



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.15090 OF 2025**

Boggu D. Poojary @ Bhagu D Poojari ... Petitioner
versus
Sunil Builders and Ors. ... Respondents

WITH
WRIT PETITION NO.15093 OF 2025

Sarla Shantilal Gosar ... Petitioner
versus
Om Mangal Construction Co. and Ors. ... Respondents

WITH
WRIT PETITION NO.15095 OF 2025

Ravi T. Shetty ... Petitioner
versus
Sunil Builders and Ors. ... Respondents

Mr. Bhavik Lalan with Mr. Kevin Gala, for Petitioners.
Mr. Rahul R. Tiwari for Respondent No.1 in WP Nos.15090 of 2025 and
15095 of 2025 and for Respondent No.2 in WP No.15093 of 2025.
Mr. Rubin Vakil with Mr. Ankur Kalal for Respondent Nos.2 in WP Nos.15090
of 2025 and 15095 of 2025 and for Respondent No.3 in WP No.15093 of
2025.

CORAM: N.J.JAMADAR, J.

DATE : 13 NOVEMBER 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. These petitions under Article 227 of the Constitution of India assail the legality, propriety and correctness of the orders dated 29 February 2024

passed by the learned Judge, City Civil Court, in the Chamber Summons taken out by the Petitioners – Plaintiffs in the respective suits to implead Vimukta Shanti Niketan Nagar Co-operative Housing Society Limited, as party Defendant to the Suit, and, carry out amendment in the complaints so as to make averments in respect of, and seek reliefs against, the proposed Defendant.

3. By the impugned orders, learned Judge, City Civil Court, rejected the Chamber Summons taken out by the respective Petitioners observing, inter alia, that, no justifiable cause was ascribed in seeking amendment in the complaints belatedly, and, that the proposed amendment would enlarge the scope of the suits as the Plaintiff(s) professed to seek reliefs against the Society.

4. The background facts can be stated, in brief, as under :

4.1 For the sake of convenience and clarity, the facts in WP No.15093 of 2025 are noted as a representative case, as the facts in all the Petitions are almost identical.

4.2 Vimukta Shanti Niketan Nagar Co-operative Housing Society Limited (R12), the proposed Defendant, is a co-operative Housing Society. The Society is the holder of the land situated at Survey No.14, CTS No.115, Kurla (E), Mumbai (the suit premises). The Society proposed to develop the suit premises. A Development Agreement was executed on 31 July 1984 between the Society and M/s. Om Mangal Construction Co (D1). The latter entered into an agreement to assign the rights to develop the suit premises in favour

of M/s. Sunil Builders (D2) under Articles of Agreement dated 28 October 1987.

4.3 In the intervening period, the Plaintiffs assert, the Society issued an allotment letter dated 4 April 1988 to allot flats to the respective Petitioners. Accordingly, the Plaintiffs agreed to purchase flats in the buildings to be constructed over the suit premises and parted with substantial consideration. They were also admitted as members of the Society. The Plaintiffs were also directed to pay consideration for the respective flats directly to the developers. It is the case of the Plaintiffs that Defendant No.1 and its assignee (D2), did not develop the suit premises and construct the building, as agreed.

4.4 Eventually, the Society entrusted the development to Ayodhya Construction Co. (D3). The latter has commenced the development of the project "Saffron Residency", comprising of four wings. Initially, the Defendant No.3 gave assurances to complete the project and deliver the flats. However, in the month of February 2018, Defendant No.3 informed the Plaintiffs that they were not entitled to any flat in the said project. Hence, the Plaintiffs instituted respective suits seeking a declaration that they are entitled to the allotment of a flat in the building to be constructed at the suit premises; direction to the Defendant No.3 to execute and register an instrument and also give possession of the respective flats, and, the consequential relief of injunction.

4.5 The Defendants resisted the suits.

4.6 The Plaintiffs took out Chamber Summons seeking amendment in the plaints, so as to implead the Society as a Defendant and incorporate the averments in regard to the acts and omissions of the Society and seek further prayer to order and direct the Society to issue share certificate to the Plaintiffs in respect of the respective flats in the newly constructed building.

4.7 The Chamber Summons was resisted by the Defendants. It was, inter alia, contended that the proposed amendment would introduce a new cause of action. The prayers sought to be incorporated by way of proposed amendment qua the Society, cannot be granted by the Civil Court as the jurisdiction of the Civil Court was barred by the provisions contained in Section 163 of the Maharashtra Co-operative Societies Act, 1960. Even otherwise, the proposed amendment was sought belatedly without any justification. Therefore, the Plaintiffs were not entitled to seek amendment in the plaints.

