



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12416 OF 2025

Sameer Jai Hiremath and Anr. ..Petitioners

Versus

Baba Neelkanth Kalyani and Ors. ...Respondents

Mr. Janak Dwarkadas, Sr. Advocate with Mr. Rahul Dwarkadas, Ms. Sukhada Wagle, Ms. Shireen Mistri i/by RJD and Partners, for Petitioners.

Mr. Simil Purohit, Sr. Advocate with Mr. Mayur Khandeparkar, Mr. Yash Chokshi, Ms. Kanika Sharma i/by Khaitan and Co., for Respondent No.1.

Mr. Rohan Rajadhyaksha with Ms. Deepti Prabhu, Mr. Rajveer veera i/by AZB and Partners, for Respondent No.3.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 8 DECEMBER 2025

PRONOUNCED ON : 15 DECEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioners-Plaintiffs takes exception to an order dated 21st August 2025 passed by the learned Civil Judge, Pune, whereby an Application preferred by the Plaintiffs for amendment in the Plaint under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908 (“the Code”) came to be partly rejected.

3. Shorn of superfluities, the background facts can be stated as under:

3.1 The Plaintiffs claim to be the coparceners in respect of the joint family property of two HUFs, Annappa N Kalyani (“ANK”) and Nilkanth A Kalyani (“NAK”). The HUFs consist of the Plaintiffs and Defendant Nos. 1 to 6. Babasaheb Neelkanth Kalyani (D1) is the son of NAK. Gaurishankar N. Kalyani (D3) is another son of NAK. Sugandha (D6) is the daughter of NAK. Plaintiffs are the children of Sugandha (D6). Amit (D2) is the son of Babasaheb N. Kalyani (D1), and Sheetal Gaurishankar Kalyani and Viraj Gaurishankar Kalyani (D4 and D5) are the children of Gaurishankar N. Kalyani (D3).

3.2 The Plaintiffs instituted a Suit seeking *inter alia* partition of joint family properties and separate possession of their share therein. The Plaintiffs also sought a declaration that the assets listed at Annexures “A” to “E” to the Plaint as well as the properties which may be discovered / disclosed, during the course of the Suit, are the joint family properties belonging to Kalyani family HUFs. The Plaintiffs had expressly reserved the right to include such properties and assets as the Suit was instituted on the basis of limited knowledge which the Plaintiffs then had about the properties and assets of Kalyani family HUFs.

3.3 The Plaintiffs filed an Application for amendment in the Plaint asserting *inter alia* that the properties, business, assets and funds which have been discovered by the Plaintiffs be brought in the hotchpotch by

substituting the Annexures “A”, “B” and “E” with the Annexures “A”, “B” and “E” appended to the Application, enumerating those properties, business, assets and funds. The Plaintiffs also sought to amend paragraph 40 of the Plaint to seek injunctive reliefs during the pendency of the Suit including but not limited to exercise of any voting rights in respect of the shares of the companies which were acquired from funds/nucleus of the family HUFs. Accordingly, two interim prayer clauses (H1) and (H2) were sought to be added.

3.4 The Defendant Nos. 1 and 3 resisted the Application. By the impugned order, the learned Civil Judge was persuaded to allow the Application to the extent of prayer clause (a) therein, i.e., substitution of Annexure “A”, “B” and “E” in place of Annexure “A”, “B” and “E” originally annexed to the Plaint, comprising of the properties, business, assets and funds allegedly subsequently discovered.

3.5 However, the Application came to be rejected to the extent of prayer clauses (b) and (c) whereby the Plaintiffs principally sought a restraint against the exercise of voting rights in respect of the shares allegedly acquired from the funds/nucleus of the family HUFs.

3.6 The learned Civil Judge was of the view that no cogent and sufficient material was brought by the Plaintiffs to sustain the said prayers. In view of the provisions contained in Section 47 and 430 of the Companies Act, 2013, the Plaintiffs could agitate the said matter

before the appropriate forum and, even in the said Suit, if at later stage of the trial the Plaintiffs succeeded in bringing on record sufficient material. The proposed amendment in terms of prayer clauses (b) and (c), in the view of the learned Civil Judge, would increase the complexity in the Suit and give rise to complex issues.

3.7 Being aggrieved, the Plaintiffs have invoked the writ jurisdiction.

4. I have heard Mr. Janak Dwarkadas, the learned Senior Advocate for the Petitioners, Mr. Simil Purohit, the learned Senior Advocate for the Respondent No.1, and Mr. Rohan Rajhyadaksha, the learned Counsel for the Respondent No.3. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. Mr. Janak Dwarkadas, the learned Senior Advocate for the Petitioners, would urge that the learned Civil Judge committed a manifest error in rejecting the Application for amendment by delving into the merits of the matter sought to be introduced by way of amendment. In the process, the learned Civil Judge lost sight of the cardinal principle that at the stage of consideration of an application for amendment in the pleadings, the merits of the proposed amendment are not required to be taken into account. As the learned Civil Judge approached the matter from an incorrect perspective, the order stood vitiated, submitted Mr. Dwarkadas.

