



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12605 OF 2025**

Satyanarayan Gangaram Gunnal	...	Petitioner
versus		
Commissioner, Pune Municipal Corporation and Ors.	...	Respondents

Mr. Niranjan Mogre for Petitioner.
Mr. R.M.Pethe, for Respondent Nos.1 to 3.
Ms.Lalita Panchakshari, for Respondent Nos.4 to 7.

CORAM: N.J.JAMADAR, J.

RESERVED ON	: 17 MARCH 2026
PRONOUNCED ON	: 8 JUNE 2026

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. By this Petition under Article 227 of the Constitution of India, the Petitioner assails the legality, propriety and correctness of the order dated 4 July 2025 passed by the learned Civil Judge, Pune, whereby the substantive part of the prayer for amendment in the plaint in SCS No.1467 of 2023 instituted by the Petitioner, came to be rejected.
3. Shorn of unnecessary details, the background facts can be stated, as under :
 - 3.1 The Petitioner claimed that he was in the occupation of two rooms, admeasuring 300 sq.ft. (the demised premises) in an old house, situated at

CTS No.1164, Nana Peth, Pune (the suit premises). There were in all six tenants in the various portions of the demised premises. Late Sadashiv Rajaram Mithapelli was the original landlord. After the demise of the original landlord, Defendant Nos.4 to 9 became the landlord and the owner of the demised premises. Defendant No.3, a partnership firm, which is engaged in the business of builders and developers, undertook the development of the suit premises. Multiple Development Agreements were executed in favour of Defendant No.3 by the owners of the suit premises.

3.2 The Plaintiff claimed, Defendant No.3 also approached the Plaintiff with an offer to provide 600 sq.ft. carpet area, which was double the area of the demised premises, without any monetary consideration, in lieu of the surrender of the demised premises to the Plaintiff. Defendant No.3 also agreed to provide transit rent @ Rs.10,000/- per month, from the date of delivery of the possession of the demised premises till the completion of the new building.

3.3 Accordingly, on 30 November 2021, a Memorandum of Understanding (MOU) came to be executed between the Plaintiff and Defendant No.3, incorporating all the aforesaid terms. It is the claim of the Plaintiff that Defendant No.3 reneged from its promises. Upon demand of the transit rent, as agreed, Vishal G. Dhanwade – Defendant No.3(a) flatly refused to pay the transit rent and asserted that a residential unit of 330 sq.ft. only, would be

provided to the Plaintiff and if the Plaintiff wanted more area, he should pay an amount of Rs.32 Lakhs.

3.4 It further transpired that, Defendant No.3 had changed the pages of the MOU and forged the said MOU by replacing page Nos.3 and 4. Thus, asserting that the MOU dated 30 November 2021, propounded by Defendant No.3 was forged and fabricated and on the basis of false and forged documents, Defendant No.3 had obtained the permission for development, far in excess of the entitlement for development, the Plaintiff prayed for declaration that the building permission obtained by Defendant No.3 from Defendant Nos.1 and 2 was illegal, null and void, and not binding on the Plaintiff as it was based on false and forged documents and deliberate misrepresentation. The consequential reliefs of injunction to restrain Defendant No.3 from carrying out further construction and recovery of the arrears of transit rent @ 10,000/- p.m. along with interest, and compensation of Rs.3 Lakhs, were also sought

3.5 After the institution of the suit, it appears that the Plaintiff filed an application under Order XXIII Rule 1 (3) of the Code of Civil Procedure, 1908, seeking permission to withdraw the suit with liberty to file a fresh suit. By an order dated 28 November 2024, the said application came to be rejected opining, inter alia, that the Plaintiff could seek additional area and alternative prayer for specific performance of the purported MOU by filing an application

for amendment.

3.6 Thereupon, the Plaintiff took out instant application for amendment in the plaint seeking, inter alia, the prayer for specific performance of the purported MOU and a direction to Defendant No.3 to execute a registered deed, providing 600 sq.ft. flat / residential unit as per the MOU dated 30 November 2021 in the newly constructed building. The Plaintiff also sought to delete the earlier prayers of declaration that the development permission was obtained on the basis of false and forged documents; the MOU dated 30 November 2021 was illegal, null and void and the relief of perpetual injunction to restrain Defendant No.3 from carrying out construction pursuant to the development agreement granted by Defendant Nos.1 and 2. Certain incidental and consequential amendments were also sought.

