No. 465 of 1984 against defendant Nos. 6 and 7 for recovery of unpaid consideration. In the said suit defendant Nos. 6 and 7 filed a written statement cum counter claim seeking declaration that the said Sale Deed dated 8th August, 1980 was null and void. However, since the parties remained absent, the said suit as well as the counter claim were dismissed for want of prosecution.

3C. The defendant Nos. 1, 3 and 5 are the distant relatives of the plaintiffs. In or about year 2000, defendant No. 1 posing himself as one of the Directors of defendant No. 6 company represented to the plaintiffs that the Sale Deed dated 8th August, 1980 has been cancelled, and the plaintiffs being the legatees of Homi Bharucha were required to execute certain documents to close the issue of the Sale Deed dated 8th August, 1980. Believing the representations of defendant No. 1 the plaintiffs claimed to have signed certain blank

papers/ stamp papers.

4. On 3rd October, 2008, the plaintiffs executed a Sale Deed of a part of the suit property in favour of K.V. Bumb. When K.V. Bumb applied to revenue authorities to mutate her name to the said property, the plaintiffs were notified by the revenue authorities that the defendant Nos. 3 to 5 had raised objection to the mutation of the name of K.V. Bumb to the record of rights.

5. Thereupon, inquiries were made and it transpired that on the basis of the documents which the plaintiffs were induced to sign by defendant No. 1, false and fabricated agreement for sale dated 5th June, 1996 and a Power of Attorney dated 12th June, 1996 were created. On the strength of those documents further documents were executed by defendant Nos. 1 and 2 in favour of defendant Nos. 3 and 5. The plaintiffs claimed they received copies of some of the documents in the RTS proceedings in the year 2009 or thereabout. Hence, the action by way of suit for declaration that the agreement styled as Agreement for Sale dated 5th June, 1996 and the Power of Attorney dated 12th June, 1996 are illegal, null and void ab initio and do not bind the plaintiffs. The Sale Deed dated 18th August, 1980 in favour of defendant Nos. 6 and 7 by late Homi Bharucha is also illegal, null and void and does not bind the plaintiffs. Consequential relief of declaration qua the subsequent documents

executed by the defendants on the strength of aforesaid documents were also sought. In addition, injunctive reliefs to restrain the defendants from acting upon those documents and causing obstruction to the possession of the plaintiffs over the suit properties and changing nature of the suit properties was also prayed.

6. Defendant No. 1 filed an application for rejection of the plaint on the ground that the plaint did not disclose a cause of action, the relief claimed was barred by law of limitation and the suit claim was undervalued. While the said application was being heard, the plaintiffs preferred the instant application for amendment in the plaint seeking to incorporate additional averments in the plaint.

7. It was inter alia asserted that on account of the issues raised by the defendants during the course of hearing on the application for rejection of the plaint, certain facts were required to be explained, subsequent events were required to be brought on record and clarification as to certain facts was necessary for adjudication of the dispute between the parties. In the original plaint, some facts were also not pleaded inadvertently and it was, therefore, necessary to elaborate and clarify the plaintiff's case.

8. Defendant No. 1 resisted the application for amendment in the plaint. It was contended that the application for amendment was

filed to derail the hearing and decision on the application for rejection of the plaint. In fact, the plaintiffs had amended the plaint on multiple times in the past. The facts which were sought to be incorporated by way of amendment predate the institution of the suit. The plaintiffs were attempting to make inconsistent statements so as to withdraw the earlier admissions. The relief claimed by way of amend proposed amendment was also barred by limitation. Therefore, the plaintiffs cannot be permitted to amend the plaint, by way of proposed amendment.

9. By the impugned order, the learned Civil Judge was persuaded to reject the application opining, inter alia, that the plaintiffs did not offer any explanation for not seeking the amendment at a prior point of time. The proposed amendment so far as it related to the time of knowledge as to the instruments in question was inconsistent with the existing pleadings; by way of proposed amendment, the plaintiffs were trying to make out an entirely new case; the withdrawal of the claim in respect of the land sold to K.V. Bumb by way of amendment was impressible and rest of the pleadings, sought to be incorporated by way of proposed amendment, were vague and had no bearing on the adjudication of the real question in controversy between the parties.

10. Being aggrieved, the plaintiffs have invoked the writ

jurisdiction of this Court.

