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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.375 OF 2025

Mr. Akshay Quenim
34 years of age, Indian
National, Businessman, son
of Ramnath Quenim, r/o.
House No.D-6, Ashirwad
Ocean Park, Dona Paula,
Tiswadi - Goa. ... Petitioner.

Versus

Mr. Royce Savio Pereira,
Age about 33 years,
Profession – Chartered
Accountant son of late Arthur
Felix Pereira, R/o T-8, Sonali
Apartments, D-Block, Tonca,
Caranzalem, Goa. ... Respondent.

Mr. Vibhav Amonkar with Mr. Raj Chodankar and Mr. Omkar Bhave, Advocates for the Petitioner.
Mr. Kaif Noorani, Advocate for the Respondent.

CORAM: VALMIKI MENEZES, J.
DATED: 25th September, 2025

ORAL JUDGMENT:

1. Registry to waive office objections and register the matter.

2. Rule. Rule made returnable forthwith. With the consent of the

parties, petition is disposed of finally.

3. This petition impugns order dated 06.06.2025 passed by the Civil Judge Junior Division, 'B' Court at Merces in Special Civil Suit No.40/2024/B, ordering that the application for amendment of a plaint at Exhibit D-13 would be first heard and decided, prior to rendering its decision on an application for return of the plaint filed by the Defendants under Order 7 Rule 10 at Exhibit D-9 of the record of the Trial Court.

4. The impugned order was passed in the background facts which are detailed below:

a) Special Civil Suit No. 40/2024/B came to be filed by the Respondent/Original Plaintiff wherein the Plaintiff sought, as prayer (a), a Decree to direct the Defendant to compensate the Plaintiff in the sum of Rs.50,00,000/- for loss of reputation of the Plaintiff caused by the Defendant. Prayer clause (b) of the plaint seeks a decree directing the Defendant to issue a public apology and to retract the allegations made by the Defendants against the Plaintiffs. Prayer clause (c) seeks a decree to declare a cheque issued on the Plaintiff's account for a sum of Rs.50,00,000/- in favour of one Hospitality AQ Gastronomy Ventures, is not issued for a legally enforceable debt or liability and the Plaintiff in entitled for return of the same from the Defendant, and further, for a Decree directing the Defendant to

pay the Plaintiff a sum of Rs.5,19,390/-, including GST towards the Plaintiff's outstanding professional dues.

b) According to paragraph 100 of the plaint, it was valued for the purpose of the Court fees, at Rs.50,00,000/- and the maximum Court fees were paid therewith.

According to paragraph 89 of the plaint, the cause of action for filing the suit arose when the Defendant published on Instagram, material, which according to the Plaintiff is defamatory. In paragraph 91 of the plaint, the Plaintiff lays a claim to an amount of Rs.5,19,390/- including GST for dues payable by the Defendant towards his professional services.

c) In paragraphs 10 to 14 and 18, the Plaintiff refers to a written engagement letter sent to the Defendant on 18.08.2023 by which the Plaintiff set down the terms of his engagement which were accepted, according to the Plaintiff by the Defendant, and further, according to paragraph 12, the Plaintiff has averred that the terms were verbally approved by the Defendant.

d) In paragraph 18 of the plaint, the Plaintiff avers that from January 2024, the Defendant engaged his services for outsourced accounting and finance services for his restaurant at Kolhapur for which the Plaintiff sent his engagement letter

dated 14.02.2023, the terms of which were also accepted by the Defendant, and under which arrangement, the Plaintiff rendered services to the Defendant.

e) On the aforementioned averments, the cause of action as pleaded in the plaint and reliefs sought, the Trial Court issued summons to the Defendant, who was served on 10.07.2024. On appearance on the same day, the Defendant filed an application under Order 7 Rule 10 CPC for return of the plaint; the application refers to the pleadings in the plaint which are referred above, raising a plea that the entire cause of action in the suit was covered by the terms of engagement under the two letters referred to in paragraphs 10 and 18 of the plaint. According to the Defendant, the suit partakes of a commercial transaction covered under the Commercial Courts Act, hence, the Trial Court lacked the jurisdiction to entertain the suit. The plaint was sought to be returned to be presented before the appropriate Commercial Court, on this basis.