3.7 The application was resisted by Defendant Nos.3(a) to 3(c).

3.8 By the impugned order, the learned Civil Judge was persuaded to partly allow the application for amendment, only to the extent of the amendment proposed in the title clause, para No.1B, and line No.2 of para 13. Rest of the proposed amendment was rejected.

3.9 The learned Civil Judge was of the view that, by the proposed amendment, the Plaintiff was seeking to substitute the relief of cancellation of the MOU with the relief of specific performance of the very same MOU, qua which a declaration was initially sought that it was forged and fabricated. The

prayers proposed to be incorporated by way of amendment were inconsistent with the original prayers. In substance, the Plaintiff was proposing to convert the original suit for declaration, perpetual injunction and damages into one for specific performance of the MOU. It was impermissible to permit such amendment as it would completely alter the nature and character of the suit. Thus, the learned Civil Judge, Pune, was persuaded to partly allow the application only with regard to the change in the description of the party – Defendants and the assertions / reliefs which flowed from the original pleadings.

3.10 Being aggrieved, the Plaintiff has invoked the writ jurisdiction.

4. Respondent Nos.4 to 7 have filed an affidavit in reply opposing the Petition.

5. I have heard Mr. Niranjan Mogre, learned Counsel for the Petitioner, Mr. R.M.Pethe, learned Counsel for Respondent Nos.1 to 3 and Ms. Lalita Panchakshari, learned Counsel for Respondent Nos.4 to 7, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record, including the averments in the original plaint, changes sought to be introduced by way of proposed amendment and the impugned order.

6. Mr. Mogre, learned Counsel for the Petitioner, submitted that, the learned Civil Judge has completely misconstrued the nature of the Plaintiff's

claim. In essence, Mr. Mogre would urge, the Plaintiff has been pursuing his rights in the capacity of the tenant of the demised premises, which accrue upon the redevelopment of the suit premises. The learned Civil Judge has approached the application for amendment in the plaint from an incorrect perspective. Indeed, the Plaintiff was proposing to seek enforcement of contractual obligations of Defendant No.3 to deliver the possession of 600 sq.ft. residential unit and the transit rent. However, that did not imply that the Plaintiff was completely altering the nature of the suit and the Plaintiff has set up a new cause of action. The proposed amendment, Mr. Mogre would urge, has its foundation in the pleadings in the unamended plaint. Thus, the learned Civil judge could not have rejected the application for amendment in the plaint at a pre-trial stage.

7. As a second limb of the submission, Mr. Mogre would urge, the trial Court, on the one hand, did not permit the Plaintiff to withdraw the suit with liberty to institute a fresh suit on the same cause of action under Order XXIII Rule 1(3) of the Code, while observing that the Plaintiff could incorporate additional pleadings in support of the claim for 600 sq.ft. area and additional or alternative prayer for specific performance of MOU by moving an application for amendment in the plaint, and, on the other hand, the Plaintiff's application seeking amendment in the plaint, came to be rejected by observing that the proposed amendment would materially alter the nature of

the suit. If the proposed amendment is not allowed, the Plaintiff would be rendered remediless, submitted Mr. Mogre.

8. Mr. Pethe, learned Counsel for Respondent Nos.1 to 3 supported the impugned order.

9. Ms. Panchakshari, learned Counsel for Respondent Nos.4 to 7 also supported the impugned order. It was submitted that the Petitioner, with a view to wriggle out of the situation that arose on account of filing of an application under Order VII Rule 11 of the Code for the rejection of the plaint, the Plaintiff initially filed an application for withdrawal of the suit, with liberty to file a fresh suit and upon the same being rejected, sought amendment in the plaint. The proposed amendment alters the character of the suit completely. Since the Petitioner – Plaintiff under the guise of amendment intends to convert the suit for declaration and injunction into one for specific performance of the contract by setting up the terms which are not borne out by the MOU, the learned Civil Judge has not committed any error in rejecting the application for amendment, seeking wholesome conversion of the suit, submitted Ms. Panchakshari.

