

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4828 OF 2025

PK. Velu and Co. Pvt. Ltd. ... Petitioner
V/s.
Hazarat Noori Baba Dargah Trust ... Respondents
and Ors.

Mr. Vishal Kanade with Mr. Saket Mone, Mr. Shrey Shah and Mr. Bhupen G. i/by Vidhii Partners, for the petitioner.

Mr. R. Haridas with Mr. Tuushar Sonawane, for the respondent no. 1.

CORAM : N.J. JAMADAR, J.

DATE : 16TH APRIL 2025.

PC:

1. This petition under Article 227 of the Constitution of India takes exception to an order dated 26th March 2025 passed by the learned Civil Judge, Thane, whereby application for amendment in the plaint (Exhibit-121 in Regular Civil Suit No. 258 of 1997) came to be rejected.

2. The plaintiff is a company incorporated under the Indian Companies Act, 1956. Defendant no. 1 is a Public Charitable Trust registered under the Maharashtra Public Trust Act, 1950. The defendant nos. 2 to 7 are the trustees of the defendant no. 1. on 29th November 1961 defendant no.1 had entered into an agreement to

lease the suit property, subject to consent of the Charity Commissioner. As the Charity Commissioner refused the permission to lease the suit property, an application was filed before the City Civil Court, Greater Bombay. Thereupon, the City Civil Court granted authorisation to the respondents to grant lease of the suit property to the petitioner subject to certain conditions, including that the lease shall be for a term of 30 years with an option to renew the said lease for a further term of 30 years.

3. As the respondents failed to execute renewal of lease, the plaintiff instituted the Suit, being RCS NO. 258 of 1997. During the pendency of the said suit, the defendant nos. 8 and 9 filed an application for their impleadment. The said application was rejected. A Writ Petition being, Writ Petition No. 8583 of 2009, came to be filed before this Court assailing the said order dated 30th August 2009. Eventually, by an order dated 7th April 2022, this Court permitted the petitioner to carry out amendment in the suit to implead the respondent nos. 8 and 9 and also directed expedited hearing of the suit.

4. Trial commenced. After the recording of evidence was over and the suit was posted for final arguments, the petitioners filed an application seeking amendment in the plaint so as to incorporate the averments to the effect that the renewal be granted either excluding the period of litigation or, in the alternative from the date of judgment in the said suit. The application was resisted by the defendants.

5. By the impugned order, the learned Civil Judge was

persuaded to reject the application observing, *inter alia*, that the proposed amendment was not necessary for the determination of real question in controversy between the parties and the plaintiff failed to satisfy the test of due diligence.

6. Mr. Kanade, learned counsel for the petitioner, submitted that the learned Judge did not properly appreciate the nature of the amendment. The proposed amendment is subsumed in the real dispute between the parties. The question whether the plaintiff is entitled to seek the renewal of the lease, excluding the period of litigation or from the date of the judgment of the Trial Court, are the matters of merit and need not have been delved into at the stage of consideration of the application for amendment in the plaint.

7. I am unable to persuade myself to agree with the submission of Mr. Kanade. Evidently, the proposed amendment is actuated by a design to perpetuate the claim of the plaintiff to hold on to the suit property. As noted above, the City Civil Court had granted authorisation to lease out the suit property to the petitioners on the condition that there would be a further renewal of term of 30 years; which expires soon. In order to cling on to the property, the plaintiff preferred an application for amendment in the plaint when the suit was posted for final hearing.

8. Learned Civil Judge was well within his rights in declining to grant amendment as it did not appear to be necessary for determination of real question in controversy. The proposed amendment, if permitted, has the propensity to cause grave prejudice

to the defendants. In fact, it would introduce a totally new case. The term of lease is a matter of contract or stipulation by the order of the Court. It is not the case that the plaintiff has not been in possession of the suit property during currency of the second term of 30 years, though the lease has not been renewed by the defendants.

9. I find substance in the submission of Mr. Haridas, learned counsel for the respondent, that if the amendment of the present nature is allowed, no litigation would come to an end.

10. Thus, the petition does not deserve to be entertained.

11. The Petition stands dismissed.

(N.J. JAMADAR, J)