



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.7012/2024

M/s Kolbro Group
Through its Proprietor,
Prakash Sahebrao Kolhe,
Aged 53 years, Occ.: Contractor,
Office at Plot No. 8, Flat No. 215,
Satyam Apartment, Dhantoli,
Tq. & Dist. Nagpur-440012

... PETITIONER

...VERSUS...

1. Municipal Council, Warud,
Through its President,
Municipal Council, Warud,
Amravati
2. Chief Officer,
Municipal Council, Warud,
District – Amravati,
Tq. Warud

...RESPONDENTS

Shri S. Alaspurkar, Advocate for petitioner
Shri M.I. Dhatrak, Advocate for respondent No.2

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 24/02/2025

DATE OF PRONOUNCING THE JUDGMENT: 28/02/2025

JUDGMENT

Rule. Rule made returnable forthwith.

2. Heard both the sides. By consent matter is taken up for final hearing at the stage of admission.

3. The petitioner is challenging the impugned order below Exhibit 18, dated 04/09/2024, passed by learned Joint Civil Judge Senior Division, Amravati, in Special Civil Suit No. 164/2023, whereby application under Order 6, Rule 17, read with Section 151 of the Code of Civil Procedure has been rejected.

4. Petitioner herein is original plaintiff and respondents are the original defendants. Plaintiff filed Special Civil Suit No. 164/2023, against defendants for declaration and recovery of amount. In the said suit the plaintiff sought relief for declaration to the effect that the defendants have committed breach of contract with the plaintiff and further sought relief for decree of recovery of amount of Rs.91,95,079/-, in favour of plaintiff along with interest at the rate of 18% per annum from the date of filing of suit. The petitioner filed an application for permission to file documents on 11/03/2024, whereas, defendants have filed application for

rejection of plaint. The documents which petitioner,/plaintiff sought to be brought on record are the letters issued by the defendants dated 04/10/2019, 10/11/2020 and 04/12/2020. These documents are placed on record which are issued by defendants to show that there was continuous cause of action. As the documents are the letters issued by defendant, it is submitted that no prejudice will cause to them. The petitioner moved an application on 11/03/2024, for amendment under Order 6, Rule 17 read with Section 151 of the Code of Civil Procedure, on the ground that the amount of plaintiff towards the work done were deliberately withheld by the defendants.

5. It is the contention of the petitioner that the documents those were inadvertently not placed on record, therefore, pleading to that effect were remained to be mentioned in the plaint. It is further contention that defendant, by suppressing all these communication, filed application under Order 7, Rule 11, for rejection of plaint. The learned Trial Court rejected the application for grant of permission to amend the plaint, though application for placing document on record was allowed. The learned counsel for

petitioner submitted that Trial was yet to commence and therefore, there would not have been any prejudice to defendants, if permission is granted to amend the petition, specifically when application for placing on record document is allowed. Moreover, by way of amendment nature of content between the parties is not going to change.

6. Learned counsel for petitioner relied on following citations :

- (i) Jalaram Flexo Laminates Pvt. Ltd. Vs. Polypet Flexible Packaging Pvt. Ltd., 2018(5) Mh.L.J. 615*
- (ii) Pramod S/o Manoharrao Konge Vs. Shantaram Balkrushna Dhok, 2017(3) Mh.L.J. 223*
- (iii) Bharat Travellers Vs. Sumitrabai Vinayakrao Buty, 2017(6) Mh.L.J. 703*
- (iv) Dattaram Dharma Mayekar and another Vs. Abhimanyu Dharma Mayekar and others, 2012(1) Mh.L.J. 971*
- (v) Hasinabi w/o Abdul Latif Vs. Mohammad Sharif and others, 2024(4) Mh.L.J. 129*
- (vi) State of Bihar and others Vs. Modern Tent House and another, 2017 ALL SCR 1834*

7. As against this, learned counsel for respondent Shri Dhatrak vehemently opposed the application on the ground that the order passed by the Civil Judge Senior Division, is perfectly justified. It is the contention that by way of this amendment, petitioner is changing the cause of action which is not permitted. The amendment application is moved before commencement of trial, however, amendment which change the date of cause of action, cannot be allowed. These are the attempts of the petitioner to brought the suit within limitation.

8. Learned counsel for respondents relied on following citations :

(i) P. A. Ahammed Ibrahim Vs. Food Corporation of India, (1999) 7 SCC 39

(ii) Prabhakar Vs. State of Goa, 2013(6) Mh.L.J. 440

(iii) Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, (2022) 16 SCC 1

9. I have heard both the parties at length. Perused documents, impugned order and considered the citation place on

record by both the parties. It is a matter of record that the suit is filed for declaration and recovery of amount. The plaintiff firm is a propitiatory firm and working in the civil construction consulting Property Assessment, Property Tax assessment, GIS Property Tax Assessment Survey and having office at Nagpur and working since 2010, in Nagpur and Amravati Division. The Municipal Council, Warud, had given publication regarding property tax assessment survey vide e-tendering process on 03/05/2017. This tender was third tender prior to that tender dated 30/09/2016 and 16/04/2017, came to be cancelled. The said tender was confirmed in the name of plaintiff. After negotiations agreement entered into by the parties. As per tender plaintiff performed the work, however, it is his contention that the payment of Rs.91,95,079/-, was outstanding from the defendant, Municipal Council. There was correspondence regarding demanding amount payable by the Municipal Council. There is certificate issued by the Municipal Council, Warud, in regard to the properties which were assessed and they were confirmed the said copy of certificate as per wards and properties which were included in survey is on record.

