

varsha

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1741 OF 2025
IN
WRIT PETITION NO. 9122 OF 2022**

Shri Dilip Pundalik Gaikwad and Anr ...Applicants/Petitioners

vs.

Arham Construteck Pvt Ltd through ... Respondent
Director Shri Milind Ramanlal Parekh

Mr. Urmila K. Sanil for the Applicants.

Mr. Satyajeet P. Dighe for Respondent.

CORAM : GAURI GODSE, J.

DATED : 10th NOVEMBER 2025

ORDER:

INTERIM APPLICATION NO. 1741 OF 2025

1. This application is for the restoration of the writ petition. The Writ Petition was dismissed as none had appeared for the petitioners.

2. Learned counsel for the applicants submits that the petitioners' advocate could not attend the hearing due to a medical emergency, and the reasons are stated in the application. In view of the reasons for non-appearance stated in the application, learned

counsel for the respondent has not objected to the restoration.

3. For the reasons stated in the application, the application is allowed in terms of the prayer clause (a).

4. The writ petition is restored to the file.

WRIT PETITION NO. 9122 OF 2022

5. Heard learned counsels for the parties. The petition is filed to challenge the order rejecting the petitioners' application seeking leave to amend the written statement. Learned counsel for the petitioners submits that the trial had not commenced, and only the evidence affidavit of the plaintiff was filed. Since the suit was pending for cross-examination, no prejudice would be caused to the plaintiff if the amendment was permitted. She submits that the proposed amendment is necessary for a proper adjudication of the suit. She submits that the plaintiff had not handed over the possession of the flats as per the agreement, and they were of sub-standard quality, and thus, it is necessary for the defendants to add the proposed amendment raising objections to the quality of construction. She submits that since the cross-examination has not yet commenced, no prejudice would be caused if the amendment is allowed. However, if the amendment is disallowed, serious prejudice would be caused to the defendants. She therefore submits that the

application for leave to amend the written statement be allowed.

6. Learned counsel for the plaintiff supports the impugned order. He submits that the matter had remained pending for cross-examination as the defendants had filed various applications to prolong the hearing of the suit. He submits that in the original written statement, objections regarding the quality of construction were not raised, and by way of amendment, the defendants sought to bring on record new facts only after the plaintiff filed an affidavit of examination-in-chief. He submits that no reason is stated in the application to show that, despite due diligence, such an averment could not be made at the time of filing the written statement. He therefore submits that no interference is warranted in the impugned order.

7. I have perused the papers of the petition. The suit is filed for the return of the security deposit paid by the plaintiff to the defendants for carrying out construction for the development of the property owned by the defendants. According to the plaintiff, since the construction is complete and the flats are already handed over to the defendants, they are under an obligation to return the security deposit. The written statement was filed on 2nd November 2017. In the written statement, the defendants contended that the amount of

Rs. 25,00,000/- was a part of the consideration and it was not towards the security deposit. However, by way of amendment, the defendants sought to add paragraphs raising objections to the quality of construction. Thus, the contention is that the defendants would not be liable to return the amount.

8. A perusal of the application for permission to seek amendment reveals that the defendants have contended that the events that occurred after the written statement are necessary to bring on record. However, the proposed amendment does not pertain to any subsequent events. After the written statement was filed, issues were framed, and the plaintiff filed an evidence affidavit on 15th December 2017. The application for amendment was made on 10th March 2021. In the intervening period, the defendants had filed various applications at Exhibits 41, 45, 48 and 50. The plaintiff has therefore objected to the amendment on the ground that it is filed only by way of delaying tactics. The suit is filed in the commercial division of the court. Hence, the suit is required to be decided expeditiously as per the provisions of the Commercial Courts Act.

9. Considering the status and the stage of the suit, and for want of any due diligence, the trial court has refused to grant leave to

amend the written statement. The trial court has also observed that the proposed amendment would be irrelevant for deciding the prayers in the suit.

10. A perusal of the original written statement and the proposed amendment reveals that a new case is sought to be raised by the defendants after the plaintiff filed the evidence affidavit. Since the suit is filed in the commercial division and has been pending for cross-examination since 2017, it was necessary for the defendants to show that the proposed amendment could not have been applied despite due diligence. For want of any due diligence and sufficient reason in seeking an amendment at this stage, the trial court has rightly rejected the application.

11. There is no illegality or perversity in the impugned order, warranting any interference by this court in the exercise of the discretionary jurisdiction under Article 227 of the Constitution of India.

12. The petition is therefore rejected.

(GAURI GODSE, J.)