



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION No.282 OF 2025

(Chhaya Haribhau Gulhane and others Vs. Mohammad Yusuf Mohammad Shafi Punjani)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Masood Shareef, Advocate for petitioners.

Mr. F.T. Mirza, Senior Advocate i/b. Ms. Madhura Bhande, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : RESERVED ON : 06th AUGUST, 2025.
PRONOUNCED ON : 21st AUGUST, 2025

1. Heard Mr. Masood Shareef, learned Advocate for the petitioners and Senior Counsel Mr. F.T. Mirza for the respondent.

2. The petitioners have filed the instant writ petition under Article 227 of the Constitution of India challenging the order passed by the Court of District Judge-1, Darwaha rejecting the application under Order VI Rule 17 of the Civil Procedure Code for amendment in Appeal memo.

3. The petitioners are original defendants in the suit for specific performance of contract which was filed by the respondent seeking specific performance of agreement to sell dated 28.08.2011. The suit was contested on merits by both

parties and by judgment and decree dated 06.04.2023 the suit was decreed directing the defendants to execute the sale-deed in favour of plaintiff. Being aggrieved by this judgment and decree the original defendants i.e. petitioners herein filed appeal under Section 96 of the Civil Procedure Code before the Court of District Judge Darwha. During the pendency of this appeal the appellants filed an application dated 23.08.2024 under Order VI Rule 17 of the Civil Procedure Code seeking amendment of the memorandum of appeal to incorporate certain grounds viz. Ground No.15A to 15E as mentioned in the said application. The respondent opposed the application by way of reply dated 30.09.2024. By order dated 15.11.2024 the Appellate Court rejected the application and the petitioners have challenged this order by way of instant petition.

4. Mr. Masood Shareef, learned counsel for the petitioners vehemently submitted that the petitioners/appellants have only sought to add new grounds to the memorandum of appeal, which could be replied by the respondent and, therefore, the trial Court ought to have allowed the application. He submitted that in view of the provisions of Order 41 Rule 2 of the Civil Procedure Code the appellants are entitled to raise new grounds in the

memorandum of appeal and in view of the facts and circumstances the Appellate Court ought to have granted leave to the appellants to amend the memorandum of appeal. He also submitted that the controversy involved in the suit falls in the definition of a 'commercial dispute' as defined in Section 2(c) of the Commercial Courts Act, 2015 and the appellants were, therefore, entitled to raise necessary grounds available to it during the course of the appeal. He, therefore, submitted that the Appellate Court erred in considering the merits of the amendment and erroneously passed the impugned order. In support of his submissions he placed reliance on following case laws :

- (i) **State of Maharashtra vs. Hindustan Construction Company Pvt. Ltd. (2010) 4 SCC 518,**
- (ii) **Harcharan Vs. State of Haryana, (1982) 3 SCC 408,**
- (iii) **Chittoori Subbanna Vs. Kudappa Subbanna, AIR 1969 SC 1325,**
- (iv) **M.J. Exporters Pvt. Ltd. Vs. Union of India, (2021) 13 SCC 543,**
- (v) **Sugandhi (dead) by legal representatives and another Vs. P. Rajkumar represented by his power agent Imam Oli, (2020) 10 SCC 706 and;**

**(vi) K. Lubna and others Vs. Beevi and others,
(2020) 2 SCC 524.**

5. By referring to the position of law as laid down in the above mentioned judgments learned counsel for petitioners submitted that in view of the provisions of Order 41 Rule 2 of the C.P.C the memorandum of appeal has to be considered like the plaint in a suit and the appellants are, therefore, entitled for seeking amendment to the memorandum of appeal. He submitted that in view of the peculiar facts of this case since the dispute involved in the suit falls in the category of a commercial dispute, the appellants cannot be deprived of raising relevant grounds and the trial Court ought to have, therefore, granted leave to the appellants to amend the memorandum of appeal

6. Per contra, Mr. Firdos Mirza, learned Senior Counsel appearing for the respondent strongly opposed the petition and submitted that there is no perversity in the impugned order, since the Appellate Court has given due consideration to the prevailing legal position while passing the impugned order. He submitted that the application for amendment is filed by the appellants at the stage of final hearing of the appeal and by way of amendment, appellants are attempting to introduce

totally new case which will cause serious prejudice to the rights of the respondent/plaintiff. He also submitted that there is no foundation in the pleadings for the proposed amendment and the amendment cannot be allowed on account of absence of due diligence on the part of the appellants. In support of his submissions he relied upon the judgment in the matter of **Union of India Vs. Pramod Gupta (dead) by LRs. And others, (2005) 12 SCC 1.**