10. In view of this position, the plaintiff filed application for placing documents on record including various correspondence from plaintiff as well as defendant. The same documents are the documents issued by the defendants, therefore, no prejudice is going to cause. The learned Civil Judge Senior Division allowed the Exhibit 19 i.e., permission to file documents along with list of documents. He also applied for amendment of the plaint under Order 6 Rule 17, to demonstrate that there was continuous cause of action but due to the inadvertence, the said pleadings were remained to be mentioned in the plaint. It is also contention of the plaintiff that petitioner is well aware about the cause of action that by taking undue advantage of bonafide mistake of counsel, in order to illegal gain, a defendants has filed application for rejection of plaint.

11. On perusal of impugned order it appears that the learned Civil Judge Senior Division rejected the application on the count that the application for amendment is moved after filing of application under Order 7, Rule 11 of the Code of Civil Procedure. Secondly, it is in the opinion of the learned Civil Judge Senior

Division, that by way of this proposed amendment, cause of action is going to be extended from 19/08/2019 to 08/12/2020. He posed question to himself that whether such type of letter communications and further explanation regarding the transaction can be permissible in pleading. The learned Civil Judge Senior Division is also of the opinion that by way of this amendment plaintiff is trying to put a new cause of action on the basis of letters work done by him after issuance of a legal notice.

12. Thirdly, it is opinion of the Trial Court that the documents placed on record, there is no acknowledgment date by the defendant, therefore, if this amendment is allowed it will seriously prejudice to the defendants. Accordingly, application came to be rejected.

13. The learned Court considered the judgment of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another, (2022) 16 SCC 1***, specifically paragraph No. 70 Direction Nos. 10 and 11, which reads as under:

“70.....

(x) *Where the amendment changes the nature of the suit*

or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. However, amendment sought is only with respect to the relief in plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before the commencement of trial, the court is required to be liberal in its approach. The court is required to bear in the mind the fact that opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment. The amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate the main issues in controversy between the parties. The amendment should be allowed.”

14. However, in my considered opinion, the learned Trial Court totally erred in understanding the import of judgment. On the first place the amendment is moved before commencement of trial. Secondly, the documents which sought to be placed on record are already allowed by the Court. This document contains the letter issued by the respondent Municipal Council, from which, it can be gathered that these pending bills of petitioner cannot be considered in view of pending PIL. Prima facie it shows that there is some amount due and payable or settlement about the amount due or

payable is not finally concluded. In view of this, if plaintiff seeks permission to amend the pleading to set up his plea of continuous cause of action, that will not prejudice in any way to the respondent, Municipal Council. In fact, prior to commencement of trial, all amendments are required to be liberally granted and at that stage it is not necessary to go into the merit. Where the amendment changes the nature of the suit or the cause of action, the amendment must be disallowed, however, if such amendment set up an entirely new case, foreign to the case set up in the plaint. In my considered opinion, by way of proposed amendment, the claim of the plaintiff is not foreign the case set up in the plaint, nor it is placing entirely new case. In fact, it is only in respect to the relief in plaint and is predicated on facts which are already pleaded in the plaint. Ordinarily, such amendment is required to be allowed.

15. Learned counsel for petitioner relied on ***Jalaram Flexo Laminates Pvt. Ltd.*** (supra), in support of his contention that even if application for amendment of plaint is filed after application for rejection of plaint is filed, amendment application needs to be decided first. In the said matter this Court observed that plaintiff

has pleaded that after receiving last amount on 30/10/2013 further amount of Rs.31,05,518/- is still due and payable for goods supplied to the defendant, therefore, cause of action is already pleaded. By amendment plaintiff wants to plead filing of petition and continuous cause of action. In view of this, rejection of application under Order 7, Rule 11 and allowing amendment of plaint is upheld.

16. Learned counsel for petitioner also relied on ***Pramod Manoharrao Konge*** (supra), wherein, this Court held that the application filed by defendant for rejection of plaint and application filed by plaintiff for amendment of the plaint are there then application for amendment of plaint needs to be considered on its merit before consideration of application for rejection of plaint.

17. Learned Counsel also placed Reliance on ***Bharat travellers*** (supra), wherein, similar view is taken as taken in ***Pramod Manoharrao Konge*** (supra).

18. Learned counsel placed Reliance on ***Dattaram*** (supra), wherein, this Court held that an amendment application can be

allowed if it results in bringing the facts before the Court which would facilitate the dispute between the parties being completely adjudicated.

