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IN THE HIGH COURT OF BOMBAY AT GOA.

MISC. CIVIL APPLICATION NO. 107 OF 2026

IN

SECOND APPEAL NO. 30 OF 2014

MUNI RAJ,

...APPLICANT

~ VERSUS ~

NARAYAN KRISHNA MALWANKAR AND
5 ORS.

...RESPONDENTS

APPEARANCES:

for the Appellant/
Applicant.

*Mr V. A. Lawande, Mr Parimal Redkar
and Ms Smita Gawas, Advocates.*

for the Respondent No.6

*Mr Gauravvardhan A. S Nadkarni,
Advocate.*

for the Respondent Nos.4
and 5

*Mr Vibhav Amonkar and Mr Omkar
Bhave, Advocates.*

CORAM : AMIT S. JAMSANDEKAR, J.

Dated : 24th April, 2026.

ORDER

1. Heard the learned Counsel for the Appellant and the learned Counsel appearing for the Respondents.
2. By the present Miscellaneous Civil Application in the Second Appeal, the Appellant seeks to amend the plaint filed on 19.07.2008. The Second Appeal was admitted on 16.02.2018.
3. By the proposed amendment, the Appellant seeks to amend the plaint in terms set out in the Schedule to the application, which reads as follows:-

*“A) after prayer clause "b" in the Plaint add the following prayer
"c) In the alternative and without prejudice and only in the event this Hon'ble Court ultimately concludes that the Plaintiff is not entitled for grant of specific performance, this Hon'ble Court may be pleased to direct the Defendant no 1 and 2 and the subsequent purchasers ie. Mr Bharat Kanu Rathod, Mr Rohan R Harmalkar, Aparna Anand Harmalkar and Shri Ashish Arya to jointly and or severally pay to the Plaintiff Rs 2,00,000/- (Rupees Two Lacs only) which was received by the Defendant no 1 and 2, together with interest at rate 12% per annum or any other rate as this Hon'ble Court deem fit and from such dates as this Hon'ble Court deems just, along with such compensation/ damages as may be found appropriate
B) After Defendant no 2 amend the plaint by impleading the subsequent purchasers i.e.a) Mr Bharat Kanu Rathod R/o Bhavani Shankar Road, Masjid Gali, Bashir Mama Chawl, R No. 3, Dadar (W), Mumbai, 400028 b) Mr Rohan R Harmalkar c) Aparna Anand Harmalkar Both R/o 412/1/B, Sinquerirn, Divar Piedade, North Goa d) Shri Ashish Arya WZ-885, 1" Floor Rani Bagh, Saraswati Vihar, S.O. North West Delhi-1 10034”*

4. The Misc. Application seeking an amendment is made in the following facts and circumstances:

- i) The Appellant filed a Civil Suit seeking specific performance of the agreement dated 14.05.2005. The suit was instituted on 19.07.2008. By the said suit, the Appellant sought the reliefs in terms of prayer clause (a) and (b) which read as follows:-

“(a) For decree of specific performance of the agreement dated 14th May, 05, directing the Defendants to execute the Sale Deed with respect to the property situated at Village Arpora, Bardez and surveyed under No.23/6 after the receipt of the balance amount of consideration.

(b) For a Permanent Injunction, restraining the Defendant No.1 & 2, their agents and servants from selling, alienating or creating any third party right with respect to the suit property and also restraining the Defendants from carrying out any improvements in the suit property.”

- ii) The suit came to be dismissed by the Trial Court on 31.03.2012. At that stage, Respondent Nos. 1 and 2 were the only Defendants to the suit filed by the Appellant.
- iii) Aggrieved by the judgment and order of the Trial Court, the Appellant preferred an Appeal on 25.04.2012. The said First

Appeal was heard by the Learned District and Sessions Court, Panaji, and was dismissed on 20.08.2013.

