

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL APPEAL NO.31 OF 2025
IN
COMMERCIAL SUIT NO.405 OF 2019**

Prashant Gobind Hingorani & Anr.

....Appellants

versus

Kamla Landmarc Builders & Ors.

....Respondents

Mr. Pravin Samdani, Senior Advocate with Mr. Akshit Dedhia and Mr. Minhas Joshi i/b M/s. Wadia Ghandy & Co. *for the Appellants.*

Mr. Sagar G. Talekar, *for Respondent No.1.*

Mr. Kalpesh Joshi with Ms. Nisha Shah i/b M/s. Kalpesh Joshi Associates, *for Respondent No.3 to 5.*

Mr. Mohit Jadhav, Additional GP with Mr. Himanshu B. Takke, AGP *for Respondent No.7/State.*

Ms. Vaishali Ugale i/b Ms. Komal Punjabi *for Respondent Nos.8 and 9-MCGM.*

**CORAM: ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.**

DATE : 09 JUNE 2025.

ORDER (Per Sandeep V. Marne, J.) :

1. The present Appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015 challenging the order dated 22 February 2019 passed by learned Single Judge of this Court

by which the Suit filed by the Appellants has been dismissed on the grounds that the Plaint was not verified by Plaintiff No.1-Society and that Plaintiff Nos. 2 and 3 did not have the authority to file Suit on behalf of the Plaintiff No.1-Society.

2. Brief facts leading to filing of the present Appeal are as under :

JVPD Sterling Co-operative Housing Society Limited, Mr. Prashant Gobind Hingorani and Mr. Rakesh Desai (**Plaintiffs**) instituted Commercial Suit No.405 of 2019 *inter alia* challenging No Objection Certificate (**NOC**) dated 30 March 2017 issued by MHADA in favour of Defendant No.1 for proposed additional development in respect of the suit property. Plaintiffs also challenged the Intimation of Disapproval (**IOD**) as well as Commencement Certificate issued by the Municipal Corporation for Greater Mumbai for proposed additional development at the suit property. Plaintiffs also sought consequential injunctive reliefs in their Suit. The Plaint was verified by Mr. Prashant Hingorani (Plaintiff No.2) for himself and as a member of Plaintiff No.1-Society alongwith Mr. Rakesh Desai (Plaintiff No.3).

3. The learned Single Judge had proceeded to dismiss the Suit on the ground that the Plaint was not verified on behalf of Plaintiff No.1-Society and that Plaintiff Nos.2 and 3 did not have any authority from Plaintiff No.1-Society to file the Suit on its

behalf. The learned Single Judge held that the action of Plaintiff Nos.2 and 3 in seeking to file the Suit on behalf of Plaintiff No.1-Society was gross abuse of process of law. The Suit accordingly came to be dismissed by order dated 22 December 2019, which is the subject matter of challenge in the present Appeal.

4. The Appeal was originally filed by all the three Plaintiffs including Plaintiff No.1-Society. The Appellant Nos. 2 and 3 however filed Interim Application (L) No.2087 of 2025 seeking transposition of Appellant No.1 as Respondent No.10 and for incorporation of consequential pleadings. Since the application was not opposed, this Court permitted transposition of the first Appellant as Respondent No.10 by order dated 30 January 2025. Accordingly, the Appeal is now being prosecuted by original Plaintiff Nos.2 and 3.

5. We have heard Mr. Samdani, the learned senior advocate appearing for the Appellants who would submit that the defect in verification of the plaint was of procedural nature which could have been cured. That since the defect was a curable defect and the learned Single Judge ought to have granted an opportunity to the Plaintiffs to cure the same. Reliance is placed on judgment of this Court in ***All India Reporter Ltd. vs. Ramchandra Dhondo Datar***¹. Alternatively, he would submit that the Appellants no longer wish to pursue the Suit on behalf of JVPD

¹ AIR 1961 Bom 292

Sterling Co-operative Housing Society Limited, who is already transposed as Respondent No.10 in the present Appeal. It is therefore submitted that Plaintiff No.1-Society would accordingly be transposed as Defendant in the Suit. This would obviate the objection of non-verification of Plaintiff on behalf of the first Plaintiff as well as Plaintiff Nos.2 and 3 not having the authority to file the Suit on behalf of the Society.