4.8 By the impugned orders, the learned Judge, City Civil Court, dismissed the Chamber Summons recording that the facts which were sought to be brought on the record of the Court by way of amendment had transpired much before the institution of the suit. Secondly, the endeavour of the Plaintiffs was to enlarge the scope of the suits by seeking reliefs against the Society. There was an inordinate delay in seeking amendment and the ground of change in

Advocates was not sufficient to permit amendment in the plaint at such a belated stage.

4.9 Being aggrieved, the Petitioners – Plaintiffs have approached this Court.

5. I have heard Mr. Bhavim Lalan, learned Counsel for the Petitioners – Plaintiffs, Mr. Rahul Tiwari for Respondent No.1 in WP Nos.15090 and 15095 of 2025 and for Respondent No.2 in WP No.15093 of 2025 and Mr. Rubin Vakil, learned Counsel for Respondent No.2 in WP No.15090 of 2025 and 15095 of 2025 and for Respondent No.3 in WP No.15093 of 2025. With the assistance of the learned Counsel for the parties, I have perused the original pleadings, Schedules of the proposed amendment, impugned orders and the material on record.

6. Mr. Lalan, learned Counsel for the Petitioners, submitted that the learned Judge, City Civil Court, was clearly in error in declining to grant amendment in the plaint when the suits are at the pre-trial stage. As the trial has not commenced, the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, was not attracted. Yet, by the impugned order, the learned Judge, City Civil Court dismissed the Chamber Summons taking into account the aspect of alleged delay.

7. Secondly, Mr. Lalan would urge, in the plaint itself, the Plaintiffs had laid sufficient foundation with regard to the role of the Society – the proposed

Defendant. Thus, the challenge to the proposed amendment on the ground that the Plaintiffs intended to put forth a new cause of action was wholly unwarranted.

8. Mr. Lalan would urge, a perusal of the impugned orders would indicate that the necessity of the impleadment of the society has not been disputed. Yet the prayer for amendment came to be rejected on technical grounds without appreciating the fact that the impleadment of the society and the amendment in the plaint was necessary for determination of the real question in controversy between the parties.

9. Mr. Tiwari, learned Counsel for the Respondents supported the prayers of the Petitioners – Plaintiffs.

10. Mr. Vakil, learned Counsel for the Respondents, however, strongly opposed the submissions on behalf of the Petitioners. Taking the Court through the documents on record, Mr. Vakil made an endeavour to draw home the point that the Petitioners were not the original 27 members of the Society. The very question as to whether the Petitioners were the members of the Society and were entitled to the flats in the project was debatable.

11. In any event, according to Mr. Vakil, the impleadment of the Society and the relief of a direction to issue share certificates in favour of the Plaintiffs, would completely alter the nature of the suit. The Plaintiffs' endeavour was to work out their remedies against the Society, which was not permissible. Mr.

Vakil would urge, the issue of share certificates is a matter which singularly falls within the ambit of an act touching the business of the society. Therefore, the bar under Section 164 of the Act, 1960, was fully attracted.

12. At the outset, it is necessary to note that the Plaintiffs sought amendment in the plaint at a pre-trial stage. The interdict contained in the proviso to Order VI Rule 17 of the Code, 1908, which enjoins a party seeking amendment after the commencement of the trial, to satisfy the test of due diligence, which is construed to be a jurisdictional fact, was not at all attracted. In view thereof, the prayer for amendment in the plaint was required to be appreciated on the touchstone of the general principles which govern the amendment in the pleadings.

13. It is well recognized that, all amendments which are necessary for the determination of real question in controversy between the parties are required to be permitted. Two overarching principles govern the exercise of discretion to permit the amendment in the pleadings. First, whether the amendment is necessary for the determination of the real question in controversy between the parties. Second, whether the amendment has the potentiality to cause prejudice to the opponent. The consideration as to whether the amendment would change the nature of the suit or the relief sought to be claimed by way of amendment is, otherwise, barred by law, also deserve to be kept in view. However, at a pre-trial stage, when the interdict contained in the proviso to

Order VI Rule 17 of the Codes does not come into play, the application for amendment is required to be construed liberally.

14. In the case of **Jai Jai Ram Manohar Lal V/s. National Building Material Supply, Gurgaon**¹, the Supreme Court enunciated the principles which govern the exercise of jurisdiction to permit the amendment in the plaint, as under :

“5.....Rules of procedure are, intended to be a handmaid to the administration of justice. A party cannot be refused relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.....”

15. In the case of **Revajeetu Builders and Developers V/s. Narayanaswamy and Sons and Ors.**², on which reliance was placed by Mr. Vakil, the Supreme Court culled out the basic principles which deserve to be considered in determining the application for amendment, as under :

“63. On critically analysing both the English and Indian

1 (1969) 1 SCC 869

2 (2009) 10 SCC 84

cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment :

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bona fide or mala fide;
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

16. At this stage, it is necessary to note that by way of proposed amendment, the Plaintiffs also sought to implead the Society as a party Defendant, purportedly under the provisions of Order 1 Rule 10(2) of the Code. It is trite addition or deletion of a party in exercise of the power under Order 1 Rule 10(2) of the Code, is not a matter of initial jurisdiction but one of

judicial discretion. The Court is empowered to add or delete a party at any stage of the suit.