10. To start with the uncontroverted facts. The jural relationship between the Plaintiff and Defendant No.4 to 9 is not in dispute. The Plaintiff claims to be a tenant in respect of the two rooms situated in the suit premises, albeit there is a controversy regarding the area of those two rooms. Nor is it in

dispute that Defendant Nos.4 to 9 – landlord and owners of the suit premises, have executed Development Agreements in favour of Defendant No.3 firm, for development of the suit premises. Indisputably, Defendant No.3 made an offer to the Plaintiff and the latter has vacated the demised premises. On the basis of the development agreement executed by the landlord and owners, and the subsequent developments, Defendant No.3 has obtained permission for the development from the planning authority – represented by Defendant Nos.1 and 2.

11. The Plaintiff claimed that, he had also entered into a MOU with Defendant No.3 on 30 November 2021. The said instrument remained in the custody of Defendant No.3 only. It is the case of the Plaintiff that Defendant No.3 had initially agreed to provide 600 sq.ft. Carpet residential unit and, upon delivery of the possession of the demised premises, Defendant No.3 would pay transit rent @ Rs.10,000/- per month. Defendant No.3 reneged from the said promise. It further transpired that the Defendant No.3 had forged page Nos.3 and 4 of the said MOU on which the aforesaid terms were incorporated and the Plaintiff has put his signatures. Thus, on the basis of the forged and fabricated MOU, Defendant No.3 professed to deprive the Plaintiff of the larger area upon redevelopment, and the transit rent.

12. With the aforesaid version, in the original plaint, the Plaintiff sought a declaration that Defendant No.3 has obtained building permission from

Defendant Nos.1 and 2 on the basis of the false and forged documents, the building permission was illegal, and, thus, Defendant No.3 be restrained from carrying out construction over the suit premises on the basis of the sanctioned plan so obtained. The Plaintiff has also sought declaration that Defendant No.3 had obtained MOU dated 30 November 2021 by practicing fraud on the Plaintiff. The said MOU dated 30 November 2021 was void, ab initio and did not bind the rights of the Plaintiff. In addition, the Plaintiff sought arrears of transit rent and compensation of Rs.3 Lakhs.

13. In order to appreciate the controversy in a correct perspective, it may be apposite to extract the pleadings in the original plaint, proposed amendment and the decision thereon by the trial Court. They read as under :

Sr. No.	Para of plaint	Original pleading	Amendment sought	Allowed / Rejected
1	Title Clause (Defendant No.1)	The suit was filed naming “मा. आयुक्त” (Hon. Commissioner) as Defendant No.1 directly, without specifying mode of service of summons/notice on Pune Municipal Corporation.	Deletion of the words “मा. आयुक्त” and addition of the words “(Summons/notice to be served upon Hon. Commissioner, Pune Municipal Corporation)” in the title clause, so as to correct the nomenclature to Pune Municipal Corporation through Commissioner.	Allowed
2	Title clause (Defendant No.2)	Defendant No.2 was described as “मा. कार्यकारी अभियंता” (Executive Engineer), without further	Addition of the words “तथा पद निर्देशित अधिकारी” (and the Officer holding the said Post) after the words	Allowed

		designation or mode of service.	“मा. कार्यकारी अभियंता” and addition of summons / notice service wording.	
3	Para 1B (Line 3)	The plaint pleaded that the plaintiff was tenant in two rooms of 300 sq.ft. In the suit property, (without specifying that each room was 300 sq.ft. And total area was 600 sq.ft.)	Addition of the words “each” (प्रत्येकी) after “02 rooms” (02 खोल्या यांसी) and addition of the words “total 600 sq.ft.” (एकूण 600 चौ.फुट) after “300 sq.ft.” (300 चौ.फुट) in line 3 of para 1B.	Allowed
4	Para 13 (Line 2)	Para 13 referred to the MOU dated 30.11.2021 and alleged that certain pages were replaced / substituted by Defendant No.3, but did not specifically identify which page numbers were falsely replaced.	Addition of the words “page nos.03 and 04 (क.03 व 04) after the word “pages” (पाने) in line 2 of para 13, to specifically identify the pages allegedly replaced by Defendant No.3.	Allowed
5	Para 12 (Lines 12-13)	Para 12 contained the pleading that the construction plan and all permissions were prepared by Defendant No.3 on the basis of false and fabricated information, which were essentially unlawful.	Deletion of the entire original pleading in Para 12 (lines 12-13) referring to preparation of construction plan on false information and its illegality.	Rejected
6	Para 13 (Line 7 Onwards)	Para 13 contained pleading that false proposal / submission was made and construction plan / permissions obtained unlawfully, causing loss; challenged the MOU and the illegal	Deletion of original text and substitution with new averment that Defendant No.3 showed excess tenants to obtain extra FSI, illegally obtained construction permission, and,	Rejected

