



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7119 OF 2026**

Raman Shamrao Rath and Ors. ... Petitioners
versus
Rath Mansion Co-operative Housing Society
Ltd. and Ors. ... Respondents

Dr. Uday P. Warunjikar i/by Mr. Samir Sarambalkar, for Petitioners.
Mr. Pradip Kadam, for Respondent Nos.5A and 5B.

CORAM: N.J.JAMADAR, J.

DATE : 11 JUNE 2026

ORDER :

1. Heard the learned Counsel for the parties.
2. By this Petition under Article 227 of the Constitution of India, the Petitioners – Plaintiffs take exception to an order dated 15 May 2026 passed by the learned Judge, City Civil Court, in Chamber Summons No.1131 of 2026 in SC Suit No.1078 of 2017, whereby the Chamber Summons taken out by the Plaintiffs seeking amendment in the plaint came to be dismissed.
3. The Plaintiffs claimed to be the owners of the suit property over which the building known as Rath Mansion, having two wings comprising of 13 flats and two open parking spaces and one open stilt area under B Wing, has been constructed. Defendant No.1 is a co-operative housing Society formed by the owners of the flats in the said building, allegedly fraudulently on the basis of false and forged documents. Defendant Nos.3 to 6 are the members of

Defendant No.1 Society.

4. The Petitioners have instituted a suit seeking compensation in the sum of Rs.90 Lakhs for causing injury to the Petitioners in the mind, body and reputation by instituting various false and vexatious criminal and civil proceedings, which have ultimately been decided against the Defendants. In addition, the Plaintiffs have sought declaration that the Defendant No.1 Society has no right to enter into any agreement for lease, licence and/or permit entry of any outsider's vehicle into the suit property and also to restrain Defendant No.1 Society and its office bearers from alienating, and/or parting with the possession of the flats and/or creating any charge and lien over any of the flats forming part of the suit property.

5. The Defendants have resisted the suit. Issues have been settled. When the matter was posted for recording of evidence of the Plaintiffs, the Plaintiffs took out Chamber Summons seeking amendment in the plaint, so as to incorporate the averments as enumerated in the Schedule of amendment appended to the Chamber Summons. The Plaintiffs claim that the amendment was necessitated on account of the subsequent developments, including (i) creation of a provisional list of voters showing 15 members of the Defendant No.1 Society whilst there are only 13 flats in the building to fraudulently show Rajendra Patil and Shobha Patil as members against the non-existent sheds 9A and 9B, and facilitate the implementation of an illegal

development scheme, and, thereby defraud the Plaintiffs; (ii) illegal trespass into open area and compulsory open spaces so as to convert the same into an illegal commercial parking lot for third party vehicles; (iii) filing fraudulent application for deemed conveyance, being Application No.12 of 2026, before the Competent Authority, despite having unconditionally withdrawn B.C.C.Suit No.8271 of 1986 instituted for the very same prayer of conveyance. Accordingly, the Plaintiffs sought to incorporate the additional prayers of declaration that the deemed conveyance Application No.12 of 2026 was a fraud upon the authority and barred by the principles of res-judicata; mandatory injunction to remove all unauthorized third party and commercial vehicles from the precincts of the suit property; declare that the provisional list of voters dated 16 December 2024 showing 15 members of the Defendant No.1 Society, was fraudulent, fabricated and void ab-initio and for prohibitory injunction to restrain the occupants of Flat Nos.3 and 9 from selling, alienating, encumbering, parting with possession or creating any third party interest in respect of the suit flats without the express consent of the Plaintiffs.

6. The prayer for amendment was resisted by the Defendants.

7. By the impugned order, the learned Judge, City Civil Court, was persuaded to reject the Chamber Summons opining, inter alia, that the proposed amendment would materially alter the nature of the suit. The proposed amendment was in respect of distinct causes of action for which the

Plaintiffs could initiate appropriate proceedings against the Defendants. In substance, the proposed amendment, if allowed, would enlarge the scope of the suit exponentially. Learned Judge, City Civil Court was also of the view that the interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, would also apply as the amendment was sought after the commencement of the trial.

8. Dr. Warunjikar, learned Counsel for the Petitioners, would submit that, the learned Judge, City Civil Court has completely misconstrued the scope of the provisions which permit the amendment in the pleadings and the nature of the amendment sought by the Plaintiffs. The learned Judge has unjustifiably observed that the application for amendment was not maintainable. By adverting to the merits of the amendment, the learned Judge has held that the proposed amendment was not necessary and the reliefs claimed therein, cannot, even otherwise, be granted. In the process, the learned Judge, City Civil Court, lost sight of the well settled principle that, while considering the application for amendment, the Court need not delve into the merits of the amendment. Dr. Warunjikar submitted that, by the proposed amendment, the Plaintiffs intended to bring on record the subsequent developments, which the court is required to take note of.