7. Thus, the rival issue which falls for my consideration is about legality of the order rejecting appellants' application for amendment of the memorandum of appeal. It is crucial to note that the amendment application is filed by the appellants at the stage of final hearing of the first appeal. The respondent had filed the suit for specific performance of contract, on 29.11.2013. The Commercial Courts Act, 2015 came into force on 23rd October, 2015 and the parties were entitled to raise a plea about controversy being a commercial dispute in accordance with the provisions of this Act. The application for amendment was not filed during the pendency of the suit and it is filed on 23.08.2024, only during the pendency of the appeal. Therefore, it is crucial to note that in view of the dispute raised by way of suit, the defendant has not filed any amendment at

the first instance and the amendment is filed after the conclusion of the trial and thus it is clear that the defendants have not exercised due diligence. Thus, if the proposed amendment as mentioned in the application seeking to raise new grounds in the memorandum of appeal is seen, it becomes clear that the appellants want to raise issues challenging the jurisdiction of the trial Court alleging the dispute to be a commercial dispute. The crucial question, therefore, arises as to whether the amendment would cause any prejudice to the other side. A perusal of the application mentioning reasons for filing amendment application shows that the appellants have stated that at the stage of final hearing, during the course of study of the matter it was revealed that the nature of the subject matter, constituted a commercial dispute and, therefore, the matter was required to be tried by the Commercial Court as per the provisions of the Commercial Courts Act, 2015. Only on this ground the amendment to incorporate various paragraphs in the memorandum of appeal is sought. It is thus clear that no exceptional reasons are mentioned to explain as to why the grounds were not raised during the pendency of the suit. There is thus no material on record to conclude that the appellants had exercised due

diligence to seek amendment before the commencement of trial.

8. Although the appellants are entitled to raise new grounds in the appeal in accordance with the provisions of Order 41 Rule 2 of the Civil Procedure Code by seeking leave of the Court, the provisions of Order VI Rule 17 of the Civil Procedure Code and proviso also need to be given due consideration. Although the petitioners have heavily relied upon provisions of Order 41 Rule 2 of the Civil Procedure Code, it has to be noted that the petitioners/appellants have failed to demonstrate any due diligence on his part in absence of any reasons in the application for amendment. It is thus clear that there is no foundation in the pleadings for making proposed amendment and the proposed amendment raising issues of jurisdiction of the Court will definitely cause serious prejudice to the other side.

9. The Judgments relied upon by the counsel for the petitioners deal with general principles for considering the application for amendment and the propositions of law laid down therein are not disputed. It is crucial to note that in the matter of *State of Maharashtra vs. Hindustan Construction Company Pvt. Ltd.* (supra) relied upon by the petitioners the

Hon'ble Supreme Court has observed in paragraph No.36 that new grounds containing new materials/facts could not have been introduced for the first time in an appeal, in absence of any foundation. Although it is settled position of law that procedural law is intended to facilitate and not to obstruct the course of substantive justice, as laid down in the matter of *Harcharan Vs. State of Haryana* (supra) relied upon by the petitioners, it is equally important to note in the instant matter that allowing the amendment of memorandum of appeal will cause prejudice to the other side by introduction of totally new case. While considering the judgment of *Harcharan Vs. State of Haryana*, (referred above), the Hon'ble Supreme Court in the matter of *Union of India Vs. Pramod Gupta* (referred above) made pertinent observations in paragraph Nos. 133 and 134 which read thus :

133. *Mr. Salve submitted that the bar under Section 25 of the Act must be considered having regard to Section 53 thereof which provides for applicability of the provisions of the Code of the Civil Procedure. The learned counsel urged that the respondents had already filed an application for amendment of memo of appeal in terms of Order 41, Rule 3 of the Code of Civil Procedure, which having been allowed, would amount to amendment of the claim application in the reference case itself. Strong reliance in this behalf has*

been placed on Harcharan Vs. State of Haryana and Ghaziabad Development Authority Vs. Anoop Singh.

134. *We do not agree. The pleadings before the Trial Court are the basis for adduction of evidence either before the trial court or before the appellate court. By amending the memo of appeal the original pleadings cannot be amended. The respondents claimants made their claim before the Reference Court claiming compensation for the lands acquired under two different references at a certain rate. They are bound by the said pleadings. Section 53 merely provides for applicability of the provisions of the Code of Civil Procedure including the one containing Order 6, Rule 17 thereof. Order 6, Rule 17 of the Code of Civil Procedure postulates amendment of pleadings at any stage of the proceedings. Before an amendment can be carried out in terms of Order 6, Rule 17 of the Code of Civil Procedure the court is required to apply its mind on several factors including, viz., whether by reason of such amendment the claimant intends to resile from an express admission made by him. In such an event the application for amendment may not be allowed. (See Modi Spg. & Wvg. Mills Co. Ltd. v. Ladha Ram & Co., Heeralal v. Kalyan Mal and Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad.)*

10. In the backdrop of this legal position, a perusal of the impugned order shows that the Appellate Court has given due consideration to the relevant factual and legal aspects. Although the Court has referred to the merits of proposed amendment, it is seen that while dealing with the case laws

relied upon by the parties, the Court has made reference to certain aspects dealing with the issue of commercial dispute. This reference appears to have been made while dealing with the case laws and these are not inferences on merits. However, there is no perversity in the approach of the Appellate Court.

11. On consideration of the above mentioned factual and legal aspects I find no reason for indulgence with the impugned order under Article 227 of the Constitution of India. The petition, therefore, deserves to be dismissed.

12. Writ Petition is dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

LATER ON :

1. After the order is pronounced, learned counsel for the petitioners makes a request for continuation of interim relief which was granted by order dated 23rd January, 2025 for enabling the petitioners to challenge this order.

2. In view of the fact that interim relief was operating during the pendency of this petition, same is continued for a further period of four weeks from today.

(PRAFULLA S. KHUBALKAR, J.)