

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5241 OF 2024

Datta Khandu Atakari

..Petitioner

Versus

Dhondibhau Ranu Mhaske
Decd.Thr Heirs And Legal
Representive And Ors

...Respondents

Mr. Uday B. Nighot, for the Petitioner.

Ms. Aditi Naikare, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATE : 14th JANUARY 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. This petition under Article 227 of the Constitution of India takes exception to an order passed by the learned Civil Judge on 28th February, 2024, whereby an application preferred by the respondents-plaintiffs for amendment in the plaint (Exh. 178), came to be allowed, subject to payment of costs.
3. In fact, the respondents-plaintiffs had filed an earlier application seeking amendment in the plaint (Exh. 167) and by an order dated 23rd August, 2023, the said application was rejected by the learned Civil Judge. It appears, under a months time, the respondents-plaintiffs again preferred the second application (Exh. 178) seeking amendment in the plaint.

4. In the said application, the plaintiffs sought to incorporate, by way of amendment, the averments, which were disallowed by the learned Civil Judge by the order dated 23rd August, 2023, and certain additional averments and prayers, especially a prayer for rectification of the instrument under Section 26 of the Specific Relief Act. In the reply to the said application for amendment, the petitioner-defendant had specifically contended that, an earlier application seeking identical amendment (Exh. 167), was already rejected by the Court.

5. It appears that, in the second application for amendment (Exh. 178), the plaintiffs did not advert to the fact that, an application for amendment was earlier filed and it was rejected by the Civil Court by order dated 23rd August, 2023. The learned Civil Judge also failed to note the fact that, such an application was already filed and rejected, despite a specific objection having been raised by the defendant on the said count.

6. The learned Counsel for the respondents-plaintiffs fairly submitted that, the proposed Paragraphs 10A to 10C were part of the amendment, which was disallowed by the learned Civil Judge by order dated 23rd August, 2023.

7. Evidently, the learned Civil Judge completely missed the fact that, an earlier application for amendment, seeking substantially the same amendment, except the averments regarding the rectification of the instrument, was already rejected.

8. As the learned Civil Judge failed to notice the factum of rejection of earlier application, the impugned order came to be passed even allowing the amendments which were already disallowed. Plainly, the learned Civil Judge could not have allowed the amendments, which were already disallowed. It is trite, the principles of res judicata apply at different stages of the same proceeding.

9. Faced with the aforesaid situation, the learned Counsel for the respondents-plaintiffs, on instructions, submits that, the respondents-plaintiffs would restrict the second application for amendment (Exh. 178) to Paragraph No. 10 D, 14 A1 and 14 B1 and the consequential amendments.

10. In view of the aforesaid statement and the fact that the Trial Court misdirected itself in not considering the import of the rejection of earlier application for amendment (Exh. 167) in the plaint, the Court considers it appropriate to quash and set aside the impugned order and remit the application for

amendment for afresh determination to the Trial Court, to the extent of the proposed amendment in Paragraph 10D, 14 A1 and 14 B1 and the consequential amendments only.

11. Hence, the following order:-

:: O R D E R ::

- i) The petition stands partly allowed.
- ii) The impugned order stands quashed and set aside.
- iii) The application for amendment (Exh. 178) is remitted back to the Trial Court for afresh determination, after providing an effective opportunity of hearing to the parties, restricted to the proposed amendment in Paragraph 10D, 14 A1 and 14 B1 and the consequential amendments only.
- iv) The learned Civil Judge is requested to hear and decide the said application as expeditiously as possible.

[N. J. JAMADAR, J.]