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

**INTERIM APPLICATION NO. 1971 OF 2025
IN
COMMERCIAL SUIT NO. 134 OF 2015**

Bindiya Wallia & Ors. .. Applicant

IN THE MATTER BETWEEN

Bindiya Wallia & Ors. .. Plaintiffs.

Versus

Ajay Lajpatrai Chawla .. Defendant

**Adv. Jamshed Master i/b Adv. Aniket Worlikar for the
Applicant/Plaintiffs.
Adv. Gaurav Mehta a/w, Adv. Aaditya Mapara i/b Dhruve Liladhar & Co.
for the Defendant.**

CORAM: FIRDOSH P. POONIWALLA, J.

**RESERVED ON: SEPTEMBER 23, 2025
PRONOUNCED ON : OCTOBER 10, 2025**

ORDER :

1. The original Suit has been filed for the following reliefs :

“(a) That the Defendant be ordered and decreed to pay to the Plaintiffs the aggregate sum of Rs. 3,59,80,000 (Rupees Three Crore Fifty Nine Lacs Eighty Thousand Only) with further interest on 3,59,80,000/- as per the claim described in Statement of Claim marked Exhibit "A" to "D" with future interest @ of 10% per annum or at such other rate as this Hon'ble Court may deem fit and proper from the date of filing of the suit till payment or realization.

(aa). That the defendant be ordered and decreed to pay the Plaintiffs the total amount of Rs.62864015/- with interest as on 09.05.2017 (the amount of para (a) marked as Exhibit A to D is included in this amount of Rs. 6,28,64,015/-) with future interest from 09.05.2017 at the rate of interest of 10% Per Annum or as such other rate as this Hon'ble Court may deem fit and proper till the date of payment or realization.

(b) Maintenance amount from 1.3.2015 of US \$ 500 per month equivalent to Indian Rs. 31,105/- to the plaintiff no. 1 during her life time (at current rate of exchange of US\$1 = Rs 62.21) be also decreed and the defendant be ordered to pay the said amount.

(c) Cost of the suit be also awarded

(d) For such further and other reliefs as the nature and circumstances of the case may require be also awarded."

2. The present Interim Application has been filed for bringing certain subsequent facts on record and for adding after prayer (aa) the following prayers as (b), (c), and (d), which read as follows :

"b. This Hon'ble Court be pleased to order and decree qua the defendant a sum of INR ₹15,32,98,312 as contemplated under Exhibit U along with a further direction to pay a sum of US \$ 500 per month from January 2025 until Plaintiff No. I expires or re-marries and a further interest @ 10% p.a. on the decretal amount or at such higher rate as this Hon'ble Court may deem fit and proper till the date of payment.

c. This Hon'ble Court be pleased to order and decree qua the defendant to handover quiet, vacant and peaceful possession and ownership with clear marketable title of a Flat more particularly described as "Flat No. 101, The Legacy, 3rd Road, Bandra West. Mumbai-400050" which presently stands in his name.

d. This Hon'ble Court be pleased to grant interim and ad-interim reliefs in aid of final relief"

3. The Applicants herein are the original Plaintiffs in the present Suit Plaintiff No.1 is the second wife of the Defendant. Plaintiff No.1 and the Defendant were married in India on 8th November, 1991 and subsequently settled in the United States of America. Out of the said wedlock, they have two children i.e. Plaintiff Nos. 2 and 3. Plaintiff No.1 and the Defendant have now obtained a divorce from the Superior Court of California, Contra Costa County, United States of America (hereinafter, referred to as “the **US Court**”). The Defendant got married to a third wife after obtaining divorce and flying back to India.

4. The US Court granted a decree of divorce and also a money decree under various heads which *inter alia* included alimony and maintenance in favor of the Plaintiffs. The said decree was passed for a sum of USD 5,78,367.72, equivalent to Rs.3,59,80,231/-, on account of arrears in child support, maintenance, medical expenses of children etc. The said US Court decree was not complied with by the Defendant. Therefore, the US Court passed a fresh and separate order on 9th May, 2017, enhancing the said amounts recoverable from the Defendant to a sum of USD 9,72,825.9917, equivalent to Rs. 6,28,64,015/-. The Plaintiffs have initiated contempt proceedings in the US Court and the same are pending till date. An arrest warrant was also issued by the US Court in 2017. It is the case of the Plaintiffs that the Defendant has remained in India so as to evade arrest.