6. As against this, Mr. Simil Purohit, the learned Senior Advocate, for the Respondent No.1, supported the impugned order. It was submitted that by the proposed amendments, which did not find favour with the learned Civil Judge, the Plaintiffs intended to add interim prayers. The Plaintiffs had filed an Application for temporary injunction. The Plaintiffs could have preferred another Application seeking interim reliefs. However, there was no justifiable reason to add interim reliefs in the Suit. In any event, the Civil Court has no jurisdiction to entertain a Suit seeking restraint on the exercise of voting rights. The National Company Law Tribunal has exclusive jurisdiction over the said matter. Therefore, when the matter was ex-facie beyond the jurisdiction of the Civil Court, the learned Civil Judge was justified in rejecting the Application for amendment to that extent.

7. Mr. Rohan Rajyadhaksha, the learned Counsel for the Respondent No.3, submitted that to the extent of the inclusion of the properties, assets, business and funds, in the suit property, the Defendant No. 3's position was that there were other properties than the ones sought to be included by way of proposed amendment. At the same time, the Defendant No.3 was in unison with the Defendant No.1 that the issues sought to be raised by way of proposed amendment, were beyond the jurisdictional competence of the civil court.

8. It is well recognized that all amendments which are necessary for the determination of real question in controversy between the parties are required to be permitted. Two overarching principles govern the exercise of discretion to permit the amendment in the pleadings. One, whether the amendment is necessary for the determination of real question in controversy. Two, whether the amendment has the potential to cause irretrievable prejudice to the opponent. The aspects as to whether the amendment would change the nature of the suit and the relief claimed thereby is otherwise barred by limitation, also deserve to be taken into account. However, it is trite at a pre-trial stage, where the interdict contained in the proviso to Order VI Rule 17 does not come into play, an application for amendment is required to be considered liberally.

9. In the case at hand, the learned Civil Judge reckoned that the amendment was sought at a pre-trial stage. The interdict contained in the proviso to Order VI Rule 17 of the Code, did not come into play. What weighed with the learned Civil Judge was the inadequacy of the material pressed into service on behalf of the Plaintiffs to substantiate the prayers qua the exercise of the voting rights over the shares, which were alleged to be part of the joint family property.

10. A bare perusal of the impugned order indicates that the learned Civil Judge adverted to remote possibility of the prayers, sought to be

incorporated by way of the amendment, being granted. Indeed, the learned Civil Judge also opined that the prayers in relation to the exercise of voting rights would fall within the exclusive jurisdiction of the Tribunal under the Companies Act, 2013. Yet, it is the inadequacy of the material to substantiate those pleas that seem to have influenced the learned Civil Judge more.

11. Whether the aforesaid approach is justifiable ? By the proposed amendment, as articulated in prayer clause (b) of the application, the Plaintiffs intended to add the necessity of the restraint on the exercise of voting rights on the shares of the entities, which were acquired from the ANK and NAK HUFs. Lest, the Plaintiffs would suffer grave prejudice. The averments in paragraph 40 of the plaint indicate that, the Plaintiffs asserted that the assets of the Kalyani Family HUF were under the control of the Defendants, who might deal with those assets during the pendency of the suit, and, therefore, it was necessary to restrain the Defendants from dealing with or in any manner disposing of the properties of the HUFs.

12. By the proposed amendment, the Plaintiffs, in a sense, intended to amplify and supplement the said assertions, and, thus sought consequential prayers. On first principles, once the trial Court found that, the prayer for amendment in the Plaint so as to substitute the Annexures “A”, “B” and “E” which contain additional properties, assets

and funds, was justifiable, the amendments which were essentially consequential from the point of view of the prayers in regard to such properties could not have been dissected.

13. It is well recognized that the amendment which is in the nature of amplification of the pleadings already on record, normally does not change the nature and character of the suit. The amendment which adds the further grounds in support of the prayers or amplify the case of the Plaintiffs, or for that matter, seeks additional reliefs, on the strength of the very cause of action, ought to be allowed as such amendment neither changes the nature of the suit, nor has the potential to cause prejudice to the adversary.

14. In the case of **Jai Jai Ram Manohar Lal V/s. National Building Material Supply, Gurgaon¹**, the Supreme Court enunciated the principles which govern the exercise of the jurisdiction to permit the amendment in the plaint, as under :

“5. Rules of procedure are, intended to be a handmaid to the administration of justice. A party cannot be refused relief merely- because of same mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court -always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However

¹ (1969) 1 SCC 869

negligent or careless may have been the -first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.....”