6. The appeal is opposed by Mr. Talekar, the learned counsel appearing for Respondent No.1. He would submit that the suit was fraudulently instituted by Plaintiff Nos. 2 and 3 who had no authority to represent the society and file the suit on its behalf. No resolution was adopted by the general body of the society for filing of the suit and Plaintiff No.1 misrepresented this Court that Plaintiff No. 2 had the authority to sign and verify the plaint on behalf of the society. That the society is not aggrieved by the impugned NOC, IOD or the Commencement Certificate and would in fact be benefited by the same. He would submit that the defect is not of procedural nature but what is noticed by this Court is the fraud played upon by Plaintiff Nos. 2 and 3 in grossly abusing the jurisdiction of this Court. He would accordingly pray for dismissal of the appeal.

7. We have also heard Mr. Joshi, the learned counsel appearing for Respondent Nos.3 to 5, Mr. Jadhav, the learned Additional Government Pleader appearing for Respondent No.7-

State and Ms. Ugale, the learned counsel appearing for Respondent Nos.8 and 9-MCGM.

8. Perusal of the impugned order dated 22 February 2019 passed by the learned Single Judge would indicate that Plaintiffs' Suit has been dismissed only on account of failure on the part of Plaintiff No.1-Society to verify the Plaint and Plaintiff Nos.2 and 3 not having any authority to file the Suit on behalf of Plaintiff No.1-Society.

9. It is seen that the defect noticed by the learned Single Judge about the Plaint not being verified by an authorised person for Plaintiff No.1-Society was a curable defect. It is difficult to accept the proposition that a suit which suffers from a defect cannot be said to have been instituted at all. An opportunity could have been granted to verify the plaint by a person duly authorised by a resolution adopted by the Plaintiff No.1-Society. Reliance in this regard by Mr. Samdani on Division Bench judgment of this Court in *All India Reporter Ltd.* (supra) is apposite, in which it is held as under:

12. The question is whether the provisions contained in O. VI relating to signing, verification and presentation of the plaint relate merely to procedure or whether a plaint which does not strictly comply with the requirements of O. VI would cease to be a valid plaint and would be a nullity because of such defects or irregularities. It is true that when a plaint is presented to the Court or to such officer as the Court appoints, it is open to the Court or to the officer to point out the defects or

irregularities to the person presenting the suit and to require him to rectify the defects or irregularities. But can it be said that the defects or irregularities would make the presentation of the suit itself invalid although the plaint is admitted and particulars of the plaint are entered in a register of suits as provided by O. IV, r. 2? In this connection it is necessary to note that O. VII, r. 11, which refers to the rejection of a plaint, enumerates only four cases in which a plaint has to be rejected, but it does not enumerate any of the defects or irregularities referred to in O. VI, r. 14, O. VI, r. 15, or O. VI, r. 2. **It is clear from the provisions contained in O. VI that these rules relate only to procedure, and the better view would be to regard them as mere matters of procedure and to hold that if a plaint is not properly signed or verified but is admitted and entered in the register of suits it does not cease to be a plaint and the suit cannot be said not to have been instituted merely because of the existence of some defects or irregularities in the matter of signing and verification of the plaint.**

14. The judgment of the Division Bench of the Bombay High Court in *Ganpati Nana v. Jivanabai* and the judgments of single Judges in *Bundi Portland Cement Co. Ltd. v. Abdul Hussein*, *Ephrayim v. Turner, Morrison & Co.* [(1930) 32 Bom. L.R. 1178.] and *Nanjibhai v. Popatlal* **are in favour of the view that defects in regard to the signature, or verification or presentation of the plaint are mere irregularities of procedure.** In *Bundi Portland Cement Co. Ltd. v. Abdul Hussein* it was held that the rule in O. XXIX, r. 1, Civil Procedure Code, regarding signature on the plaint is only a matter of procedure and that "if the signature on the plaint or the verification of the pleading is defective, the defect can be cured at any subsequent time." It was also held that the provisions contained in O. XXIX, r. 1, Civil Procedure Code, are clearly permissive and not imperative. Order XXIX, r. 1 is merely a rule of procedure and does not exclude the operation of O. VI, r. 14 and r. 15. In *Ganpati Nana v. Jivanabai*, where a power-of-attorney was defective, it was held that the decree should not be disturbed in appeal in spite of the defect. If such defects go to the root of the plaint and vitiate the plaint, there could be no suit and no decree. As the High Court refused to disturb the decree in spite of defects in the plaint it impliedly held that defects in the plaint do not vitiate the plaint or the suit. Section 99 of the Civil Procedure Code was applied apparently on the view that there was merely a defect or

