

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3772 OF 2025

Sambhaji Dnyanoba Tupe and Ors.

...Petitioners

vs.

M/s. City Corporation Limited

...Respondent

Mr. Venkatesh Shinde a/w. Mr. Ishan Paradkar and Mr. Mayuresh Ingale, for the Petitioners.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 18, 2025

P.C:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 18th February, 2025 passed by the learned Civil Judge, Pune whereby an application preferred by the defendant for the amendment in the written statement under the provision of Order VI Rule 17 of the Code of Civil Procedure, 1908 came to be allowed.
3. The petitioners have instituted a suit for specific performance of the contract contained in the Agreement dated 11th September, 2008 and the allotment letter dated 12th July, 2012. The plaintiff has also prayed for the relief of injunction to restrain the defendants from alienating or otherwise creating third party interest in the suit property bearing Survey Nos.1-B and 1-C and changing the nature of the suit property. The plaintiff filed an application for temporary injunction. By an order dated 19th

October, 2023, the said application was allowed and the defendant was restrained from alienating the suit property bearing Survey Nos. 1-B and 1-C till further order.

4. The defendant challenged the said order before this Court in Appeal From Order No. 978 of 2023. This Court was persuaded to allow the appeal and the application filed by the plaintiffs was restored to the file of learned Civil Judge for afresh decision. The defendant was granted liberty to file additional documents in support of his defence to the application for temporary injunction.

5. The petitioner carried the matter before the Supreme Court. In Special Leave Petition (Civil) Diary No. 34466 of 2024 the Supreme Court clarified that the issues as to the genuineness of the documents to be produced by the defendant shall be considered by the trial Court and would be decided while deciding the application for injunction afresh.

6. The defendant thereafter took out an application for amendment in the written statement so as to incorporate additional grounds of defence in the written statement. By the impugned order, the learned Civil Judge was persuaded to allow the application opining that the defendant is entitled to take multiple defences and since the application for amendment was filed at pre-trial stage, there was no impediment in permitting the defendant to

carry out the amendment in the written statement.

7. The learned counsel for the petitioner would urge that this Court in the order passed in Appeal From Order No. 978 of 2023 had indicated the manner in which the application for temporary injunction was to be heard. In the additional affidavit filed in the said Appeal From Order No. 978 of 2023, the defendant intended to place certain additional facts on record. Therefore, this Court had permitted the defendant to file an additional affidavit in support of the defence to the application for temporary injunction only. Therefore, the defendant could not have carried out the amendment in the written statement.

8. It was further submitted that since a common written statement and say to the application for temporary injunction was filed, the defendant could not have been permitted to amend the written statement, at this stage, as it would also amount to amendment in the say filed to the application for temporary injunction. At best, the amendment, which has been permitted in the written statement, may be considered at the time of final adjudication of the suit.

9. First and foremost the order passed by this Court in Appeal From Order No. 978 of 2023 cannot be so construed as to preclude the defendant from seeking amendment in the pleading. Secondly,

the fact that the amendment was sought at a pre-trial stage, nay at a nascent stage, of the suit cannot be lost sight of. Evidently, the interdict contained in the proviso to Order VI Rule 17 did not come into play. It is well settled that an application for amendment in written statement is required to be construed more liberally. The defendant is entitled to take even inconsistent defences. The trial Court has opined that the amendment is necessary to determine the real question in controversy.

10. In this view of the matter, the objection sought to be raised on behalf of the petitioner on the ground of the stage at which the amendment is sought to be carried out, especially qua the application for temporary injunction in the light of the order passed by this Court in Appeal From Order No. 978 of 2023, does not merit countenance. The said order cannot be construed as an embargo on the right of the defendant to seek amendment in the written statement.

11. In this view of the matter, this Court does not find any infirmity in the impugned order.

12. Petition stands dismissed.

(N. J. JAMADAR, J.)