5. The decretal amount has not been paid and consequently, interest is mounting thereon. The present suit was filed seeking recovery of the said amount from the Defendant and was initially filed as a Summary Suit. This Court, by an Order dated 18th January, 2016, held that the Suit was not maintainable as a Summary Suit and therefore granted unconditional leave to defend. Consequently, the Suit was converted to a Commercial Suit by this Court.

6. Further, on account of the fresh and separate Order dated 9th May, 2017 passed by the US Court, the Plaint was amended.

7. The US Court, in view of the default committed by the Defendant in payment of the decretal amount as per its Order dated 8th October, 2009, levied sanctions against the Defendant wherein the Plaintiff was awarded a share in flat No.101, 1st floor, The Legacy Apartment, 3rd Road, Bandra West, Mumbai- 400054 (hereinafter referred to as “**Legacy Flat**”).

8. The Defendant held a US passport and an OCI card. The said US passport was valid until 13th June, 2020. In or about 2017, the Defendant applied to the Consul General of United States of America, in India, for addition of supplementary pages in his US passport and submitted an

application along with the original passport at the Consulate. The said application was refused, and the Consulate did not return the original passport to the Defendant as the Defendant had not paid the child support arrears as directed by the US Court. The passport therefore remained in the custody of the US Consulate in India and eventually expired in 2020.

9. The Defendant made an Application for renewal of the said passport. However, on 6th January, 2020, the office of the Consul General of the United States of America informed him that the said renewal application could not be processed until and unless the arrears of child support were paid up in full.

10. It is the case of the Plaintiff that in defiance of the decree passed by the US Court and in order to once again thwart the US Court decree, the Defendant chose to take a stand that he had renounced his US citizenship and is therefore an Indian citizen. It is further the case of the Plaintiffs that the Defendant made a false statement in a passport application preferred by him before the Indian Passport Authorities at Mumbai and succeeded in obtaining an Indian passport. The Defendant had not surrendered his OCI Card while obtaining the said Indian passport.

11. On 6th October, 2022, the regional passport office issued a notice calling upon the Defendant as to why the said passport should not be impounded as the same was obtained fraudulently.

12. Subsequently, the Foreigner's Regional Registration Office ("FRRO") initiated action against the Defendant because the Defendant was residing in India on the basis of an OCI Card linked to an expired passport, which was in contravention of Section 7D (da) of the Citizenship Act, 1955.

13. Further, it is the case of the Plaintiffs that since, on the one hand, the US Consulate would not issue a passport unless the child support arrears were deposited, and on the other hand, the Indian authorities had already taken note that the Indian passport was obtained by fraud and misrepresentation, the Defendant realised that he had no option but to comply with the child support portion of the decretal amount.

14. On 17th July, 2024, the Defendant deposited a sum of USD 253,533 with the Department of Child Support Services, Contra, Costa County, California, USA and obtained a fresh US passport. The same is recorded in an Order dated 12th August, 2024 passed by this Court in Writ Petition No. 16115 of 2023.

15. Further, the US Court awarded spousal maintenance to the tune of US\$ 500 per month from 1st August, 2009 until death or remarriage of Plaintiff No.1, whichever was earlier.

16. The present Suit came to be filed in 2015 and was subsequently amended in 2017 pursuant to Order dated 7th December, 2017 passed by this Court and the decretal amount was increased to Rs. 6,28,64,015/-.

17. It is the case of the Plaintiffs that the said amount continued to accrue alongwith interest @ of 10% p.a. until payment /realization of monies. Accordingly, the Plaintiffs, by way of the present amendment, seek to amend the present claim to show that, as on 9th December, 2024, the Defendant is liable to pay to the Plaintiffs a sum of Rs. 15,32,98,312. A copy of the said claim statement is annexed and marked as **Exhibit "A"** to the Interim Application.

18. Further, by the present Interim Application, the Plaintiffs has also sought reliefs in respect of the Legacy Flat in prayer (c) sought to be added by way of this amendment.

19. The Defendant has filed an Affidavit-in-Reply dated 20th August, 2025 opposing the granting of the reliefs in the present Interim Application. The Plaintiffs further filed an Affidavit in Rejoinder dated 4th September, 2025 in response to the said Affidavit-in-Reply.

20. Mr. Jamshed Master, the learned counsel appearing on behalf of the Plaintiffs, submitted that the amendment sought by the present Interim Application ought to be allowed as the nature of the Suit has not changed. Mr. Master submitted that the decree of the US Court is before this Court. The facts pleaded are subsequent to the filing of the Suit, the averments for the prayers are in the Plaint, the Order passed by the US Court in year 2017 is also on record and therefore no prejudice would be cause to the Defendant if the present amendments are allowed. Mr. Master referred to the Judgement of the Hon'ble Supreme Court in *Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. & Anr. (2022) 16SCC*.