f) Immediately thereafter, the Plaintiff moved an amendment application at Exhibit D-13 on 29.07.2024 seeking to amend the valuation clause in the suit i.e. paragraph 100, and to substitute the original valuation clause which fixed the valuation in the suit at Rs.50,00,000/- by a paragraph contained in the draft amendment which now splits the valuation relief-

wise in the following manner:

a. Relief clause (a) was sought to be valued at Rs.50,00,000/-.

b. Relief clause (b) was sought to be valued at Rs.1,000/-.

c. Relief clause (c) was sought to be valued at Rs.50,00,000/-.

d. Relief clause (d) was sought to be valued at Rs.5,19,390/-.

5. It is under these circumstances that the Trial Court was called upon to decide whether it should address itself to the application for return of plaint first in point of time or whether it should first decide the application for amendment. By the impugned order, the Trial Court, after referring to various case laws has held that, in its opinion, it was the application for amendment that would be first decided.

6. The following submissions have been advanced by the learned Advocate for the Petitioner:

a) That the Trial Court ought to have addressed itself to the question of whether it inherently lacked jurisdiction to try the suit as filed,

b) It was further submitted that the Trial Court ought to have examined the amendment application to see whether, if it

were allowed, it would have the effect of conferring jurisdiction upon the Court where the plaint was lodged, and effectively filled in the lacunae in the plaint by which the plaint, if it were not amended, would have to be returned. The following case law has been relied upon by the Petitioner:

a. ***M/s. Vivienda Luxury Homes LLP v. M/s. Gregory & Nicholas***, **Judgment dated 27.06.2025 in Writ Petition No.237/2025 (F) of the High Court of Bombay at Goa**.

b. ***HSIL Limited v. Imperial Ceramic and Anr.***, **2018 SCC OnLine Del 7185**.

7. Per contra, learned Advocate for the Respondents has advanced the following submissions:

a) Relying upon the Judgment of this Court in ***Gaganmal Ramchand v. The Hongkong and Shanghai Banking Corporation***, **AIR 1950 Bom 345** and of the Supreme Court in ***Devichand Ratanchand Solanki and Anr. v. Premshankar Shivram Bajpayi***, **1994 Mh.L.J. 1001**, it was contended that it is only after the amendment application is allowed, that the Court must examine whether the plaint requires to be returned or rejected. It was further contended that the amendment application is not to incorporate the

cause of action, but only to split the valuation clause into various components by valuing each relief, and the amendment, if allowed, would not in any way materially affect the jurisdiction of the Court, since the suit as drafted was primarily a suit for recovery of damages on grounds that the Defendant had indulged in defamation of the Plaintiff.

8. I have considered the rival submissions of the learned Counsel for the parties.

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.

13. *Gaganmal Ramchand* (supra) was a case where the original plaint did not disclose a complete cause of action and was sought to be amended at a later date, when the documents which completed the cause of action came to the hands of the Plaintiff. It was in that context that the Court held that under such circumstances, the plaint need not be rejected since the amendment application was based upon a subsequent event which completed the cause of action.

14. In *Devichand Solanki* (supra), the Bombay High Court was considering the effect of substitution of facts in a plaint by an amendment application, and held that in the facts and circumstances

of that case, it is only after the amendment were allowed that the objections as to jurisdiction could be taken up. Neither of these cases apply on facts to the present matter.

15. In *Vivienda Luxury Homes* (supra), this Court was dealing with a case where the Trial Court held that it would decide an application for return of plaint before it would entertain an application for amendment of the same plaint, which was filed later in point of time. After referring to the Judgment of the High Court of Delhi in *HSIL Limited* (supra) has held that the Court dealing with the suit has to examine whether the essential ingredients that confer jurisdiction on the Court are disclosed in the plaint or are missing, and a Court that does not have jurisdiction, cannot be allowed to confer upon itself the jurisdiction that it lacks, by allowing amendment of the pleadings. The Delhi High Court, in *HSIL Limited* (supra) has in detail laid down the very same proposition which I have set in the preceding paragraphs. Relevant paragraphs of *HSIL Limited* (supra) are quoted below:

> "*20. I have however wondered whether an application under Order VII Rule 11 of the CPC on the ground of the plaint not disclosing a cause of action or suffering from some other technical defect viz. of valuation, court fee paid or the claim therein being barred by any law, can be equated with an application under Order VII Rule 10 of the CPC on the ground of the Court not having territorial jurisdiction. This becomes important because of the consistent view of the High Courts mentioned above including of this Court that when the Court lacks territorial jurisdiction, it*

cannot even entertain an application for amendment of the plaint and which amendment would vest territorial jurisdiction in the Court. Reference may also be made to Hans Raj Kalra Vs. Kishan Lal Kalra ILR (1976) II Delhi 745 and Anil Goel Vs. Sardari Lal (1998) 75 DLT 641 though in the context of pecuniary jurisdiction.

21. Having considered the matter, I am of the opinion that the judgments holding that application for amendment of plaint, even if filed to defeat the pending application under Order VII Rule 11 of the CPC, has to be heard first, will not extend to a case where averments contained in the plaint as existing does not disclose the Court to be having territorial jurisdiction and amendment is sought to incorporate the pleas to disclose the Court to be having territorial jurisdiction. I have reached the said conclusion relying on the dicta of the Supreme Court in Harshad Chiman Lal Modi Vs. DLF Universal Ltd. (2005) 7 SCC 791 holding that a Court has no jurisdiction over a dispute in which it cannot give an effective judgment and even an agreement between the parties vesting jurisdiction in the Court which it otherwise does not have, is void as being against public policy. It was further held that where a Court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, it cannot take up the cause or the matter and an order passed by a Court having no jurisdiction is a nullity. It was yet further held that neither waiver nor acquiescence can confer jurisdiction upon a Court, otherwise incompetent to try the suit. It was yet further held that where a Court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing and a decree passed by a Court having no jurisdiction, is non est and its invalidity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings; a decree passed by a Court, without jurisdiction is a coram non judice.

22. Thus, if the plaint in these suits as it exists, does not disclose this Court to be having territorial jurisdiction, then the only

option for this Court is to return/reject the plaint and this Court would not have jurisdiction to even consider the application of the plaintiff for amendment of the plaint and which amendment, if allowed, would disclose the plaint as having the necessary averments for this Court to have jurisdiction to entertain the suit."

I am in complete agreement, as held in the above paragraphs, with the view taken by the Delhi High Court in *HSIL Limited* (supra), in that the Trial Court would be required to examine the plaint as it stood, and based upon the averments of the plaint, if it inherently lacked jurisdiction to take up the suit, it has to reject or return the plaint as the case may be without looking into the amendment; however, whilst doing so, the Trial Court may also look into the averments sought to be pleaded by way of amendment to test whether, if these averments were allowed to be incorporated, in the plaint as it originally stood, they would have the effect of conferring the jurisdiction on the Court dealing with the suit, which it otherwise lacked or that the amendment would assist the plaintiff to get over the bar of any law.

16. The impugned order dated 06.06.2025 would therefore have to be set aside. The Trial Court shall now consider the averments made in the plaint as they stood when the plaint was brought before the Court, while also considering the effect of the amendment, if allowed. On considering both the applications, if it concludes that the suit as originally filed is a commercial suit, the Trial Court shall return the

plaint to be presented before the appropriate Commercial Court, in which case it will lack the jurisdiction to grant the amendment application. However, if on considering both the applications, it concludes that the amendment application, if granted would have no effect on its jurisdiction, it would proceed to reject the application under Order 7 Rule 10 and consider the amendment application on its own merits. Obviously, therefore, the Trial Court would have to consider both the applications simultaneously.

17. Consequently, and for the reasons stated above, the impugned order dated 06.06.2025 is quashed and set aside. The Trial Court shall consider the application under Order 7 Rule 10 CPC filed by the Defendants (Exhibit D-9) and the amendment application filed by the Defendants (Exhibit D-13), and pass orders in the light of the observations made above. Rule is made absolute in the above terms.

VALMIKI MENEZES, J.