19. Learned counsel for petitioner also placed reliance on *Hasinabi* (supra), wherein, petitioner defendant was illiterate pardanashi lady and unable to understand pleadings in written statement filed by her in suit. Proposed amendment is filed to clarify contents of gift deed about which the defendant already pleaded. It is held that amendment is not changing the nature and character of the suit or defence as well as not cause prejudice to plaintiff.

20. Learned counsel for petitioner placed reliance on *The State of Bihar Vs. Modern Tent House* (supra), in support of his contention that where the proposed amendment is on fact and the applicant in substance seeks to elaborate the facts originally pleaded and if it is in the nature of amplification of the pleading already taken, if amendment is allowed, it would neither result in changing the pleadings already taken nor result in withdrawing any

kind of admission and if allowed no prejudice is going to cause as the initial burden to prove the case continuous to remain on the plaintiff and trial is not yet completed. In such circumstances, amendment should have been allowed.

21. Learned Counsel for respondent relied on *P. A. Ahammed Ibrahim* (supra), however, the citation relied is of no help to the respondent as it is in respect of the application under Order 6, Rule 17, held must to be in instituted suit. Any application filed under the provisions of different statute cannot be treated as a suit and if the amendment would introduces a totally new cause of action and change the nature of the suit it would also introduce a totally different case which is inconsistent with the prayer made for referring the dispute to the arbitrator such amendment would cause serious injustice. However, in the present matter as held that there is no introduction of any totally new cause of action which change the nature of suit.

22. Learned Counsel also relied on *Prabhakar Xembu Bhandari* (supra), wherein paragraph No. 13 this Court observed as

under :

“There can be no dispute about the proposition of law as established by the ratios in the decision cited by Ms. Agni. It is well established principle that the Court should allow all amendments that would be necessary for determining the real question in controversy between the parties. Merely because the party fails to include certain facts in the original pleadings and files an application subsequently for including those facts, the application cannot be rejected solely on the ground that the applicant was well aware of the facts proposed to be brought on record by way of amendment and ought to have pleaded the same in the original pleadings. What is prohibited by way of an amendment is only to alter cause of action in the suit or to introduce an entirely new or inconsistent cause of action which would virtually amount to substitution of a new plaint or new cause of action in the place of the original plaint. In fact the very provision of Order 6, Rule 17 is to ensure that the parties get an opportunity to place on record all the relevant facts in their pleadings so as to promote the ends of justice and not defeat it. For that purpose however, the factors that have been enumerated above must be taken into consideration. The application of the petitioners is required to be considered against the backdrop of the above legal position.”

23. There is no dispute over the ratio laid down in this judgment. In fact, it also clarifies that if amendment is necessary for determining the real question in controversy between the parties should be allowed. Merely because the party fails to improve certain

facts in the original pleading and files and application subsequently for including those facts the application cannot be rejected solely on the ground that the applicant was well aware of the fact proposed to brought on record by way of amendment, which is there already in the pleading.

24. My attention is drawn by the learned counsel for petitioner to the provision of the Code of Civil Procedure Order 7, Rule 13, whereby, if plaint is rejected under Order 7, Rule 11, the plaintiff is not precluded from filing suit by proper declarations. As such, even if it is presumed that some different date or continuous cause of action is pleaded and on that ground a plaint is rejected, the same can be filed as per above provision.

25. In my considered opinion in *LIC versus Sanjay builders* (supra), it is made more clear that top most reason to allow the amendment application is to avoid multiplicity of proceeding, if amendment is necessary to determine the real question in controversy, such amendments are to be allowed.

26. Learned Judge misinterpreted the judgment in *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another*, (2022) 16 SCC 1, there is no new cause of action which this petitioner wants to substitute. It is the letters issued by the defendants, from which, it can be gathered that his claim was kept pending for the reason of one PIL No. 21/2019, pending with this High Court. Thus, there is no refusal to pay the amount due, as an abundant precaution the plaintiff filed suit. If amendment is not allowed, the documents which are allowed to be placed on the record to show that there was continuous cause of action cannot be proved. Therefore, the learned Civil Judge Senior Division ought to have allowed the application for amendment. Moreover, at this stage, there is no necessity to decide merits of amendment. Limitation is mixed question of law and fact and it can be proved by leading evidence.

27. Considering these facts, pleadings and documents on record and the settled law position the order passed by learned Civil Judge Senior Division is patently erroneous and it is liable to be set aside. Accordingly, I proceed to pass the following order:

ORDER

- (i) Writ Petition is allowed.
- (ii) Order dated 04/09/2024, passed by learned 16th Joint Civil Judge Senior Division, Amravati, in Special Civil Suit No. 164/2023, is hereby quashed and set aside.
- (iii) Application below Exhibit 18 dated 11/03/2024, is hereby allowed.
- (iv) Amendment to be carried out within three weeks from passing of this order.

The Writ Petition stands disposed of.

(Smt. M.S. Jawalkar, J.)

Jayashree..