21. Mr. Gaurav Mehta, the learned counsel appearing on behalf of the Defendant, opposed the Interim Application on various grounds. Mr. Mehta first submitted that the Plaintiffs had included in the schedule of amendment, averments and allegations regarding the Defendant's renewal of passport which were totally irrelevant to the claim in the Suit.

22. Further, Mr. Mehta submitted that there is no requirement to amend the Plaint every few months/years to merely update the calculation of the amount claimed on the basis of a foreign decree. Mr. Mehta submitted that the purpose of seeking such amendments was merely to delay the trial and hearing of the Suit. He submitted that issues were framed on 17th October, 2018 and the Plaintiff's Evidence Affidavit has been filed on 21st November, 2018. Despite the same, till date, the Plaintiffs have not moved the matter for marking of documents. Mr. Mehta further submitted that revising the claim due to child support paid by the Defendant or by calculating the monthly accruing claim of the Plaintiffs does not warrant amendments, but is merely a matter of calculation at the hearing of the Suit.

23. Further, Mr. Mehta submitted that the amendment sought by the present Interim Application was not a pre-trial amendment. Mr. Mehta submitted that, under Order 6 Rule 17 of the Code of Civil Procedure, 1908 ("the CPC"), no Application for amendment shall be allowed after the trial has commenced, unless the Court comes to a conclusion that, in spite of due diligence, the party could not have raised the matter before the commencement of trial.

24. Mr. Mehta submitted that, by an order dated 17th October, 2018, issues were framed. Plaintiff No.1 had filed her Evidence Affidavit on 21st November, 2018 and it is well settled that the trial commenced on the filing of the Evidence Affidavit. Mr. Mehta further submitted that no due diligence has been shown as to why the proposed amendments could not have been made earlier. Mr. Mehta submitted that, in the absence of the Plaintiffs discharging the burden to show “due diligence”, there is a jurisdictional bar to entertain this Interim Application.

25. Further, Mr. Mehta submitted that the Interim Application does not contain any averments and lays no foundation to justify the inclusion of new prayer (c) regarding the possession of the Legacy Flat. In this context, Mr. Mehta submitted that the US Court order regarding the Legacy Flat is dated 9th May, 2017. Thereafter, on 7th July, 2017, the Plaintiff filed Chamber Summons No. 121 of 2017 to amend the Plaint to bring on record the Order dated 9th May, 2017. Mr. Mehta submitted that the new prayer (c) sought to be added by this Interim Application was not included in this Chamber Summons which was allowed by an Order dated 7th December, 2017. Mr. Mehta submitted that the Interim Application contains no explanation as to why prayer (c) was not added earlier and, therefore, the Plaintiff has not discharged the burden of showing “due diligence”.

26. Mr. Mehta next submitted that the proposed prayer (c) is *ex-facie* barred by limitation. He submitted that by proposed prayer (c), the Plaintiffs seeks a decree against the Defendant to hand over vacant possession of the Legacy Flat. This prayer is based on the US Court's Order dated 9th May, 2017. However, the Interim Application is filed only on 16th December, 2024, which is well beyond the period of 3 years provided under Article 101 of Limitation Act, which deals with the period of limitation in respect of a suit upon a judgement, including foreign judgement or a recognisance.

27. Mr. Mehta submitted that when a relief sought to be introduced by an amendment is *ex-facie* incapable of being granted, the amendment should not be allowed. He submitted that the amendment to add new relief, if barred by limitation, should not be allowed.

28. Further, Mr. Mehta submitted that, by attempting to add proposed prayer (c), the Plaintiff was introducing a new cause of action and altering the cause of action on which the Suit was filed. Mr. Mehta submitted that the proposed amendment changes the character of the Suit from one for recovery of money to one for possession of the flat. Mr. Mehta submitted

that, for all the aforesaid reasons, the Interim Application ought to be dismissed.

29. I have heard the learned counsel for the parties and perused the documents on record. By this Interim Application, the Plaintiffs have sought to bring subsequent facts on record and have also sought amendments in terms of prayers (b) and (c) as set out herein above.

30. As far as the subsequent facts are concerned, in my view, there is no impediment in allowing the Plaintiffs to amend the Plaint and bring the subsequent facts on record. I am unable to accept the submission of Mr. Mehta that the averments and allegations regarding the Defendant's renewal of passport are totally irrelevant to the claim in the Suit. These averments and allegations are necessary to show the factual matrix in which the Suit lies. Therefore, in my view, the amendment seeking to bring subsequent facts on record can be allowed.