- iv) There are concurrent findings of fact against the Appellant.
- v) The Appellant thereafter preferred the present Second Appeal on 25.11.2013. The Second Appeal was admitted on 16.02.2018 on the following substantial questions of law:-

“(i) Whether the finding by the Lower Appellate Court that the appellant was not ready and willing to perform his part of the contract only on account of there being a shortfall of Rs.50,000/- in so far as the payment agreed to be made under clause (2) of the agreement is concerned, is perverse ?

(ii) Incidentally, whether the said condition stood modified by the money receipt Exh.22 ? (ii) Whether the Courts below ought to have drawn adverse inference against the respondents for not having entered into the witness box, to substantiate their defence ?

(iii) Whether the First Appellate Court was in error in invoking the provisions of Article 1156 of the Portuguese Civil Code in the absence of any pleadings or proof that the respondents/defendants were governed by the Portuguese Law and were married under the Communion of Assets ?

(iv) Whether the discretion exercised by the Courts below refusing to grant specific performance can be said to be perverse in the facts and circumstances of the case ?”

- vi) After dismissal of the First Appeal on 20.08.2013, Respondent Nos. 1 and 2 sold the suit property to Respondent No. 3 on 4.04.2013. Respondent No. 3, in turn, transferred the property to Respondent Nos. 4 and 5 on 18.2.2019. These transactions were effected in the absence of any interim relief or stay in favour of the Appellant.
- vii) On 18.08.2025, the Appellant filed an application seeking an amendment to implead Respondent Nos. 3 to 6 as subsequent purchasers. The said application was allowed on 17.09.2025.
- viii) The Second Appeal was taken up for final hearing on 13.01.2026 and was heard substantially, and was kept part heard. Thereafter, it was finally heard on 30.01.2026 and 13.02.2026. The matter was thereafter kept for filing written submissions.
- ix) Instead of filing written submissions, the Appellant sought to move an application across the bar on 20.02.2026 seeking amendment of the plaint. The Appellant was directed to file a formal application before the Registry, pursuant to which the present application came to be filed on 23.02.2026.

5. By the present application, the Appellant seeks to amend the plaint to incorporate an alternative relief, as set out in the schedule. It is contended that the proposed amendment to the plaint to incorporate an alternative relief is clarificatory in nature, does not introduce any new factual foundation, does not alter the nature of the suit, and is consistent with the pleadings and evidence on record. It is further contended that the amendment is permissible under Section 22(2) of the Specific Relief Act, 1963 and the Code of Civil Procedure, 1908.
6. Learned Counsel for the Appellant submits that Section 22 (2) of the Specific Relief Act, 1963 permits amendment of the plaint at any stage of the proceedings and therefore, the amendment can be allowed even at the stage of Second Appeal. In support of this submission, Mr Lawande cited the judgment of the Supreme Court in ***Madhav Housing Private Limited and others Vs Suchita Baburao Chavan, (2019) SCC Online Bom 5952*** and submitted that the amendment to the plaint can be allowed even at the execution stage. It is submitted that the amendment is *bona fide*, in the interest of justice, and would not cause any prejudice to the Respondents. It is further submitted that in the event the Second

Appeal fails, the Appellant would be entitled to a refund of the part consideration paid under the agreement dated 14.05.2005.

7. *Per contra*, Mr. Nadkarni, the learned Counsel for the 6th Respondent, opposes the application, contending that this Court, while exercising jurisdiction under Section 100 of the Code of Civil Procedure, 1908, does not have the power to allow amendment of the plaint at the stage of Second Appeal. It is further contended that the application is not *bona fide*, having been filed after the matter was substantially heard, and that allowing the amendment would cause serious prejudice to the Respondents. He submitted that the application should not be heard only because the appeal is admitted by framing questions of law. By virtue of Section 100(5) of the Code of Civil Procedure 1908, it is always open for the Respondents to contend that there are no substantial questions of law that arise. He submitted that in the present matter, the substantial questions of law were framed in the absence of the Respondents. Therefore, at the final hearing stage, the Respondent shall establish that the present Second Appeal is not maintainable.