11. I have heard Mr. Rohaan Cama, learned counsel for the petitioners, and Mr. Amit Shroff, learned counsel for respondent No. 1 at some length. With the assistance of learned counsel for the parties, I have perused the averments in the application for amendment, text of the draft amendment, the pleadings and the material in this petition.

12. Mr. Cama, learned counsel for the petitioners, submitted that the learned Civil Judge committed a manifest error in law in applying the test of due diligence despite noting that the proviso to Order VI Rule 17 was not attracted. Secondly, the learned Judge misconstrued the text of the draft amendment in paragraph 7 to draw an unsustainable inference that the plaintiffs were trying to alter the date of the knowledge regarding the instruments. It was submitted that the time of knowledge in paragraph 9 of the original plaint was in relation to 1980 document and the assertion in the paragraph 7 of the text of the draft amendment was in relation to the documents executed during the period 2003 to 2008. There was no inconsistency between these two statements. Thirdly, the learned Judge was clearly in error in holding that a part of the claim could not be withdrawn by way of an amendment. In the original plaint there is specific reference to the sale of the portion of

the suit land to K.V. Bumb. Consistent therewith the plaintiff intended to exclude the properties sold to K.V. Bumb from the suit claim. Lastly, Mr. Cama would submit the addition of a ground to assail the legality and validity of the Sale Deed dated 8th August, 1980 would not amount to change in the cause of action or character of the suit.

13. To buttress these submissions, Mr. Cama placed reliance on the judgment of the Supreme Court in the case of **Pankaja and Anr. vs. Yellappa (deceased) and Others**[1]**;** an order passed by this Court in the case of **Renu Balwant Maru vs. Bhupendra D. Tank and Others**[2] and a judgment of this Court in the case of **Ashok Gaurishankar Salgar and Others vs. Gaurammabai Sanmukhghoda Patil and Another**[3]**.**

14. In opposition to this, Mr. Shroff, learned counsel for respondent No. 1, strenuously resisted the prayer of amendment. Mr. Shroff laid emphasis on the stage, at which the application for amendment came to be filed. It was submitted that the application was filed only after the learned Civil Judge, while hearing the application for rejection of the plaint, called upon the plaintiffs to put on an affidavit that though the plaintiffs had signed a copy of the record of rights annexed to the instruments executed in the

1 (2004) 6 SCC 415.
2 IAL No.9590/2021 in Suit No.422/2012 Dt.24/10/2024.
3 (1994) 1 Mah.L.J. 286.

year 2008, yet, they were not aware of the names of the defendants mentioned on the said record of rights till late in the year 2009. To wriggle out of the situation and obviate the obvious rejection of the plaint, the plaintiffs have filed the instant application for amendment in the plaint, urged Mr. Shroff.

15. Taking the Court through the contents of the original plaint and the draft text of amendment, Mr. Shroff strenuously urged that the avowed purpose of the proposed amendment was to withdraw the admissions in the plaint, especially regarding execution of the Sale Deed on 18th August, 1980. Despite clearly admitting the execution of the Sale Deed by late Homi Bharucha, by way of proposed amendment, the plaintiffs were trying to assert that the signature of late Homi Bharucha on the Sale Deed appeared to be forged and fabricated. To avoid the inevitable consequences of dismissal of the suit which is by barred by limitation, the plaintiffs were trying to incorporate the plea that they learnt about the instruments in the year 2009. In fact, in the year 2000 itself, as alleged, the plaintiffs had knowledge about the Sale Deed dated 8th August, 1980. The proposed amendment is also ex-facie barred by limitation.

16. Mr. Shroff submitted that it is well recognized that an amendment which takes away a vested right accrued to a party or

is ex facie barred by limitation, cannot be allowed. To lend support to this submission, Mr. Shroff placed reliance on the judgment of the Supreme Court in the case of **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another**[4].

17. First and foremost, it is necessary to note that, indubitably, the trial in the suit has not commenced. Therefore the proviso to Order VI Rule 17 had no application at all. Yet, the trial Court was of the view that the plaintiffs were required to offer an explanation as to why they could not seek the proposed amendment at an anterior point of time. This approach of the learned Civil Judge can be countenanced only where the delay in seeking amendment is construed as a facet of prejudice to the defendants. However, if the delay was arrayed against the plaintiffs, sans the element of prejudice to the defendants, the same can not be a ground to reject the prayer for amendment.