31. As far as prayer (b) sought to be added by the amendment is concerned, in my view, the same can also be allowed. It is the submission of the Defendant that what is sought to be brought on record by way of the said prayer (b) is merely a matter of calculation, which does not warrant an

amendment. In my view, if as contended by the Defendant, what is sought by prayer (b) is merely a matter of calculation, then no prejudice is caused to the Defendant in allowing prayer (b).

32. Further, in the present case, the trial commenced on 21st November, 2018 when the Evidence Affidavit of Plaintiff No.1 was filed. A persual of the amendment sought shows that the claim sought to be added is from 1st May, 2017 till 9th December, 2024. In my view, since, most of the claim is in respect of a period post the commencement of trial, the Plaintiff could not, despite exercising due diligence, have sought the amendment prior to the commencement of the trial. Therefore, the commencement of the trial cannot be a bar in seeking to add prayer (b) by way of the amendment. Further, the Interim Application has been filed on 16th December 2024. Moreover, part payment was made by the Defendant in respect of the claim on 17th July, 2024. In these circumstances, in my view, the amendment sought in adding prayer (b) is not *ex-facie* barred by the law of limitation. In these circumstances, the said amendment can be allowed by leaving the issue of limitation open to be considered at the trial of the Suit.

33. As far as prayer (c) sought to be added by way of amendment is concerned, in my view, the same cannot be allowed. The said prayer (c) seeks

an order and decree qua the Defendant to hand over quiet, vacant, and peaceful possession and ownership of the Legacy Flat. This amendment has been sought pursuant to an Order dated 9th May, 2017 passed by the US Court. The trial commenced when the Plaintiff No.1 filed her Evidence Affidavit on 21st November, 2018, i.e. after a period of more than one and a half years from the date of the said Order dated 9th May, 2017. Further, on 7th July, 2017, the Plaintiffs filed Chamber Summons No. 121 of 2017 to amend the Plaint and to bring on record the Order dated 9th May, 2017. The new prayer (c) sought to be added by way of this Interim Application was not included in the said Chamber Summons, which was allowed by an Order dated 7th December, 2017. In these circumstances, if the Plaintiffs had acted with due diligence, then the amendment to include prayer (c) would have been made prior to the commencement of the trial. Not only have the Plaintiffs failed to do so but the Plaintiffs have, in the Interim Application, not given any reason whatsoever, as to why the said amendment to add prayer (c) could not be sought by them before the commencement of the trial of the Suit. For all these reasons, in my view, the amendment sought to add prayer (c) cannot be allowed.

34. Further, there is one more reason as to why the said amendment seeking to add prayer (c) cannot be allowed. By the proposed prayer (c), the

Plaintiffs seeks a decree against the Defendant to hand over vacant possession and ownership of the Legacy Flat. This prayer is based on the US Court's Order dated 9th May, 2017. The Interim Application is filed only on 16th December, 2024, which is well beyond the period of 3 years provided under Article 101 of the Limitation Act which reads thus :

Description of suit	Period of limitation	Time from which period begins to run
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PART IX – SUITS RELATING TO MISCELLANEOUS MATTERS

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| 101. Upon a judgement, including a foreign judgment, or a recognisance. | Three years | The date of the judgment or recognisance. |
|---|-------------|---|

35. As can be clearly seen, the period of limitation under Article 101 of the Limitation Act, which deals with the period of limitation for a suit upon a judgement, including a foreign judgement, is 3 years from the date of the Judgement. The judgement in this case is the US Court's Order dated 9th May, 2017. In these circumstances, the period of 3 years expired on 8th May, 2020. Even if the extension of limitation on account of Covid is considered, the present Application, in so far as it seeks to add prayer (c) on 16th December, 2024, is clearly barred by the law of limitation.

36. In my view, for all the aforesaid reasons, the amendment sought to add prayer (c) cannot be allowed.

- 37.** For all the aforesaid reasons, I hereby pass the following order :
- (a) The Plaintiff is permitted to amend the Plaint as per 'Schedule A' to the Interim Application, except the addition of the proposed prayer (c) which is rejected.
 - (b) The question of limitation in respect of proposed prayer (b) is kept open.
 - (c) The Interim Application is disposed of in the aforesaid terms.
 - (d) In the facts and circumstances of the case, there will be no order as to costs.
 - (e) The Plaintiffs to carry out the amendment within a period of 3 weeks from the date of uploading of this Order and serve a copy of the amended Plaint on the Defendant by that date.

[FIRDOSH P. POONIWALLA, J.]