

Mr. Prasad Dani, Sr. Advocate with Mr. Murari Madekar, Mr. Sachin Kudalkar
i/by M/s. Madekar and Co., for Petitioners.
Mrs. P.J.Gavhane, AGP for State.

DATE : 15 JUNE 2026

1. Heard Mr. Dani, the learned Senior Advocate for the Petitioners.
2. The challenge in this petition is to the orders dated 20 September 2025 and 10 February 2026 passed by the learned Judge, City Civil Court, Greater Mumbai, in Suit No.495 of 2022, thereby holding that the Chamber Summons taken out by Respondent Nos.1 to 14 – Plaintiffs for amendment in the plaint under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908, needs to be heard and decided first.
3. Respondent Nos.1 to 14 have instituted a suit seeking declaration that the notice dated 28 January 2022 issued by Respondent No.15 – Defendant No.2 purportedly under Section 50(3) of the Maharashtra Land Revenue Code, 1966, for removal of encroachment in respect of the suit premises, is null and void and not binding upon the Plaintiffs and the consequential relief

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of injunction.

4. The Plaintiffs claim to be in lawful use and occupation of the suit premises which were allotted to the predecessor in title of the Plaintiffs as they were employed with Defendant No.1 – Petitioner herein. The suit premises are part of the residential block (chawl known as ‘Rahivasi Chawl’). At the behest of Defendant No.1, the Plaintiffs claimed, Defendant No.2 had issued a notice dated 28 January 2022 purportedly under Section 50(3) of the Code, 1966, thereby directing the Plaintiffs and other similarly situated residents of Rahivasi Chawl to remove the alleged encroachment on the suit premises within 24 hours, with the threat of forcible removal in the event of failure to comply with the notice. Hence, the suit.

5. In the said suit, the Petitioner – Defendant No.1 took out a Notice of Motion being No.81 of 2024 for rejection of the plaint under the provisions of Order VII Rule 11(d) of the Code, 1908 contending, inter alia, that in view of the provisions contained in the Maharashtra Land Revenue Code, 1966 and the Bombay Revenue Jurisdiction Act, 1876, the suit before the City Civil Court is barred.

6. While the said Notice of Motion awaited adjudication, the Plaintiffs took out Chamber Summons No.65 of 2025 to amend the plaint so as to incorporate further averments and seek additional prayers. An application was filed for hearing and decision of the said Chamber Summons first. By an

order dated 20 September 2025, the learned Judge, City Civil Court allowed the said application placing reliance on a judgment of a learned Single Judge of this Court in the case of **Pramod s/o Manoharrao Konge V/s. Shri Shantaram Balkrushna Dhok**¹.

7. The Petitioner thereafter, filed an application seeking directions to hear both the Notice of Motion No.81 of 2024 for rejection of the plaint and the Chamber Summons No.65 of 2025 for amendment of the plaint, simultaneously. By an order dated 10 February 2026 (the second impugned order) the learned Judge, City Civil Court rejected the said application opining that, in view of the first impugned order dated 20 September 2025, determining the order of hearing of the Chamber Summons and the Notice of Motion, the application preferred by the Petitioner was not maintainable.

8. Being aggrieved, the Defendant No.1 has invoked the writ jurisdiction.

9. Rule 13 of Order VII provides that the rejection of the plaint on any of the grounds mentioned in Rule 11 shall not of its own force preclude the Plaintiff from presenting a fresh plaint in respect of the same cause of action.

10. This resultant effect of the rejection of the plaint, even if one were to proceed on the premise that in the given facts of the case the plaint would be eventually rejected, bears upon the order of hearing and decision on an

¹ WP No.6165 of 2016

application for rejection of the plaint and an application for amendment in the plaint.

11. In the case of **Pramod s/o Manoharrao Konge (Supra)** a learned Single Judge of this Court, enunciated that the provisions of Order VII Rule 13 of the Code lay down that if the plaint is rejected under Order VII Rule 11 of the Code, then the Plaintiff is not precluded from presenting a fresh plaint in respect of the same cause of action and, thus, if the application for rejection of the plaint is decided first and the trial Court rules in favour of the Defendant, then the plaint shall be rejected, and it would be permissible for the Plaintiff to file a fresh plaint incorporating the proposed amendment in the pleadings. Thus, the Application for amendment of the plaint ought to be heard first.

12. Following the aforesaid pronouncement in the case of **Bharat Travellers Vs Sumitrabai Vinayakrao Buty**², another learned Single Judge of this Court reiterated that it would not be procedurally correct to decide the application for rejection of the plaint first, since even if the Defendants 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

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

fresh suit with an amended plaint. It is further clarified that it makes no difference whether the application for rejection of the plaint was filed under under Clause (a) or Clause (d) of Order VII Rule 11 of the Code.

13. 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 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 informs the decisions in the cases of **Pramod Manoharrao Konge (supra)** and **Bharat Travellers (supra)**.

14. Mr Dani would urge that, the judgment of this Court in the case of **Akshay Quenum Vs Royce Savio Pereira**,³ delineates the correct approach that the Civil Court should adopt in cases, wherein, after the Application for rejection of the plaint is filed (like the case at hand), the Plaintiff takes up an Application for amendment in the plaint, in regard to the order of hearing of such Applications.

3 2025 SCC OnLine Bom 3600.

15. Reliance was placed on the following observations 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.”

16. 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 with 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.

17. 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.

18. The case at hand appears to be governed by the judgments in the cases of **Pramod Manoharrao Konge (supra)** and **Bharat Travellers (supra)**.

19. The question whether the Civil Court lacks inherent jurisdiction in view of the bar contained in the provisions of Maharashtra Land Revenue Code,

1966 and the Bombay Revenue Jurisdiction Act 1876, appears to be rooted in the facts of the case and clearly debatable.

20. Thus the order of the hearing of the Application determined by the learned Civil Judge does not warrant any interference in exercise of the writ jurisdiction, which is essentially corrective in nature.

21. The Writ Petition thus stands dismissed.

22. The learned Judge, City Civil Court is requested to hear and decide the Chamber Summons taken out by the Plaintiff, as expeditiously as possible.

(N.J.JAMADAR, J.)