



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2956 OF 2026**

Atul Ishwardas Chordia and Anr. ... Petitioners
versus
Vipesh Pravin Sonigara ... Respondent

Mr. S.S.Patwardhan with Ms. Mrinal Shelar, for Petitioners.
Mr. S.C.Wakankar, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 10 APRIL 2026

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 11 February 2026 passed by the learned Civil Judge, Pune, whereby the learned Civil Judge ruled that the application for amendment of the plaint preferred by the Respondent-Plaintiff would be decided before deciding the application for rejection of the plaint filed by the Petitioners – Defendants.
3. Mr. Patwardhan, learned Counsel for the Petitioners submitted that the learned Civil Judge has given the aforesaid ruling on the sole premise that the two judgments of this Court in the cases of **Pramod s/o Manoharrao Konge V/s. Shantaram Balkrushna Dhok¹** and **Bharat Travellers V/s. Sumitrabai vinayakrao Buty²**, were rendered earlier in point of time than the judgment in

1 2017(3) Mh.L.J. 223

2 2017(6) Mh.L.J. 703

the case of **Akshay Quenum V/s. Royce Savio Pereira**³. Mr. Patwardhan would submit that, the learned Civil Judge was required to examine the ratio of the judgments in each of the cases, as all were rendered by the learned Single Judges and then determined which judgment would govern the facts of the case at hand.

4. Mr. Patwardhan further submitted that, if the amendment application is heard and decided in favour of the Plaintiff, then the ground of bar of limitation on which the Defendants were seeking rejection of the plaint, would be rendered nugatory. A very strong reliance was placed by Mr. Patwardhan on the judgment in the case of **Akshay Quenim (supra)**, wherein this Court has enunciated that the approach that the Civil Court would be required to adopt in cases wherein, after the application for rejection of the plaint is filed, the Plaintiff takes up an application for amendment in the plaint, in regard to the order of hearing of such applications.

5. In opposition to this, Mr. Wakankar, learned Counsel for the Respondent – Plaintiff, submitted that the learned Civil Judge has correctly ruled that, in a situation of the present nature, the application for amendment is required to be heard first and this position is settled by the judgments in the cases of **Pramod Manoharrao Konge (supra)** and **Bharat Travellers (supra)**.

3 2025 SCC Online Bom 3600

6. 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 instituting a fresh suit on the same cause of action. Thus, when the Plaintiff institutes 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 informs the decisions in the cases of **Pramod Manoharrao Konge (supra)** and **Bharat Travellers (supra)**.

7. The position in law as regards the binding efficacy of the judgments where conflicting views are taken by the Benches of co-equal strength is no longer res-integra. The decision of the Supreme Court in the case of **Sundeep Kumar Bafna V/s. State of Maharashtra and Anr.**⁴ illuminates the path. The Supreme Court has delineated the approach in the following words:

“19. It cannot be over-emphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the *per incuriam* rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be *per incuriam* any

4 AIR 2014 SC 1745

provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be *per incuriam* if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the *per incuriam* rule is strictly and correctly applicable to the ratio *decidendi* and not to *obiter dicta*. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of *per incuriam*. (emphasis supplied)

8. In the case at hand, in the considered view of this Court, the question of conflict in the judgments rendered by the Bench of co-equal strength does not arise. The observations of the learned Single Judge in the case of **Akshay Quenim (supra)**, make this position abundantly clear.

9. Mr. Patwardhan placed reliance on the following enunciation of law by the learned Single Judge in the case of **Akshay Quenim (supra)** :

“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 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.”

10. A correct reading of the aforesaid enunciation of law, in the considered view of this Court, indicates that this Court in **Akshay Quenim (supra)** was dealing in a situation where the contention was that Civil 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.

11. The ratio enunciated in the case of **Akshay Quenim (supra)**, thus, cannot be imported to all the situations where the application for amendment is filed after the Defendant takes out an application for rejection of the plaint to hold that, in such an eventuality, the Court must first decide the application for rejection of the plaint.

12. The case at hand is governed by the judgments in the cases of **Pramod 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 the writ jurisdiction.

13. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)