

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 18620 OF 2024

M/s Pyramid Alliance LLP
Through its Partner
Mr. Deepak Vilasrao Jagtap

...Petitioners

Versus

Karan Celista "A" Wing Cooperative Housing
Society Limited & Ors

...Respondents

Mr. Yuvraj Narvankar, for the Petitioners.
Mr. Sattyendra Muley (through VC), for Respondent Nos. 1 to 3.
Mr. Sachin Khadagle, for Respondent No.12.

CORAM: N. J. JAMADAR, J.

RESERVED ON : 16th FEBRUARY 2026

PRONOUNCED ON : 24th APRIL 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 12th July 2024, passed by the learned Civil Judge, Pune, whereby the learned Civil Judge, ruled that the application for amendment in the Plaint preferred by Respondent Nos. 1 to 3 - original Plaintiffs would be decided before deciding the application for the rejection of the Plaint, taken out by the Petitioner-original Defendant No. 11.

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3. Respondent Nos. 1 to 3 are the Cooperative Housing Societies situated at a contiguous block of land admeasuring 1 H and 15 R out of Survey No. 8, Village Balewadi, Taluka Haveli, District Pune (“the larger property”). Defendant Nos. 3 to 10 were represented to be the owners of the larger property. Defendant Nos. 1 and 2 developed the larger property and constructed three buildings thereon. Defendants Nos. 1 to 10 committed default in the discharge of their statutory obligations under The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management And Transfer) Act, 1963 (“MOFA, 1963”). Belatedly, three cooperative housing societies were formed for each of the wings/buildings (“suit buildings”).

4. The Plaintiffs claim sanctioned layout and the buildings plan disclosed only three buildings represented by the Plaintiffs-societies. The entire available construction potential has already been utilized for the construction of the three buildings. Yet, the Defendants professed to construct building - “D” on the larger property and alter the building plans without the informed consent of the societies and its members. To this end, the Defendants have entered into a Development Agreement with Defendant No.11-the Petitioner herein. The Defendants thus intended to carry out further development over the larger property exploiting the development potential to which they were not entitled to and create third party rights in violation of the provisions of MOFA,

1963, and the contractual obligation of the Defendants, to the prejudice of the rights of the Plaintiffs.

5. Hence the Plaintiffs have instituted the suit seeking declaration that the Defendants have no right and authority to carry out any development beyond the sanctioned layout and building plan dated 25th September 2012, to carry out any development and construction of any nature on the larger property and or any part of the suit buildings and or utilise any construction potential available qua the larger property and suit buildings without express and informed consent of the Plaintiffs-societies and its members and for the consequential reliefs of injunction.

6. Defendant No.11 appeared and filed applications for rejection of the Pliant on the ground that a suit simplicitor without seeking declaratory relief is not tenable; the suit seeking negative declaration is also not tenable and that the Plaintiffs have not properly valued the suit claim and furnished the requisite Court fees.

7. The Plaintiffs resisted the application. Simultaneously, the Plaintiffs filed an application seeking amendment in the Plaint, asserting *inter alia* that the Defendants have filed application for rejection of the Plaint claiming that the suit for negative declaration is not maintainable and, thus, to avoid technical issues, the Plaintiffs proposed to amend the Plaint so as to add the prayer of declaration

that only the Plaintiffs-societies are entitled to use development potential and the rights that may accrue on account of the the change in the Development Control Regulations etc and the Defendants have no right whatsoever to develop the larger property any further.

8. The parties were at issue about the order of hearing of the applications for rejection of the Plaint and the amendment in the Plaint.

9. By the impugned order, the learned Civil Judge ruled that the application for amendment in the Plaint would be taken up for hearing before considering the applications for rejection of the Plaint.

10. Being aggrieved, Defendant No.11 has invoked the Writ jurisdiction.

11. I have heard Mr. Yuvraj Narvankar, the learned Counsel for the Petitioner, Mr. Sattyendra Muley, the learned Counsel for Respondent Nos. 1 to 3, and Mr. Sachin Khadagle, the learned Counsel for Respondent No.12, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

12. Mr. Narvankar, the learned Counsel for the Petitioner submitted that the course adopted by the learned Civil Judge to first hear the application for amendment and, thereafter, the applications for the rejection of the Plaint has the potentiality to cause grave prejudice to Defendant No.11. If the averments in the application for amendment are considered, according to Mr. Narvankar, the intent of the Plaintiffs

in seeking the amendment in the Pleint becomes explicit. The amendment is sought for the reason that, Defendant No.11 has filed application seeking rejection of the Pleint. In such situation if the application for amendment is heard first and allowed, Defendant No.11 would be completely displaced of the grounds on which the rejection of the Pleint is sought.