irregularity in the proceedings in the suit after it had been properly instituted. That the signing and verification of pleadings is not a matter of substance but of procedure only, that notwithstanding irregularities in the plaint in regard to signing or verification of presentation, the plaint must be deemed to have been instituted on the date of its admission by the Court, and that such defects can be cured in appeal or even after the period of limitation was the view held in In the Matter of the Petition of Bisheshar Nath, [(1917) I.L.R. 40 All. 147.] Netram v. Bhagwan, [[1941] A.I.R. Nag. 159.] Ali Muhammad Khan v. Ishaq All Khan, [(1931) I.L.R. 54 All. 57, F.B.] Shib Deo Misra v. Ram Prasad, [(1924) I.L.R. 46 All. 637.] Subbiah Pillai v. Sankarapandiam Pillai, [[1948] A.I.R. Mad. 369, 371.] Ramgopal Ghose v. Dharendra Nath Sen, [(1927) I.L.R. 54 Cal. 380.] Sarju Prasad v. Badri Prasad [[1939] Nag. 515.] .

24. As regards the verification of the plaint, in the instant case it was verified by Ghushey as agent of the A.I.R. Limited (plaintiff No. 1). It was not verified by plaintiff No. 2. Order VI, r. 15, of the Civil Procedure Code requires that the plaint should be verified by the plaintiff or one of the plaintiffs or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. Order VI, r. 15, does not refer to persons authorized by the plaintiff or any of the plaintiffs. If the plaint is not verified by a plaintiff or by any one of the plaintiffs, it can be verified only by a person proved to the satisfaction of the Court to be acquainted with the facts of the case. It is true that there are several authorities in favour of the view that omission to verify a pleading is a mere irregularity and that a pleading which is not verified as required by O. VI, r. 15, may be verified at any later stage of the suit, even after the expiry of the period of limitation. See Ephrayim v. Turner Morrison and Co., Shib Deo Misra v. Ram Prasad, Ali Muhammad Khan v. Ishaq Ali Khan, Calico Printers' Association, Ltd. v. Karim & Bros., Ramgopal Ghose v. Dharendra Nath Sen and Educational Book Depot v. Rabindra Nath Tagore.

(emphasis added)

10. Thus, defects in regard to signature or verification or presentation of plaint are mere irregularities of procedure, which are curable in nature.

11. Apart from the curable nature of defect in the Suit, the changed circumstance now is that that Plaintiff Nos.2 and 3 no longer desire to prosecute the Suit on behalf of the JVPD Sterling Co-operative Housing Society Limited. Therefore, the very objection of defect in verification of plaint or lack of authority to institute the suit on behalf of the society is now rendered academic.

12. In our view therefore, an opportunity deserves to be granted to Plaintiff Nos. 2 and 3 to prosecute the Suit on merits by transposing the Plaintiff No.1-Society as Defendant to the Suit. If such opportunity is not granted to Plaintiff Nos.2 and 3 to prosecute the Suit on merits, their cause of action *qua* the NOC dated 30 March 2017, IOD and Commencement Certificate would remain unadjudicated on account of technical defect in presentation of the plaint. If Plaintiff Nos.2 and 3, in their individual capacity as members of the Society, are entitled to question the NOC, IOD and Commencement Certificate, their grievance deserves to be adjudicated on merits. Therefore, what needs to be ensured is decision of the Suit on merits as the same is now confined only in respect of Plaintiff Nos.2 and 3. No opinion is however expressed on merits of the prayers raised in the Suit.

13. We accordingly proceed to pass the following order:

- i) Order dated 22 February 2019 passed by the learned Single Judge is set aside.
- ii) Commercial Suit (L) No.970 of 2018 shall stand restored, to be prosecuted only on behalf of Plaintiff Nos.2 and 3 by transposing Plaintiff No.1-Society as a Defendant.
- iii) The Suit shall be decided uninfluenced by any of the observations made in the order.
- iv) All contentions of parties on merits are expressly kept open.

14. With the above directions, the Appeal is **allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)

(CHIEF JUSTICE)

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by SUDARSHAN
RAJALINGAM
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