17. In the case of **Mumbai International Airport Pvt. Ltd. V/s. Regency Convention Centre and Hotels Pvt. Ltd.**³, the Supreme Court expounded the ingredients of the provisions contained in Order 1 Rule 10(2) of the Code. The distinction between a necessary and proper party was also explained, as under :

“14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A ‘necessary party’ is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a ‘necessary party’ is not impleaded, the suit itself is liable to be dismissed. A ‘proper party’ is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in

3 (2010) 7 SCC 417

disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.”

18. In the case **Kasturi V/s. Iyyamperumal and Ors.**⁴, on which reliance was placed by Mr. Vakil, the Supreme Court enunciated that the necessary parties are those persons in whose absence no decree can be passed by the Court or that there must be a right to some relief against some party in respect of the controversy involved in the proceedings and proper parties are those whose presence before the Court would be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit although no relief in the suit was claimed against such person.

19. In the light of the aforesaid position in law, re-adverting to the facts of the case, it is pertinent to note that the case sought to be pleaded by way of amendment was essentially in the nature of amplification of the Plaintiffs case. In the original plaint, there are categorical submissions spelling out the role of the Society, in the transaction. The Plaintiffs have asserted that the Society

4 (2005) 6 SCC 733

had issued allotment letters and as per the direction of the Society, payments were made to the developers. Thus, by no stretch of imagination, could it be urged that, there was no foundation in the original pleading as regards the role of the Society in the transaction in question.

20. By way of proposed amendment, the Plaintiffs endeavoured to bring on record the sequence of events, which led to the entrustment of the project to Ayodhya Construction (D3), and introduce the documents which were executed between the predecessor in interest of Defendant No.3, especially the Agreement dated 28 October 1987 which, inter alia, records that the names of the Plaintiffs were included in the Annexure B to the said Agreement, as one of the allottees, to whom the flats were allotted by Defendant No.1, pursuant to the development agreement executed by the Society in favour of Defendant No.1. These assertions and documents, in a sense, supplement and amplify the case of the Plaintiffs.

21. It was urged on behalf of the contesting Defendants that the claim of the Plaintiffs that they were members of the Society was patently false. An endeavour was made to assail the veracity and genuineness of the documents which were sought to be introduced by way of amendment.

22. I am afraid, such submissions can be countenanced while considering the application for amendment in the pleadings. It is firmly settled that, at the stage of consideration of the prayer for amendment, the Court need not delve

into the merits of the proposed amendment. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Rajesh Kumar Aggarwal and Ors. V/s. K.K.Modi and Ors.**⁵, wherein it was postulated that the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment, and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. Once the court finds that there was adequate foundation in the original pleadings, the challenge to the proposed amendment on the ground that it would alter the nature of the suit falls through.

23. By the proposed amendment, while bringing on record the role of the society in the transactions in question, the Plaintiffs seek relief against the Society to issue share certificates. It would be contextually relevant to note that, the Plaintiffs seek to bring on record the fact that the society had issued a letter on 7 January 1989 that five shares were allotted to the Plaintiffs. If viewed through this prism, it would be difficult to accede to the submission

5 (2006) 4 SCC 385

that the proposed amendment would substantially alter the nature and character of the suits.

24. On the aspect of impleadment of the Society, suffice to note that the presence of the society is necessary for a complete and effectual adjudication of the dispute between the parties. The genesis of the dispute is in the development agreement executed by the Society in favour of Defendant No,1, who had allegedly allotted flats to the Plaintiffs. In this situation, if not necessary, the society is, undoubtedly, a proper party to the suits. The challenge to the proposed amendment on the ground that the relief sought against the Society by way of amendment cannot be granted by the civil court need not detain the Court. That is essentially a matter of merit and can be adjudicated at the trial.

25. For the foregoing reasons, this Court is of the considered view that the learned Judge, City Civil Court, did not keep in view the principles which govern the application for amendment in the plaint and addition of a party. Therefore, the impugned orders deserve to be quashed and set aside.

26. Hence, the following order :

ORDER

- (i) The Writ Petitions stand allowed.
- (ii) The Chamber Summons taken out by the Plaintiff(s) in the respective suit(s) stand allowed.

(iii) The Plaintiff(s) shall carry out necessary amendment in the plaint(s) within a period of four weeks from the date of uploading of this order.

(iv) The Defendants shall be entitled to file additional written statements within a period of one month of the service of the amended copy of the plaint.

(v) Rule made absolute in the aforesaid terms.

(vi) No costs.

(N.J.JAMADAR, J.)