13. Secondly, Mr. Narvankar would urge, that the applications for rejection of the Pleint were filed prior in time, Replies thereto were also filed and only thereafter realising the likely prospect of rejection of the Pleint, the Plaintiffs have sought the amendment in the Pleint. Therefore, the learned Civil Judge ought to have heard the applications for rejection of the Pleint first and, thereafter, if warranted, hear the application for amendment in the Pleint.

14. To buttress this submission, Mr. Narvankar placed a very strong reliance on the judgment of this Court in the case of **Vivienda Luxury Homes LLP Represented herein through its Designated Partner, Nitin Bhatia Vs Gregory & Nicholas Through its Partners, Rahul Nicholas Shah and Ors,**¹ wherein a learned Single Judge *inter alia* enunciated that it is the chronological order in which issues were brought to the fore that seemed to partly dictate the opinion of the Trial Court. It stood to reason that the issue that surfaced first in the course of proceedings and was then reasoned before the Court should be what was settled first

1 2025 SCC OnLine Bom 2510.

before moving on to the next issue, especially when such an issue travelled to the foundation of the suit. An issue of subject matter jurisdiction travelled to the very root of the dispute and, therefore, the challenge premised on lack of jurisdiction was required to be determined before considering an application for amendment in the Plaintiff.

15. In opposition to this, the learned Counsel for Respondent Nos. 1 to 3, would submit that it is settled law that when an application for rejection of the Plaintiff and an application for amendment in the Plaintiff were simultaneously filed before the Court, the application for amendment in the Plaintiff is required to be determined first. It was submitted that the decision in the case of **Vivienda Luxury Homes LLP (Supra)** would not govern the facts of the case at hand as it is not a case of lack of inherent jurisdiction. The learned Civil Judge has thus committed no error in determining the order in which the applications would be heard.

16. The order of hearing of the applications assumes significance where the outcome of one would have a bearing on the outcome of the other. Ordinarily, the application for amendment in the Plaintiff is heard first as such a course averts duplicity of exercise and avoids multiplicity of the proceedings. The consequences that ensue the rejection of the Plaintiff predominantly inform the order of hearing of such applications.

Rejection of the Complaint does not preclude the Plaintiff from instituting a fresh suit in respect of the same cause of action, albeit after rectifying the defects for which the Complaint was rejected. A party can be saved of the trouble and expenses of instituting a fresh suit, after suffering an order of rejection of the Complaint, by deciding the application for amendment in the Complaint first, is the rationale underlying the said course.

17. In the case of **Pramod S/o Manoharrao Konge Vs Shantaram Balkrushna Dhok**,² a learned Single Judge of this Court commended the procedure for the hearing of the applications for amendment in the Complaint first, where an application for rejection of the Complaint has been filed by observing that, the provisions of Order VII Rule 13 of the Code of Civil Procedure, 1908 (“the Code”) lay down that if the Complaint is rejected under Order VII Rule 11 of the Code, then the Plaintiff is not precluded from presenting a fresh Complaint in respect of the same cause of action. Thus, if the application for rejection of the Complaint is decided first and the Trial Court finds favour with the Defendant, then the Complaint shall be rejected and it would be permissible for the Plaintiff to file fresh Complaint including the proposed amendment in the pleadings. Such a course would not serve any purpose.

² 2017(3) MhLJ 223.

18. Following the aforesaid pronouncement in the case of **Bharat Travellers Vs Sumitrabai Vinayakrao Buty**,³ another learned Single Judge of this Court held that whenever an application for amendment is filed in the face of an application by the opponent for rejection of the Plaint, the former application would have to be considered first on its merits before considering the application for rejection of the Plaint, and that, it makes no difference whether the application was filed under Rule 11(a) or under Rule 11(d) of Order VII of the Code.

19. The learned Single Judge went on to observe as under:

“13.

It would not be procedurally correct to decide the application for rejection of the plaint first, since even if the defendant were right and the plaint were to be rejected, it would still be permissible for the plaintiff to file a fresh suit including the subject matter of the proposed amendment within it and no practical purpose would be served in having the defendant's application heard first and then relegating the plaintiff to file a fresh suit with amended plaint.”

20. The approach to be adopted by the Civil Court is informed by the nature of the order of rejection of the plaint, especially the consequences it entails. Rule 13 of Order VII provides that, notwithstanding the rejection of the plaint on any of the grounds mentioned in Rule 11, the Plaintiff shall not be precluded from

³ 2017 (6) MhLJ 703.

instituting a fresh suit on the same cause of action. Thus, when the Plaintiff can institute a fresh suit on the same cause of action, the Plaintiff need not be relegated to suffer the order of rejection of the plaint and then, after making amends, institute a fresh suit, is the principle which resonates the decisions in the cases of **Pramod Manoharrao Konge (supra)** and **Bharat Travellers (supra)**.