		construction.	commenced illegal construction on the property.	
7	Para 14 (Line 5)	Para 13 pleaded that the violations committed were essentially lawful ("उल्लंघन करून केलेल्या ते बेकायदेशीर आहेत").	Deletion of the existing text and the substitution with the averment that the terms and conditions of the MOU have "not been complied with at all" (तंतोतंत पालन केले नाही)	Rejected
8	Para 15 (Line 4)	Para 15 contained the original pleading about illegal construction undertaken on the suit property after misrepresenting facts before the authority and obtaining unlawful permissions.	Deletion of the original text and substitution with an extensive new averment that Defendant No.3 obtained full FSI illegally, failed to give 600 sq.ft. Carpet flat as per MOU dated 30.11.2021 as well as transit rent w.e.f. 01.12.2021 @ Rs.10,000/- p. m. and that Defendant No.3 was obligated under MOU to give 600 sq.ft. Carpet flat, failed to deliver the same, and plaintiff is entitled to transit rent of Rs.10,000/- p.m. from date of filing till filing of the suit, totalling Rs.1,90,000/- with 12% interest = 2,18,500/- and from date of filing, Defendant No.3 is liable to further pay Rs.10,000/- per month till delivery, and the pages 3 and 4 of the MOU were replaced /	Rejected

			fabricated.	
9	Para 16 (line 9 onwards)	Para 16 contained the original averment containing the apprehension that Defendant No.3 may not execute registered deed with Plaintiff and may create third party rights over all the residential flats.	Addition of a new averment in Para 16 stating that the Plaintiff is entitled to have a registered deed executed by Defendant No.3 for 600 sq.ft. (carpet) flat/residential gala, and should keep one flat of 600 sq.ft. Carpet area available for the Plaintiff, and for that Plaintiff is constrained to file the suit for permanent and temporary injunction	Rejected
10	Prayer Clause 1	Original Prayer Clause 1 : “वादी यांचा अर्ज खर्चासह मंजूर करावा” - prayer that the Plaintiff's application be allowed with costs.	Further addition sought in the prayer for direction to Defendant No.3 to execute a registered deed for providing 600 sq.ft. (carpet) flat / residential gala to Plaintiff as per MOU dated 30.11.2021 in the newly constructed building in favour of Plaintiff.	Rejected.
11	Prayer Clause 2	Original Prayer Clause 2 : Prayer for declaration that all development permissions obtained from Defendant Nos.1 and 2 on the basis of false documents be declared illegal.	In the 4 th line, the text after “permission is” should be deleted, and instead the text “is not as per the provisions in the Unitified Development Control and Promotion Regulations, 2020, such declaration be granted.” should be permitted to be included.	Rejected
12	Prayer Clause 3	Original prayer Clause 3: Prayer for	Deletion of original Prayer Clause 3 and	Rejected

		permanent injunction against Defendant No.3 restraining them from proceeding with construction on the suit property on the basis of the illegal construction permissions;	substitution with prayer for direction to Defendant No.3 to keep available 600 sq.ft. (carpet) flat / residential gala for the Plaintiff, and for permanent and temporary injunction restraining Defendant No.3 from creating third-party interest in respect thereof.	
13	Prayer Clause 5	Original Prayer Clause 5 : Prayer for a declaration that the MOU dated 30.11.2021 executed by Plaintiff with Defendant No.3 is false, fabricated, forged and not binding on the Plaintiff, being a fraudulent document.	Deletion of original Prayer Clause 5 and substitution with prayer for a declaration that pages 03 and 04 of the MOU dated 30.11.2021 are forged, fabricated and not binding on the Plaintiff.	Rejected
14	Prayer Clause 6 (New/Additional)	Prayer seeking arrears of transit rent till filing of suit with interest. (There was no prayer for further direction to Defendant No.3 to pay transit rent @ Rs 10000/- p.m. from the filing of suit till delivery of flat).	Addition of a new Prayer Clause 6 seeking direction to Defendant No.3 to pay Rs.10,000/- per month as transit rent from the date of filing of the suit until delivery of the 600 sq.ft. (carpet) flat / residential gala to the Plaintiff.	Rejected.