18. Few principles in the matter of exercise of jurisdiction to permit the parties to amend the pleadings are fairly crystallized. By the very text of the Order VI Rule 17 all amendments which are necessary for the determination of real question in controversy between the parties are required to be permitted. Two overarching principles govern the exercise of discretion to permit the amendment in the pleadings. One, whether the amendment is

4 (2022) 16 Supreme Court Cases 1.

necessary for the determination of real question in controversy. Two, whether the amendment has potentiality to cause irretrievable prejudice to the opponent. The considerations as to whether the proposed amendment would change the nature and character of the suit inexorably and the relief claimed by way of proposed amendment is ex facie barred by limitation also weigh in. By a catena of decision, it is well settled that at a pre-trial stage, where interdict contained in the proviso to Order VI Rule 17 does not come into play, an application for amendment is required to be considered liberally. In the case of **M/s Ganesh Trading Co. v. Moji Ram**[5], the Supreme Court enunciated the principles as under:

> "4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

19. In the light of the aforesaid exposition of law, re-adverting to the facts of the case, from the above narration of the plaintiffs case, it becomes abundantly clear that the substance of the plaintiffs case is that late Homi Bharucha was the original holder of the suit property. After his demise, the properties devolved on the plaintiffs.

5 (1978) 2 SCC 91.

The Sale Deed dated 8th August, 1980 executed by late Homi Bharucha had become unenforceable and did not bind the plaintiffs and the defendant No. 1 by misrepresentation, obtained signatures of the plaintiffs on few blank papers and created fabricated and forged agreement for sale and the Power of Attorney, purported to be executed in the year 1996, and on the strength of those documents further instruments were executed and all those instruments including the Sale Deed dated 18th August, 1980 were illegal, null and void.

20. If the proposed amendment is considered, keeping in view the aforesaid broad frame of the suit, the objections sought to be raised on behalf of the defendants that the proposed amendment would alter the character of the suit and it introduces a new cause of action do not merit countenance. On an analysis of draft text of amendment, in paragraph 7, this Court finds that there is necessary foundation in the original plaint with regard to the averments sought to be incorporated by way of amendments. The proposed amendment is in the nature of amplification of the averments in the plaint.

21. For instance, for the averments in proposed paragraph 4A regarding mutation of the names of the plaintiff to the record of rights of the suit properties after the demise of late Homi Bharucha,

there is foundation in paragraph 7 of the plaint. The elaboration with regard to the transaction between the plaintiff and K.V. Bump has the base in paragraphs 10 and 11 of the plaint. For the assertion that the plaintiffs have been in possession of the balance portion of the suit land, there is a foundation in the prayer in the plaint seeking restraint against the defendants from causing obstruction to the possession of the plaintiff. Moreover, there is a categorical averment in the plaint that post the Sale Deed dated 3rd October, 2008 by the plaintiff in favour of K.V. Bumb, the later has been in possession of the said portion of the suit property.

22. As regards the alleged fraudulent act of defendant No. 1 in obtaining signatures of the plaintiffs on the blank papers/ stamp papers by way of proposed amendment, the plaintiffs propose to add another pretext on which they were allegedly made to put signature on those papers, namely, to handle the process of mutation and completion of pending formalities. The proposed amendment can not be said to be so inconsistent with the earlier stand of the plaintiffs that it completely destroys the initial case. This Court, therefore, finds that the proposed amendment could not have been rejected on the ground that it alters the character of the suit or introduces a new cause of action.

23. On the aspect of the bar of limitation, it has to be shown that

the relief claimed by way of proposed amendment is ex facie barred by limitation. Conversely, if the bar of limitation assumes the character of a contentious issue, the proper course is to allow a party to amend the plaint, keeping open the issue of limitation to be adjudicated at the trial.

24. In the case of **Pankaja** (supra), on which reliance was placed by Mr. Cama, on the aspect of the amendment in the pleadings where the relief was alleged to be barred by law of limitation, the Supreme Court enunciated the law as under:-

> 13} But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.
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> 14} The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.
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> (emphasis supplied)

25. In the case of **Life Insurance Corporation of India** (supra), on which Mr. Shroff placed a strong reliance, after adverting to previous pronouncements, including the decision in the case of **Pankaja** (supra), the Supreme Court postulated the legal position in the following terms :-

> 31} From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.
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> 32. In Ragu Thilak D. John v. S. Rayappan & Ors., (2001) 2 SCC 472, this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand.
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> (emphasis supplied)

26. If the facts of the instant case are appraised in the light of aforesaid enunciation of law, it is necessary to note that, by the proposed amendment, the plaintiffs are not seeking to add the relief which was not initially claimed. At any rate, the aspect of bar of limitation can be kept open to be adjudicated by the Civil Court either in the application for rejection of the plaint under Order VII Rule 11 or at the trial.