8. I have considered the submissions and perused the record. I am not inclined to allow the application seeking amendment to the plaint for the following reasons:

- (i) The application has been filed after the matter was substantially heard on various dates and was kept for filing written submissions. Instead of filing written submissions on 20.02.2026, the Appellant attempted to move the application across the bar. The conduct of the Appellant indicates a lack of *bona fides*.
- (ii) The amendment seeks to introduce alternative relief for a refund of the consideration paid by the Appellant under the agreement dated 14.05.2005. The application has been filed after an inordinate and unexplained delay. The Appellant could have sought an amendment when the subsequent purchasers were added as party Respondents to the present Second Appeal. The Appellant chose not to do that. Further, the Appellant also chose to restrict the prayers in the suit, seeking only the specific performance and injunction. The Appellant did not even seek an alternate prayer for damages.

- (iii) If the Appellant intended to seek such relief, the same ought to have been claimed at the stage of the suit or, at the latest, in the First Appeal. The Appellant failed to do so even at the stage of institution of the Second Appeal.
- (iv) I agree with the submissions of Mr Nadkarni that it is always open for the Respondents to invoke the provisions of Section 100(5) of the Code of Civil Procedure, 1908. The jurisdiction of this Court under Section 100 of the Code of Civil Procedure is confined to the determination of a substantial question of law. In the absence of such questions, this Court cannot exercise jurisdiction to permit amendments which would alter the nature of the original proceedings. Assuming that, a substantial question arises in the Second Appeal, then the amendment can only be allowed in exceptional circumstances and not in a routine manner by taking a liberal approach. In this case, the Second Appeal was admitted by framing substantial questions of law. However, I agree with the submissions of Mr. Nadkarni that just because the Second Appeal is admitted, there are no exceptional circumstances to allow the amendment.

- (v) I further agree with the submissions of Mr. Nadkarni that the provisions of Section 22(2) of the Specific Relief Act must be read in consonance with Section 100 of the Code of Civil Procedure. If not so read, it would permit parties to amend pleadings at the stage of Second Appeal without any restrictions, thereby defeating finality in litigation. Therefore, the provisions of Section 22 (2) of the Specific Relief Act would be applicable at the stage of Second Appeal only in exceptional facts and circumstances. Further, such an amendment cannot be allowed to seek substantive relief that would require pleadings, evidence, and, in effect, a fresh trial and adjudication. At the most, an amendment to seek a relief which is ancillary in nature to the main prayer may be granted, after considering the facts and circumstances of the case. The judgment of the Supreme Court in ***Madhav Housing Private Limited and others*** (supra) cited by Mr. Lawade cannot be of any assistance to the Appellant because in that case the party was allowed to amend the pleadings at the stage of the execution of a decree to only seek an ancillary prayer in the aid of the main prayer of which decree was already granted by the Court.

- (vi) In the present case, the Appellant is seeking a substantive relief for which pleadings, evidence and a fresh trial and adjudication would be required.
 - (vii) Respondent Nos. 3 to 6, who are subsequent purchasers and were impleaded only at the stage of Second Appeal, have had no opportunity to contest such a claim of the Appellant.
 - (viii) It was not the case of the Appellant at any stage that the Appellant is entitled to get a refund of the part payment made by the Appellant to Respondent Nos. 1 and 2. Therefore, there was no occasion for Respondent Nos. 1 and 2 to meet with that claim of the Appellant. Allowing the amendment would certainly require remand of the matter for trial, which cannot be permitted at the instance of a party who has failed to exercise due diligence.
9. In view of the above, allowing the present application would cause serious prejudice to the Respondents. The application lacks *bona fides* and has clearly been filed solely to delay the hearing and final disposal of the Second Appeal.

10. Accordingly, the **Miscellaneous Civil Application stands dismissed.**
11. No order as to costs.
12. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]