14. The learned Civil Judge was of the view that the proposed amendment which has been rejected, would completely alter the nature and character of the suit and amount to conversion of a suit for declaration and perpetual injunction into one for specific performance of the agreement, which the

Plaintiff alleged was false and forged by Defendant No.3.

15. Whether the aforesaid approach of the learned Civil Judge is justifiable ? It is trite, all amendments which are necessary for the determination of real controversy between the parties are required to be allowed. There are two over-arching considerations. First, whether the proposed amendment is necessary for the determination of the real controversy between the parties, and, second, whether the proposed amendment has the potentiality to cause such prejudice to the adversary that it cannot be compensated. The question whether the proposed amendment materially alters the nature and character of the suit and whether the relief claimed by way of proposed amendment would be barred by law of limitation, also significantly bear upon the determination. The stage of the proceeding at which amendment is sought, especially in view of the insertion of the proviso to Order VI Rule 17 of the Code, assumes significance.

16. Ordinarily, all pre-trial amendments which are necessary for determination of the real question in controversy between the parties are required to be permitted, in the absence of potentiality of grave prejudice to the adversary. At a pre-trial stage, the Court is expected to adopt a little more liberal approach. The discretion to permit amendment in the pleading is, however, required to be exercised in a judicious manner and to promote the cause of justice. The principle that the procedure is a handmaid of justice and

thus, it should not be allowed to score a march over substantive justice also informs the decision.

17. In the case of **Pirgonda Hongonda Patil V/s. Kalgonda Shidgonda Patil**¹, the Supreme Court enunciated the consideration which ought to have weighed while deciding amendment in the pleading. It was enunciated that the ultimate test is, can the amendment be allowed without injustice to the other side or can it not ? The relevant observations in para No.10 read as under :

“10.....All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties..... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same: can the

1 AIR 1957 SC 363

amendment be allowed without injustice to the other side, or can it not ?"

18. In the case of **M/s. Ganesh Trading Co. V/s. Moji Ram**², the principles were further enunciated, as under :

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.” (emphasis supplied)

19. In the instant case, the thrust of the submission on behalf of the Defendants, which found favour with the trial Court, was that the proposed amendment would alter the nature and character of the suit inexorably and would virtually amount to substitution of one cause of action for another and conversion of the suit from that of declaration and injunction to that of specific performance.

20. Undoubtedly, a party is not free to take mutually destructive pleas.

² AIR 1978 SC 484

Though a party is entitled to take inconsistent pleas, yet, if it could be demonstrated that the proposed amendment, in a sense, works out the retribution of the pleadings in the original plaint, then the Court may be justified in declining to grant such amendment. However, the mere inconsistency in the averments in the unamended plaint and the averments sought to be introduced by way of amendment, by itself, cannot be a sustainable ground for rejection of the prayer for amendment in the plaint. It is not an immutable rule of law that the Plaintiff cannot take inconsistent pleas at all. The Plaintiff may claim alternative reliefs, provided the Plaintiff does not profess to alter the character of the suit inexorably.

21. In the case of **G. Nagamma and Anr. V/s. Siromanamma and Anr.**³, the Plaintiff had instituted a suit for specific performance of the agreement of reconveyance. By way of proposed amendment, the Plaintiff sought to redeem the mortgage asserting that the transaction of execution of the sale deed and obtaining a document for reconveyance were single transactions i.e. mortgage by conditional sale. Thus, the Plaintiff by way of amendment sought a decree for redemption of mortgage in the alternative. The Trial Court rejected the application. The High Court upheld the order opining that the amendment would change the nature of the suit as well as the cause of action.

3 (1996) 2 SCC 25

22. The Supreme Court allowed the application for amendment holding that it is settled law that the Plaintiff is entitled to take, even inconsistent pleas. The Plaintiff was seeking alternative reliefs. The application was for amendment of the plaint whereby neither cause of action would change nor the relief could be materially affected.

23. In the case of **B.K.Narayana Pillai V/s. Parameswaran Pillai and Anr.**⁴, wherein the defendant intended to amend the written statement by taking a plea that in case he is not held a lessee, he was entitled to the benefit of Section 60(b) of the Indian Easements Act, 1882. The Supreme Court permitted the amendment in the written statement observing that the plea that was sought to be raised by way of amendment was neither inconsistent nor repugnant to the pleas already raised in defence. It was further enunciated that, there was no absolute bar against taking inconsistent pleas. However, inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be avowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which can not be compensated by costs. No amendment should be allowed which amounts to or results in defeating the legal right accrued to the opposite party on account of lapse of time.

