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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4030 OF 2026

Sudeep Bholanath Saha and anr. ... Petitioners

vs.

Hemlata Shah ...Respondent

Mr. Amogh Singh a/w Mr. Rahul Arora, Mr. Shivam Dubey, Mr. Aditya Lele, Rutuparna Deo, Mr. Atul Mishra for the Petitioners.

Mr. Nishant Sasidharan a/w ms. Gauri Mestha, Mr. Mangirish Saraf i/b. L. J. Law for the Respondents.

CORAM : N. J. JAMADAR, J.

DATED : 30 March 2026

P. C. :

1. Heard the learned counsel for the parties.
2. By this Petition, the Petitioners are seeking the following relief :-

“(b) The Hon’ble Court in exercise of powers under Article 227 of the Constitution of India be pleased to direct the learned Court of Hon’ble City Civil Court at Dindoshi to first pass adjudicatory order in Chamber Summons No.307 of 2026 prior to hearing and deciding Notice of Motion No.2441 of 2024;”

3. The Respondent has taken out a Notice of Motion for rejection of the plaint under the provisions of Order 7 Rule 11 of the Civil Procedure Code, 1908 (“CPC”). After the said Notice of Motion was

filed by the Respondent, the Petitioners / Plaintiffs have filed a Chamber Summons seeking amendment in the plaint.

4. Incontrovertably, the said Chamber Summons has been heard and posted for orders. In the meanwhile, the hearing in the Notice of Motion for rejection of the plaint has commenced. The prayer in this Petition is that, the order in the chamber summons be passed before the Notice of Motion for the rejection of plaint is decided.

5. Mr. Singh, the learned counsel for the Petitioners placed reliance on Judgment of this Court in the case of ***Bharat Travellers Vs. Sumitrabai Vinayakrao Buty***¹, to lend support to the proposition that, in the situation of the present nature, the Application for amendment is required to be heard before the Application for rejection of the plaint is taken up for hearing.

6. In opposition to this, Mr. Sasidharan, the learned counsel for the Respondent has placed reliance on another Judgment of a learned Single Judge of this Court in the case of ***Mr. Akshay Quenim Vs. Mr. Royce Savio Pereira***². In the said case, the learned Single Judge 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

1 2017 (6) Mh.L.J.

2 WP No.375 of 2025 High Court of Bombay Bench at Goat dated 25.9.2025.

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.

7. Having considered the submissions, advanced on behalf of the parties, the situation which would be governed by the aforesaid observations of the learned Single Judge in the case of **Mr. Akshay Quenim** (supra), does not seem to arise in the case at hand. It is not the case that, the jurisdiction is sought to be conferred on the City Civil Court by carrying out amendment in the plaint. The insistence on the hearing of the Application for amendment in the plaint before considering the Application for rejection of the plaint stems from the provisions contained in Rule 13 Order 7 of the CPC, which explicitly provides that the rejection of plaint on any of the grounds mentioned in Rule 11 of Order 7 shall not preclude the plaintiff from instituting a fresh Suit on the same cause of action.

8. If the Court *ex facie* lacks the jurisdiction, the Court would be required to pose unto itself a question whether it has jurisdiction to allow the amendment. Since that question is not warranted to be determined, in the instant case, in the context of proposed amendment, and the Chamber Summons has already been heard

and closed for order, it would be in the fitness of the things that, the learned Judge, City Civil Court passes an order on the Chamber Summons taken out for the amendment in the plaint before deciding the Notice of Motion for the rejection of the plaint.

9. The Writ Petition thus stands disposed with a request to the learned Judge, City Civil Court, to pass order on Chamber Summons No.307 of 2026 before deciding the Notice of Motion No.2441 of 2024.

10. It is made clear that, this Court has not entered into the merits of the matter and all contentions of all the parties are kept open for determination in the Chamber Summons and Notice of Motion.

[N. J. JAMADAR, J.]