



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3628 OF 2025**

M/s. Rizvi Estate and Hotels Pvt. Ltd. ... Petitioner
versus
Khushru Phiroshah Patel and Ors. ... Respondents

Mr. Akash Rebello with Mr. Paras Gosar, Mr. Mahesh Mishra, Mr. Arun, for Petitioner.

Mr. Sarosh Bharucha with Mr. Nikhil Verma, Ms. Hilla Boatwalla, Ms. Ashwini Sonawane i/by Nanu Hormasjee and co., for Respondent Nos.1 to 3, and 8 to 10.

**CORAM: N.J.JAMADAR, J.
DATE : 19 MARCH 2025**

P.C.

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 9 December 2024 passed by the learned Judge, City Civil Court, whereby the Chamber Summons taken out by the Plaintiff to amend the Plaint so as to bring on record proposed Plaintiff Nos.4 to 6 as parties to the suit came to be allowed.
3. Learned Counsel for the Petitioner submitted that while allowing the amendment, the learned Civil Judge has adverted to the merits of the matter and those observations of the learned Judge cause serious prejudice to the case of the Defendants. Secondly, the learned Judge has not clarified as to whether the amendment and impleadment of proposed Plaintiff Nos.4 to 6 would relate back to the date of the plaint and the institution of the suit since it was the contention of the Defendants that minimum number of trustees was

not in the office of the trust and, therefore, the appointments to the office of the trustees could not have been made and if the amendment relates back to the date of the institution of the suit, the defence which is otherwise available to the Defendants would be taken away.

4. I have perused the impugned order. The proposed amendment, though post commencement of the trial, is in respect of an event which has occurred post the commencement of the trial. The impleadment of proposed Plaintiff Nos.4 to 6 may not materially alter the nature and character of the suit. However, the learned Judge, City Civil Court, while allowing the amendment, in paragraph Nos.6 and 9 of the order has made observations which bear upon the merits of the matter and may have the propensity to pre-judge the dispute. Therefore, it is necessary to clarify that the observations in the impugned order touching the merits of the dispute shall not influence the learned Judge in finally adjudicating the suit.

5. So far as the second ground of the proposed amendment relating back to the date of the institution of the suit, the provisions contained in Section 21 of the Limitation Act, take care of the concern of the Petitioner. The learned Judge has not recorded reasons to indicate that proposed Plaintiff Nos.4 to 6 would be treated to be added from an anterior point of time. Therefore, the main part of Section 21(1) of the Limitation Act, would govern the situation at hand.

6. Subject to the aforesaid clarification, the Writ Petition stands disposed.

(N.J.JAMADAR, J.)