4 (2000) 1 SCC 712

24. In the case of **Praful Manohar Rele V/s. Krishnabai Narayan Ghosalkar and Ors.**⁵, the Supreme Court, after adverting to the pronouncements in the case of **G. Nagamma and Anr. (supra)** and **B.K.Narayana Pillai (supra)**, permitted the Plaintiff to amend the plaint so as to incorporate an alternative plea that, under the Rent Control Act, the Defendants were liable to be evicted when the initial suit for recovery of possession was filed on the basis of the claim that the Defendants were the licencees and the licence stood terminated.

25. However, in cases where the relief proposed to be incorporated by way of amendment would be barred by limitation, slightly different considerations come into play. If it could be demonstrated that the relief proposed to be claimed by way of amendment would be barred by limitation, the Court would be justified in declining to permit the Plaintiff from amending the plaint.

26. In the case of **L.J.Leach and Co. Ltd. V/s. Jardine Skinner and Co.**⁶, the Supreme Court enunciated that, it was no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.

⁵ (2014) 11 SCC 316

⁶ AIR 1957 SC 357

27. In the case of **Life Insurance Corporation of India V/s. Sanjeev Builders Pvt. Ltd. And Anr.**⁷, after an elaborate analysis and reference to the previous precedents, the Supreme Court postulated that, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that as clarified in **L.J.Leach and Co. Ltd. (supra)**, would be a factor to be taken into account in the exercise of the discretion.

28. The Supreme Court also referred to the judgment in the case of **Ragu Thilak D. John V/s. S. Rayappan**⁸, wherein it was expounded that, where the question whether amendment was barred by time or not appeared to be a disputed question of fact, the issue of limitation could be made an issue in the suit itself, then the amendment can be allowed by directing that the question of limitation be framed and decided in the suit itself.

29. A profitable reference can also be made to the decision of the Supreme Court in the case of **Abdul Rehman and Anr. V/s. Mohd. Ruldu and Ors.**⁹, wherein the Supreme Court was confronted with the question as to whether the proposed amendment would alter the claim / cause of action of the Plaintiffs. In that case, the Plaintiffs had initially prayed for permanent

⁷ (2022) 16 SCC 1

⁸ (2001) 2 SCC 472

⁹ (2012) 11 SCC 341

prohibitory injunction restraining Defendant Nos.1 to 3 therein from forcibly and illegally dispossessing the Appellants. By way of amendment, the Appellants sought a declaration that the alleged sale deed in favour of Defendant Nos.1 to 3 were liable to be set aside and that they would not affect the rights of the Plaintiffs. In that context, the Supreme Court observed as under :

“13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the unamended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the unamended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice

should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.”

30. The legal position which, thus, emerges is that there is no absolute bar against even the Plaintiff making inconsistent averments in the plaint. It is the degree of inconsistency that assumes critical salience. If the inconsistency in the pleadings is such that it completely destroys the case initially set up and the original pleadings and the proposed amendment work out each other's retribution, then it would clearly be a case of setting up a new case.

31. In contrast, if the foundational facts remain the same and the proposed amendment, even if inconsistent to some extent or by way of alternative relief, is essentially in the nature of a different approach to the initial case, then it cannot be said that the proposed amendment completely and inexorably alters the character of the suit. However, where it could be demonstrated that, by taking inconsistent pleas, the Plaintiff intends to deprive the adversary of an advantage on account of the initial stand of the Plaintiff, or the relief sought to be claimed by way of amendment would be barred by limitation, then the said amendment cannot be allowed as it would fall foul of the potentiality of prejudice principle.

32. On the aforesaid touchstone, reverting to the facts of the case, on the first blush, resistance on the part of the Respondents – Defendants that the proposed amendment completely alters the nature of the suit, in as much as,

initially the prayers of declaration and injunction were sought and now by way of proposed amendment, the specific performance of the purported agreement between the Plaintiff and Defendant No.3 is sought, appears alluring. Indeed, the Plaintiff is seeking to delete the prayer of declaration that the building permission obtained by Defendant No.3 from Defendant Nos.1 and 2 allegedly on the basis of false and forged documents is illegal and void and seeks to confine the declaration to non-observance of the Unified Development Control and Promotion Regulations, 2020.