21. A slightly different consideration may be required to be bestowed where the rejection of the Plaint is sought on the ground that the Court lacks inherent jurisdiction to entertain the Suit. In such a situation a question may arise whether the Court lacking in inherent jurisdiction would be competent to decide an application for amendment in the Plaint. If it is a case of lack of inherent or subject matter jurisdiction, it could be urged that the application for the rejection of the Plaint be determined first as the Court lacking in inherent or subject matter jurisdiction may not have the jurisdictional competence to even delve into the question of amendment in the Plaint.

22. The decision in the case of **Vivienda Luxury Homes LLP (Supra)**, on which reliance was placed by Mr. Narvankar, deals with such a situation. In that case, the jurisdiction of the Commercial Court was questioned on the ground that the Plaint therein, as it stood, failed to demonstrate that the disputes raised therein fell within the ambit of the

“commercial dispute” defined under the Commercial Court Act, 2015. In that context, the learned Single Judge enunciated the law as under:

“25. Secondly, there exists a distinction between the subject-matter jurisdiction and the territorial jurisdiction of a Court of law that this court must bear in mind. Territorial jurisdiction refers to the geographical area wherein a Court is conferred with the power to take cognizance of and adjudicate upon disputes. While territorial jurisdiction is tied into the geographical area where a Court is competent to exercise its function, subject-matter jurisdiction has to do with the nature of the dispute. Subject-matter jurisdiction courts travel to the very epicentre of the dispute and is, in this aspect distinct from pecuniary or territorial jurisdiction as it accounts for the innate character and identity of a dispute. Such character or identity of a dispute is what dictates the area of the law that is attracted and consequently determines the court of law that is conferred with the authority to decide the dispute. In other words, while territorial jurisdiction may be treated as a technicality that may not after the court of first instance has ruled over a dispute, outweigh the cause of justice, a ruling by a court lacking subject matter jurisdiction is a nullity.

26. Further, the Court seized with the suit has to examine whether the essential ingredients that would invite the jurisdiction of the court are disclosed, and if it is found that such ingredients are missing, it would render the court lacking in jurisdiction. A court that does not have jurisdiction, cannot be allowed to confer itself with jurisdiction by way of an amendment of pleadings.

27. The argument of the learned counsel for the petitioner that an opportunity to rectify the defects has to be afforded to the

petitioner, does not hold weight in light of the fact that, an amendment that seeks to rectify the absence of essential juridical facts conferring jurisdiction upon the court cannot be stated to be merely curing of defects. Such an amendment would lead to a change in the very nature of the dispute and isolate the character of the plaintiff that is filed from the character of the amended plaintiff. Further, to state that since the proceedings are underway, it would cause prejudice to the petitioners if the plaintiff is now returned, does not find favour with this court. No saving of judicial time can counteract the lack of jurisdiction. If for want of convenience of the petitioners, the suit is allowed to be heard and decided and subsequently, it is found that the suit was not instituted before a Court of competent jurisdiction based on subject matter, the entirety of the judicial exercise will be futile and a nullity.

... ..

29. A perusal of the impugned order will make it clear that the same is a well reasoned order and not a non-speaking one. The Trial Court has made an observation that since, the application for amendment has been filed only after hearing the arguments advanced by the respondents in relation to the application for return of plaintiff, the application for return of the plaintiff has to be decided first. It is not a matter purely of the Trial Court's discretion over the course of proceedings in terms of what the Trial Court prefers to hear and adjudicate when. Rather, it is the chronological order in which issues are brought to the fore that seem to partly dictate the opinion of the Trial Court. It stands to reason that the issue that surfaces first in the course of proceedings and is then reasoned before the Court shall be what is settled first before moving on to the next issue, especially when such an issue travels to the foundation of the suit.”

23. It would be contextually relevant to make a reference to another judgment of this court in the case of **Akshay Quenum Vs Royce Savio Pereira**,⁴ wherein in a somewhat similar situation, another learned Single Judge of this Court enunciated the law as under:

“9. In my opinion, it is not in every case that the Court would consider the amendment application first, and then consider the application under Order 7 Rule 11 for rejection of plaint or under Order 7 Rule 10 CPC for return of plaint. The correct approach that the Court would have to follow would be to examine the plaint as it stood when filed, and consider whether on a holistic reading of the plaint, the Court totally lacked or inherently lacked jurisdiction to entertain the suit. If it did, it may not be appropriate for the Court, if it inherently lacks jurisdiction, either because the statute bars its jurisdiction or where the statute confers jurisdiction to try particular types of suits before a different forum, to allow an amendment application and bring a suit within its jurisdiction.