15. In the case of **Vineet Kumar V/s. Mangal Sain Wadhere**², the Supreme Court enunciated that if a prayer for amendment merely adds to the facts already on record, the amendment shall be allowed even after the statutory period of limitation. The observations of the Supreme Court in paragraph No.16 read as under :

“16. Normally amendment is not allowed if it changes the cause of action. But it is well recognised that where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record the amendments would be allowed even after the statutory period of limitation. The question in the present case is whether by seeking the benefit of Section 39 of the new Act there is a change in the cause of action. In *A.K. Gupta & Sons. v. Damodar Valley Corporation*³ this Court dealing with the cause of action observed as follows :

“The expression "cause of action" in the present context does not mean every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooks v. Gill(2) in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression

2 (1984) 3 SCC 352

3 AIR 1967 SC 96

for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Rabinson v. Unicos Property Corporation Ltd.(3) and it seems to us to be the only possible view to take. Any other view would make the rule futile."

(emphasis supplied)

16. The aforesaid being the position in law, the learned civil Judge could not have refused to permit the Plaintiffs to amend the Plaint so as to add new grounds and prayers on the premise that it would change the nature of the suit, especially when the learned Civil Judge allowed the Plaintiffs to add the purported joint family properties in the suit claim.

17. On the aspect of the Court refraining from delving into the merits of the claim proposed to be added by way of amendment also, the legal position is well-neigh settled. A profitable reference in this context can be made to a decision of the Supreme Court in the case of **Rajesh Kumar Aggarwal and Ors. V/s. K.K.Modi and Ors.**⁴, wherein the Supreme Court emphasised the cardinal principle that the Court should not go into the correctness or falsity of the case sought to be introduced by way of amendment. The observations of the Supreme Court in paragraphs 18 and 19 read as under :

“18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of

4 (2006) 4 SCC 385

the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.” (emphasis supplied)

18. In the case of **Mohinder Kumar Mehra v/s. Roop Rani Mehra and Ors.**⁵, where the High Court had affirmed the order of rejection of the

5 (2018) 2 SCC 132

prayer for amendment passed by the learned District Judge on the ground that the relief sought to be added by way of amendment may be barred by limitation, the Supreme Court enunciated the law, as under :

“27. In the facts of the present case, final determination as to whether the claim could be held to be barred by time could have been decided only after considering the evidence led by the parties. Whether plaintiff had any share in the property, which was sold in the year 2000 and what was the nature of his share and whether he can claim recovery of his share within twelve years were all the questions on which final adjudication could have been made after considering the evidence and at the stage of considering the amendment in the facts of the present case, it was too early to come to a conclusion that limitation was only three years and not twelve years as claimed by the plaintiff. The High Court on the one hand refrained from expressing any opinion and on the other hand has expressed his agreement with the view taken by the Additional District Judge rejecting the application as barred by time.” (emphasis supplied)

19. Viewed through the aforesaid legal prism, it becomes evident that, the learned Civil Judge did not adhere to the well settled legal position and ventured to evaluate the merits of the claim. The observations of the learned Civil Judge that, even in the very suit, if at a later stage, the Plaintiffs succeed in bringing the satisfactory evidence /

material on record, the proposed prayers in the application for amendment can be considered, betrays the satisfaction of the learned civil Judge that the proposed amendment was necessary for the determination of real question in controversy. Whether the prayers sought to be added by way of amendment were beyond the jurisdiction of the Civil Court, is a matter which could be considered and adjudicated by the learned Civil Judge only after the amendment was allowed.

20. The submission of Mr. Purohit that the prayers for interim reliefs were not required to be added in the plaint when an application for interim injunction can be a proper device, does not carry the matter any further. Since the proposed reliefs appear to be essentially consequential to the amendment which has been permitted to be carried out by the learned Civil Judge, the rejection of the prayer to incorporate those additional reliefs, be interim in nature, appears clearly unsustainable.

21. For the foregoing reasons, the impugned order deserves to be interfered with and the Petition deserves to be allowed.

22. Hence, the following order :

ORDER

- (i) The Writ Petition stands allowed in terms of prayer clause
- (b) of the Petition.

(ii) Necessary amendment to incorporate the averments and prayers in terms of prayer clauses (b) and (c) of the application for amendment, be carried out within a period of three weeks and amended copy of the plaint be served on the Defendants within a period of one week thereafter.

(iii) The Defendants are at liberty to file an additional written statement, if any, to the amended plaint, within a period of 30 days from the service of the copy of the amended plaint.

(iv) Rule made absolute to the aforesaid extent.

(v) No costs.

[N. J. JAMADAR, J.]