27. The learned Civil Judge also erred in holding that the plaintiffs cannot be permitted to withdraw a part of the claim by seeking to exclude a portion of the suit property sold to Mr. K.V. Bumb. As noted above, there is specific pleading in the plaint regarding the said alienation in favour of K.V. Bumb and, in fact, the proceedings that ensued before the revenue authorities to mutate the name of K.V. Bumb to the record of rights is stated to be the source of knowledge of the plaintiffs as regards the impugned

instruments. The exclusion of the property sold to K.V. Bumb from the suit claim is thus not likely to cause any prejudice to the defendants.

28. An area where the proposed amendment can be said to be in the nature of withdrawal of an admission and, in a sense, a right vested in the defendants is the draft averments qua the Sale Deed dated 18th August, 1980. In the plaint, the plaintiffs have asserted that late Homi Bharucha executed a Sale Deed in respect of few of the suit properties in favour of defeating Nos. 6 and 7 on 18th August, 1980. Undoubtedly, after referring to the proceedings with regard to the said Sale Deed, the plaintiffs have also sought relief that the Sale Deed is null and void and not binding on the plaintiffs. By way of proposed amendment, however, the plaintiffs have sought to incorporate an averment, in proposed paragraph 14A, that the signatures of late Homi Bharucha have been fabricated. This statement is clearly inconsistent with and in derogation of the plaintiffs claim in the plaint that late Bharucha had executed a Sale Deed dated 18th August, 1980 in favour of defendant Nos. 6 and 7.

29. It would be contextually relevant to note that a perusal of the plaint in the SCS No. 465 of 1984 makes it explicitly clear that late Homi Bharucha had categorically asserted that he had sold the portion of the suit property to defendant Nos. 6 and 7 and the

balance consideration was not paid and, therefore, he was constrained to institute the said suit for recovery of balance consideration. In contrast, in the counter-claim, the defendants therein had sought a declaration that the said Sale Deed was not binding on the defendants and it be ordered to be cancelled as the plaintiffs failed to deliver the possession of the property sold thereunder.

30. The endeavour of Mr. Cama that since the plaintiffs have already prayed for declaration that the said Sale Deed dated 18th August, 1980 is not legal and valid and has became unenforceable the assertion by way of proposed amendment that the signatures of late Homi Bharucha are fabricated is an additional ground of challenge, does not merit acceptance. Not only there is a categorical pleading in the plaint, in the instant suit, that Homi Bharucha had executed the said Sale Deed, but also, in the plaint in SCS No. 465 of 1984 by late Homi Bharucha himself. Therefore, the plaintiffs cannot be now permitted to resile from the said position and assert that the signatures of Homi Bharucha on the said Sale Deed are fabricated.

31. Save and except the aforesaid assertion, rest of the proposed amendment appears to be necessary for the determination of the real questions in controversy between the parties for once and all.

The proposed amendment is not of such a nature as to cause irretrievable prejudice to the defendants.

32. Resultantly, the impugned order passed by the learned Civil Judge deserves to be interfered with and the application for amendment deserves to be partly allowed subject to certain conditions.

Hence, the following order.

ORDER

1}The petition stands partly allowed.

2} The impugned order stands quashed and set aside.

3} The application for amendment stands allowed excluding the following portion in the proposed paragraph 14A :-

> "The plaintiffs further state and submit that the signatures of Late Homi Dadabhai Bharucha have been fabricated."

4} The plaintiffs shall pay the costs of Rs. 25,000/- to defendant No. 1, the contesting defendant, within period of two weeks from the date of uploading of this order.

5} Necessary amendment in the plaint be carried out within a period of three weeks from the date of uploading of this order.

6} The defendants are at liberty to file an additional written statement to the amended plaint within a period of 30 days

from the date of service of a copy of the amended plaint.

7} Rule made absolute to the aforesaid extent.

Petition disposed.

(N. J. JAMADAR, J.)

1. At this stage, the learned counsel for respondent No.1 seeks stay to the execution and operation of this order.

2. The execution and operation of this order is stayed for a period of four weeks.

(N. J. JAMADAR, J.)