

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

WRIT PETITION NO. 19228 OF 2024

Muazzam @ Mauzam Shoukatali Hamdule ...Petitioner
Versus

Abdul Rauf Shoukat Hamdule and ors. ...Respondents

WITH

CIVIL REVISION APPLICATION NO. 44 OF 2025

Muazzam @ Mauzam Shoukatali Hamdule ...Applicant
Versus

Abdul Rauf Shoukat Hamdule and ors. ...Respondents

Mr. Manoj Patil, i/b Shubham Dhenge, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED: 4th FEBRUARY, 2025

ORDER:-

1. This petition and Civil Revision Application call in question the legality, propriety and correctness of a common order dated 13th November, 2024, passed by the learned Civil Judge, Junior Division, Murud, whereby the application of the plaintiff for amendment in the plaint (Exhibit-105) was allowed and the application of the defendant – petitioner/applicant for rejection of the plaint under Order VII Rule 11 (Exhibit-96) came to be rejected.

2. The respondent instituted a suit for removal of encroachment and perpetual injunction. In addition, the

respondent – plaintiff had claimed compensation of Rs.5,00,00/-.

3. Asserting that the value of the suit claim exceeded the pecuniary jurisdiction of the Court of Civil Judge, Junior Division, and the plaintiff had not paid requisite court fee on the aggregate value of the suit claim i.e. Rs.5,01,000/-, the defendant filed an application for rejection of the plaint (Exhibit-96) and, in the alternative, prayed for a direction for correction of the valuation of the suit and payment of deposit court fee and, thereafter, transfer of the suit to the Court of Civil Judge, Senior Division.

4. The plaintiff, apart from resisting the application for rejection of the plaint, filed an application (Exhibit-105) for amendment in the plaint so as to scale down the quantum of compensation from Rs.5,00,000/- to Rs.2,00,000/-.

5. By the impugned order the learned Civil Judge was persuaded to reject the application for rejection of the plaint (Exhibit-96) and allow the application for amendment in the plaint (Exhibit-105).

6. Mr. Patil submitted that the impugned order suffers from a manifest infirmity as the learned Civil Judge allowed the plaintiff to amend the plaint after an objection was raised by the

defendant on the ground of incorrect valuation and the resultant ouster of pecuniary jurisdiction of the learned Civil Judge, Junior Division. It was urged that the learned Civil Judge, Junior Division, could not have allowed the application for amendment and thereby defeated the application of the defendant for rejection of the plaint.

7. This Court does not find any infirmity in the impugned order. It is trite, the plaintiff is entitled to relinquish a portion of his claim in order to bring the suit within the jurisdiction of any Court. Since such an amendment was sought at a pre-trial stage, the learned Civil Judge was within his rights in permitting the plaintiff to amend the plaint.

8. At any rate, the plaint could not have been straightway rejected as clauses (b) and (c) of Rule 11 of Order VII come into play only upon default on the part of the plaintiff to correct the valuation or pay the requisite court-fee, as the case may be, within the period of stipulated by the Court. Thus, there is no reason to entertain the petition as well as the Civil Revision Application.

9. Petition and Revision Application stand dismissed.

[N. J. JAMADAR, J.]