10. Similarly, if the plaint as originally filed, was of a valuation which was higher than the pecuniary jurisdiction of the Court which had issued summons, such Court would lack the pecuniary jurisdiction to proceed with the matter. Such a Court would then not be permitted to allow an amendment to reduce the value of a suit, to bring it within the pecuniary jurisdiction of that Court. In other words, the Court would have to examine in the first place, whether its act of issuing summons in a

⁴ 2025 SCC Online Bom 3600.

suit, where it lacked the jurisdiction to entertain such a suit, (either because it was beyond its pecuniary jurisdiction or because it was barred by a law), was itself void and a nullity.

11. With this principle in mind, it was incumbent upon the Trial Court to have first examined the plaint as it stood when filed and concluded for itself whether the plaint partook of a commercial suit, as argued by the Petitioners/Defendants. It ought to have also examined simultaneously whether the amendment application, if granted, would change the nature of the suit and bring it within the jurisdiction of the Court i.e. to see whether it would amount to converting what was originally a commercial suit into a regular civil suit, which the Trial Court would otherwise have jurisdiction to entertain. It is only after examining the effect of the amendment on the plaint and the averments made in the plaint as it originally stood, that the Trial Court would have to decide whether amendment should be allowed, and conversely, the application for return of the plaint would have to be rejected. The converse equally applies.

12. Unfortunately, the Trial Court, has in para 10 of its order, taken a view that it had to consider the amendment application and whether its grant would bring the suit within its pecuniary jurisdiction, and only if amendment application fails to bring the suit within its jurisdiction, the application for return of plaint would be considered on merits. This, in my view, is an erroneous approach, as what is necessary is for the Court to consider whether, in the first place it would have the

jurisdiction to issue summons/notice in the suit as framed, and if it totally lacked jurisdiction, it would either have to reject the plaint under Order 7 Rule 11 or return the plaint under Order 7 Rule 10 to be presented before a Court with jurisdiction. It would also have to examine the effect of the amendment, which, if allowed, would bring the suit, which was otherwise barred, within its jurisdiction.”

(emphasis supplied)

24. A correct reading of the judgments in the cases of **Vivienda Luxury Homes LLP (Supra)** and **Aksha Quennum (Supra)** would indicate that, in both the cases, this Court was dealing with a situation where the contention of the Defendant was that the Court lacked inherent jurisdiction. If the Court lacks inherent jurisdiction, then the question whether the Court lacking jurisdiction could entertain an application for amendment of the plaint would warrant adjudication. In that context, this Court has enunciated that the correct procedure that the Court ought to follow would be to examine the plaint as it stood when filed, and consider whether on a holistic reading of the plaint, the Court totally lacked or inherently lacked jurisdiction to entertain the suit.

25. Thus, the ratio enunciated in the cases of **Vivienda Luxury Homes LLP (Supra)** and **Aksha Quennum (Supra)** cannot be imported to all the cases where the application for amendment is filed after the Defendant takes out an application for rejection of the Plaint to sustain

a broad proposition that, in such an eventuality, the Court must first decide the application for rejection of the plaint.

26. The appropriate approach would be to examine, whether the Court lacks inherent or subject matter jurisdiction. If such a contention is raised and the Court *prima facie* finds such contention worthy of consideration, the Court may decide to hear the application for rejection of the Plaint first as the Court may then lack jurisdiction to consider the prayer for amendment in the Plaint also. In all other cases, the application for amendment ought to be decided before considering the prayer for rejection of the Plaint.

27. Reverting to the facts of the case at hand, it is imperative to note that Defendant No.11 has not questioned the inherent jurisdiction of the Court to entertain the Suit. It is not the case that the Civil Court lacks subject matter jurisdiction. Rejection of the Plaint is sought on two grounds. One, the suit for negative declaration and injunction without seeking declaration in favour of the Plaintiffs, is not tenable. Two, the suit claim is not properly valued and the requisite Court fee has not paid. None of these grounds goes to the root of the jurisdiction of the Civil Court. Therefore, the case at hand would be governed by the judgments in the cases of **Pramod S/o Manoharrao Konge (Supra)** and **Bharat Travellers (Supra)** as the Civil Court cannot be said to be lacking in inherent jurisdiction. Thus, the order of hearing of the applications

determined by the learned Civil Judge does not warrant any interference in exercise of writ jurisdiction.

28. Hence, the following order:

: O R D E R :

- (i) Writ Petition stands dismissed.
- (ii) Rule discharged.

No costs.

[N. J. JAMADAR, J.]