

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9110 OF 2025

Mohammed Asgarali Moinddin Shaikh & Ors

..Petitioners

Versus

Mahanaaz Roozbehaga & Ors

...Respondents

Mr. Ram Upadhyay, with Anuj Pande, i/b Law Competere Consults,
for the Petitioners.

Mr. V.Y. Sanglikar, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 10th JULY 2025

ORDER:

1. This Petition calls in question the legality, propriety and correctness of an order passed by the Appellate Bench of the Court of Small Causes, Mumbai in Revision Application No. 82 of 2025, whereby the revision preferred by the Petitioners-newly impleaded Defendants against an order dated 9th November 2024, on an Application (Exhibit “35”) thereby allowing amendment in the Plaint so as to implead the Petitioners as party-Defendants to the Suit and incorporate averments in the Plaint to raise the ground of alleged unlawful parting with possession of the suit premises, came to be dismissed.

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2. The Respondent No.1 instituted RAE & R Suit No. 566 of 2019 against Respondent Nos. 2 and 3-Defendant Nos. 1 and 2 for recovery of possession of the Suit premises, the arrears of rent and mesne profit on the grounds that there was default on the part of the Defendant Nos. 1 and 2 in payment of rent, breach of condition of tenancy by carrying out permanent alteration in the Suit premises, unlawful sub-letting and the non-user of the Suit premises without any reasonable cause.

3. Defendant Nos. 1 and 2 resisted the Suit. Issues were settled. The Plaintiff filed Affidavit in lieu of examination-in-chief. Thereafter, the Plaintiff took out the Application (Exhibit “35”) to add the Petitioners as party-Defendants to the Suit asserting, *inter alia*, that during the pendency of the Suit, the Petitioners instituted S.C. Suit No. 1773 of 2022 in the City Civil Court, Mumbai, wherein apart from the Defendant Nos. 1 and 2, the Plaintiff came to be impleaded as the Defendant No.5 therein. Upon perusal of the Complaint in the said Suit, the Plaintiff learnt that the Petitioners herein claimed to have acquired tenancy rights in the Suit premises from the Defendant Nos. 1 and 2, who have accepted unlawful consideration. Hence the Application for amendment in the Complaint.

4. The Defendants resisted the Application.

5. By an order dated 9th November 2024, the learned Trial Judge was persuaded to allow the Application observing, *inter alia*, that the

Petitioners were necessary parties to the Suit. The Plaintiff got knowledge about the nature of the claim of the Petitioners upon being served with the summons in the said Suit.

6. The Appellate Bench of the Court of Small Causes did not find any error in the order passed by the Trial Judge.

7. Being aggrieved, the Petitioners-Defendant Nos. 3 and 4 have invoked the writ jurisdiction.

8. Mr. Ram Upadhyay, the learned Counsel for the Petitioners, would submit that the Courts below have committed a gross error in law in permitting the Plaintiff to amend the Plaint after the commencement of the Trial, completely ignoring the bar under the Proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (“the Code”) and that too on the basis of a case which was false to the knowledge of the Plaintiff. It was submitted that the Plaintiff had falsely claimed that she learnt about the transfer of tenancy in favour of the Petitioners only upon perusal of the Plaint in S.C. Suit No. 1773 of 2022, instituted before the City Civil Court. Both the Courts have not dealt with these specific grounds raised by the Petitioners.

9. To buttress the aforesaid submissions, Mr. Upadhyay invited attention of the Court to the averments in paragraph 8 in the Suit, wherein, the Plaintiff had categorically asserted that Defendant Nos. 1 and 2 have unlawfully sub-let or given on a licence or assigned or

transferred in any other manner their interest in the Suit premises and parted with possession thereof. The Petitioners were stated to be the persons in whose name the electricity meter has been transferred. This implied that the Plaintiff was fully cognizant of the factum of possession of the Petitioners and their interest in the Suit property. Therefore, the claim of the Plaintiff that she learnt about the transaction between the Defendant Nos. 1 and 2 and Defendant Nos. 3 and 4, after perusal of the pleadings in S.C. Suit No. 1773 of 2022, before the City Civil Court is demonstrably false.

10. I have given careful consideration to the submissions canvassed on behalf of the Petitioners. It is trite that all amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed. Potentiality of prejudice to the adversary, however, deserves to be kept in view. In view of the interdict contained in the Proviso of Order VI Rule 17 of the Code, an application for amendment after the commencement of the trial cannot be allowed unless the test of due diligence is satisfied.

11. In the case at hand, in the Application itself, the Plaintiff has disclosed that the Plaintiff had filed Affidavit in lieu of examination-in-chief, and, thereafter, admissibility of the documents was determined. Trial can, thus, be said to have commenced. However, the nature of the proposed amendment cannot be lost sight of. By the proposed

amendment, the Plaintiff sought to bring on record the fact that in the Suit instituted by the Petitioners against the Defendant Nos. 1 and 2, the Petitioners claimed that they have acquired the tenancy rights in the Suit premises by parting with consideration of Rs.40 lakhs, as was evident from the averments in the Plaint, in the S.C. Suit No. 1773 of 2022 instituted before the City Civil Court.

12. The submission of Mr. Upadhyay, that the Plaintiff was aware of the said fact was primarily rested on the averments in paragraph 8 of the Plaint. The submission does not carry substance. A plain reading of the averments in paragraph 8 of the Plaint, in the instant case, would indicate that the Plaintiff had asserted that original Defendant Nos. 1 and 2 were not in need of the Suit premises as they had unlawfully sub-let or given on a leave and licence or otherwise transferred interest in the Suit premises. The Petitioners were named as the persons in whose name the electricity meter was transferred. However, the said pleading does not imply that the Plaintiff was aware of the interest and nature of the transaction between the Defendant Nos. 1 and 2 and the Petitioners -Defendant Nos. 3 and 4. The proposed amendment is essentially in the nature of elaboration and amplification of the averments in the Plaint. It does not change the nature or character of the Suit for eviction inexorably.

13. Since the Petitioners claimed to be in possession of the Suit premises, the presence of the Petitioners is absolutely necessary for a complete and effective adjudication of all the questions in controversy between the parties. From this standpoint, the institution of the S.C. Suit No. 1773 of 2022 before the City Civil Court, by the Petitioners being in the nature of a subsequent event, of which the Court is enjoined to take cautious cognizance, the interdict contained in the Proviso to Order VI Rule 17 of the Code, may not be attracted.

14. The second submission on behalf of the Petitioners that the Plaintiff had made false assertion about the knowledge of the acquisition of interest in the Suit property by the Defendant Nos. 3 and 4, also does not merit countenance.

15. It appears that the Plaintiff had an inkling that the Defendant Nos. 1 and 2, have either sub-let or transferred their interest in the Suit premises in favour of the third parties. However, definitive facts came to light only upon the institution of S.C. Suit No. 1773 of 202 before the City Civil Court, by the Defendant Nos. 3. and 4.

16. In the aforesaid view of the matter, the Courts below have correctly exercised the discretion to allow the Plaintiff to amend the Plaint in accordance with the schedule of amendment appended to the Application, to advance the cause of determination of all questions in controversy once and for all, and avoid the multiplicity of the

proceedings. Thus no interference is warranted in exercise of supervisory jurisdiction.

17. Hence, the Petition stands dismissed.

[N. J. JAMADAR, J.]