33. It is also true, the Plaintiff seeks to restrict the challenge to the MOU dated 30 November 2021 in regard to the page Nos.3 and 4 of the said MOU and not the instrument in its entirety, as being forged and fabricated and seeks performance of the contract, which according to the Plaintiff, were the true terms of the contract, as agreed by and between the Plaintiff and Defendant No.3. Nonetheless, the pivotal question is, whether the aforesaid proposed amendment materially and significantly alters the nature of the suit or is based on a completely new cause of action.

34. To this end, it is imperative to revert to the case set up in the original plaint. In para 6 of the plaint, the Plaintiff has categorically asserted that the Defendant No.3 had agreed to provide a residential unit admeasuring 600 sq.ft. carpet, without any consideration in lieu of the demised premises. Defendant No.3 had also agreed to pay transit rent @ Rs.10,000/- p.m. from

the date of delivery of the possession of the demised premises till the completion of the new building. In paras 7 and 8 of the plaint, the Plaintiff asserts that Defendant No.3 made the Plaintiff to execute a MOU dated 30 November 2021, retained the same with it and did not provide a copy thereof, and, eventually, Defendant No.3 allegedly forged the said MOU by replacing page Nos.3 and 4 of the said MOU; the original pages of which did bear the signature of the Plaintiff. The contents of the MOU were, thus, materially altered to the prejudice of the Plaintiff fraudulently, is the fulcrum of the case of the Plaintiff.

35. If the proposed amendment is appraised in the light of the averments in the original unamended plaint, it becomes explicitly clear that, all the foundational facts are clearly and specifically pleaded in the unamended plaint. Declarations initially sought by the Plaintiff emanated from the aforesaid averments in the unamended plaint. The case of the Plaintiff that he is entitled to 600 sq.ft. Residential unit and transit rent @ Rs.10,000/- p.a., from the date of the surrender of the demised premises till the construction of the new building, remain intact and unaltered. What the Plaintiff is seeking by way of proposed amendment is the reliefs which are in tune with the averments in the unamended plaint. The proposed amendment neither introduces a new cause of action, nor materially alters the substratum of the claim of the Plaintiff. Since the MOU was purportedly executed on 30

November 2021, and in para 8 of the plaint, there are averments to the effect that the Plaintiff came to know about the alleged forgery in the MOU after the Plaintiff confronted the Defendant No.3 about the non-payment of the transit rent and the application for amendment was filed on 13 January 2025, it cannot be said that the relief sought by way of amendment would be ex-facie barred by law of limitation. The question of limitation would, thus, be in the arena of mixed question of facts and law. Therefore, if the proposed amendment is permitted, no prejudice would be caused to the Defendants. Nor the Defendants would be divested of any accrued right.

36. It is well neigh settled that, while considering the prayer for amendment in the pleadings, the Court is not required to delve into the merits of the amendment. The Plaintiff may or may not eventually succeed in getting the relief sought by way of proposed amendment. However, that cannot be an inhibiting factor while adjudicating the prayer for amendment. **(Rakesh Kumar Aggarwal and Ors. V/s. K.K.Modi and Ors.¹⁰)**

37. The conspectus of aforesaid consideration is that the proposed amendment is essential for the determination of the real question in controversy between the parties, namely the nature and extent of the entitlement of the Plaintiff upon redevelopment of the suit premises. That being the crux of the dispute, the proposed amendment would obviate the

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multiplicity of the proceedings, as all the questions in controversy can be determined once and for all.

38. For the foregoing reasons, I am inclined to allow the Petition.

39. Hence, the following order :

ORDER

(i) The Writ Petition stands allowed in terms of prayer clause (a).

(ii) Necessary amendment be carried out in the plaint and amended copy of the plaint be served on the Defendants within a period of four weeks from today.

(iii) The Defendants would be at liberty to file additional written statement to the amended plaint within a period of 30 days from the date of service of the copy of the amended plaint.

(iv) The question of limitation in regard to the reliefs sought by way of proposed amendment shall remain open for adjudication at the trial.

(v) Rule made absolute to the aforesaid extent.

(vi) No costs.

(N.J.JAMADAR, J.)