9. In opposition to this, Mr. Kadam, learned Counsel for Respondent Nos.5A and 5B, stoutly supported the impugned order. It was submitted that

the learned Judge, City Civil Court, has correctly held that the proposed amendment would completely alter the nature of the suit, and, even otherwise, the prayers sought to be incorporated by way of proposed amendment were beyond the remit of the jurisdiction of the civil Court. Thus, no interference is warranted with the impugned order.

10. It is well neigh settled that all amendments which are necessary for determination of the real question in controversy between the parties are required to be allowed. Two guiding factors are : whether the proposed amendment is necessary for determination of all the questions in controversy between the parties and what is the potentiality of prejudice to the adversary. The degree of potentiality of prejudice bears upon the exercise of discretion. Apart from these two overarching principles, the aspect as to whether the proposed amendment would change the nature and character of the suit and the relief sought to be claimed by way of amendment, if allowed, would be barred by law of limitation, are the other factors which also bear upon the decision.

11. Applying these principles to the facts of the case at hand, at the outset, it is necessary to note that, though the issues have been settled, the Plaintiffs had not led evidence till the filing of the Chamber Summons. In this view of the matter, the trial cannot be said to have commenced so as to attract the interdict contained in the proviso to Order VI Rule 17 of the Code. Resultantly,

it was not necessary for the Plaintiffs to satisfy the test of due diligence. Nonetheless, the aspect of the justifiability of the proposed amendment from the point of view of the potentiality of prejudice on account of change in the nature and character of the suit deserves consideration.

12. From the tenor of the original plaint, it becomes abundantly clear that the substratum of the Plaintiffs' claim is that the Defendant No.1 Society and its members, including Defendant Nos.2 to 6, had resorted to frivolous and vexatious criminal and civil proceedings against the Plaintiffs and on account of those malicious proceedings, the Plaintiffs lost 30 precious years of their lives in litigation and suffered injuries in mind, body and reputation. As the criminal and civil proceedings were initiated and prosecuted with an oblique motive to harass the Plaintiffs and make them cave in to the lawful demands of Defendant No.1, and, eventually, all those proceedings terminated in favour of the Plaintiffs, the Plaintiffs were entitled to compensation. Reliefs of declaration and injunction in the original plaint emanate from the foundational facts that the Defendants had resorted to false, frivolous and vexatious proceedings.

13. The aforesaid being the nature of the original claim, the case sought to be introduced by the proposed amendment, be it in respect of creation of a fabricated provisional list containing 15 members, filing of application for deemed conveyance and the alleged conversion of open spaces into third

party parking lots, are all materially distinct from the original claim set up by the Plaintiffs. The proposed amendment has the effect of completely altering the nature and character of the suit. To put it in other words, the suit for damages for initiation and prosecution of malicious proceedings is sought to be converted into a suit seeking declaration in regard to the purported rights of the Defendant No.1 Society. The learned Judge, City civil Court was thus wholly justified in observing that the proposed amendment was based on materially distinct causes of action than the cause of action for the suit.

14. The amendment of the aforesaid nature which inexorably alters the nature and character of the suit cannot be permitted. A useful reference in this context can be made to the judgment of the Supreme Court in the case of **Bharat Karsondas Thakkar V/s. Kiran Construction Co. and Ors.**¹, wherein it was enunciated that the amendment which completely changed the nature and character of the suit from being a suit for specific performance of an agreement to one for declaration of title and possession followed by a prayer for specific performance of an agreement of sale entered into between its assignee and the vendors of the assignees, could not have been granted.

15. Dr. Warunjikar attempted to salvage the position by banking upon the order passed by this Court in Appeal From Order No.91 of 2020 dated 13 December 2023 between the same parties, whereby a liberty was granted to

¹ AIR 2008 SC 2134

the Plaintiffs to file an appropriate application before the City Civil Court and seek prohibitory orders if the Society takes any decision for carrying out the redevelopment of the property during the pendency of the suit.

16. I am afraid, the aforesaid liberty enures for the benefit of the Plaintiffs to seek the amendment of the present nature. The proposed amendment nowhere refers to the fact that the Defendant No.1 Society is carrying out redevelopment of the suit property. Resultantly, the learned Judge, City Civil Court, was well within his rights in declining to grant permission to amend the plaint. No interference is warranted with the impugned order in exercise of the limited corrective jurisdiction.

17. At this stage, Dr. Warunjikar submitted that the learned Judge, City Civil Court, has granted a very short period of time for the Plaintiffs to adduce their evidence and posted the matter tomorrow i.e. 12 June 2026, and, sought reasonable time to adduce evidence.

18. As the Petitioners have unsuccessfully assailed the impugned order, this Court considers it appropriate to grant two weeks time to the Plaintiffs to adduce their evidence.

19. Hence, the following order :

ORDER

- (i) The Writ Petition stands dismissed.
- (ii) The Petitioners – Plaintiffs are granted two weeks time to

adduce their evidence. Thus, the learned Judge, City Civil Court, shall not pass any coercive order against the Petitioners – Plaintiffs for a period of two weeks from 12 June 2026.

(N.J.JAMADAR, J.)