IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7283 OF 2026

Videsh Holdings Pvt. Ltd.
A Company registered under
the provision of Companies
Act I of 1956 and having its
Registered Office at 573,
Girgaum Road, Chira Bazar,
Mumbai 400002 ..Petitioner

Versus

M/s. Kalantry Textile Consultants,
a Partnership Firm
having its Administrative Office
at 207, Spectrum No.1, Relief
Road, Ahmedabad – 380 001
and an Associate Office at 249,
Kalbadevi Road, Mumbai – 400 002.
...Respondent

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Mr. Rubin Vakil a/w Mr. Ibrahim Merchant, for the Petitioner.

Mr. Jamshed Ansari, for the Respondent.

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CORAM : N. J. JAMADAR, J.
DATE : 22nd JUNE 2026

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of learned Counsel for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order passed by the learned Judge, City Civil Court in Chamber Summons No. 216/2026 in Suit No. 4010/2009, whereby the Chamber Summons taken out by the plaintiff for amendment in cause title of the plaint so as to correct the description of the defendant as a Proprietary Concern through its proprietor Kiran Gokuldas Kalantry HUF in place of "Partnership Firm" and substitute the words "Partnership Firm" with the words "Proprietary Concern" through its proprietor Kiran Gokuldas Kalantry HUF, came to be rejected.

3. The petitioner – plaintiff had appointed M/s. Kalantry Textile Consultants – the defendant as a facilitator in the purchase of the property in a sale conducted by the official liquidator of M/s. Aruna Mills Company Ltd. (liquidation). The plaintiff claimed, in connection with the said transaction, certain amount was due and payable by the defendant to the plaintiff, and a balance confirmation letter was executed by the defendant.

4. With the said assertions, the petitioner instituted a suit for recovery of sum of Rs. 19,36,767.50/- (Rupees Nineteen Lakhs

Thirty Six Thousand Seven Hundred and Sixty Seven point Fifty) alongwith further interest on the principal amount of Rs.13,50,167.50/- (Rupees Thirteen Lakhs Fifty Thousand One Hundred and Sixty Seven point Fifty).

5. When the suit was posted for recording the cross-examination of the plaintiff's witness, the petitioner took out the chamber summons seeking the aforesaid amendment in the cause title of the plaint.

6. The learned Judge, City Civil Court, was persuaded to reject the chamber summons primarily on the ground of delay in seeking the amendment. The learned Judge, City Civil Court, was of the view that, the explanation offered by the plaintiff for seeking amendment, at such a belated stage, that the new Advocate for the plaintiff noticed the mistake in the description of the defendant, was demonstrably incorrect, as in the written statement itself, the defendant has categorically contended that, the defendant was a proprietary concern and not a partnership firm.

7. Being aggrieved, the plaintiff has preferred this Writ Petition.

8. An affidavit-in-reply has been filed on behalf of the respondent – defendant opposing the prayers in the petition.

9. I have heard Mr. Rubin Vakil, the learned Counsel for the petitioner, and Mr. Jamshed Ansari, the learned Counsel for the respondent, at some length.

10. Mr. Vakil, the learned Counsel for the petitioner, submitted that, the learned Judge, City Civil Court, took a very hypertechnical view of the matter. The proposed amendment would neither change in nature of the suit, nor cause irretrievable prejudice to the defendant. It was the specific stand of the defendant that, it is a proprietary concern not a partnership firm. The learned Judge, City Civil Court lost sight of the fact that, the proposed amendment was essential to rectify the mis-description of the parties and for such amendment, the bar of limitation does not apply.

11. Mr. Vakil further submitted that, in the facts of the case, the interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, was not attracted. To buttress these submissions, reliance was placed by Mr. Vakil, on the judgments of the Supreme Court in the cases of ***Jai Jai Ram***

Manohar Lal Vs. National Building Material Supply, Gurgaon[1] and *Varun Pahwa Vs. Renu Chaudhary*[2].

12. In opposition to this, Mr. Ansari, the learned Counsel for the respondent submitted that, the falsity of the explanation sought to be offered for the delay in seeking the amendment is borne out by the fact that, in the written statement filed in the year 2012 itself, the defendant has categorically contended that, the defendant was not a partnership firm. Mr. Kiran Gokuldas Kalantry, has affirmed the written statement in the capacity of Karta of Kiran Gokuldas Kalantry HUF, the sole proprietor.

13. Moreover, during the pendency of the trial, the plaintiff had sought production of documents which also revealed that, the defendant was a proprietary concern and not a partnership firm. Yet the plaintiff did not make any effort to amend the plaint. In these circumstances, the learned Judge, City Civil Court, was wholly justified in rejecting the Chamber Summons, urged Mr. Ansari.

14. The legal position in the matter of amendment in the pleadings is crystallized. All amendments which are necessary

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1 (1969) 1 SCC 869

2 (2019) 15 SCC 628

for the determination of real question in controversy between the parties, are required to be allowed. The two overarching principles are : i) whether the proposed amendment is necessary for determining the real question in controversy and, ii) whether there is a potentiality of irretrievable prejudice to the adversary. In a case governed by the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, the question as to whether the party seeking amendment in the pleading satisfies the test of due diligence, arises for consideration.

15. In the case at hand, evidently, the application for amendment was moved after the commencement of the trial. Thus the satisfaction that in spite of due diligence the defendant could not have sought the amendment before the commencement of trial, is required to be arrived at as a jurisdictional fact. It is also true, the explanation sought to be offered in the application for seeking the amendment after the commencement of the trial, lack substance as the defendant had made it clear in the year 2012 itself that, it was a proprietary concern and not a partnership firm. Nonetheless, the nature of the amendment proposed to be carried out could not have been lost sight of by the trial Court.

16. As noted above, the plaintiff proposed to correct the description of the defendant. Undoubtedly, there was an element of delay and indolence on the part of the plaintiff, especially when the defendant had made it clear that, it was a proprietary concern. Yet, it is fairly well settled that, even if there is an element of carelessness bordering on negligence, on the part of a party seeking amendment in the pleading, if the proposed amendment is necessary for the determination of real question in controversy, the Court ought to allow such amendment as the governing principle is that, the procedure which is handmaid of justice should not be allowed to score a march over the substantive justice.

17. In the case of ***Jai Jai Ram Manohar Lal (supra)***, on which reliance was placed by Mr. Vakil, the Supreme Court enunciated that, a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting *mala fide*, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the

amendment may be allowed if it can be made without injustice to the other side.

18. The Supreme Court further clarified that, in the facts of the said case, since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises : the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff, on the date on which it was originally instituted.

19. Following the aforesaid pronouncement, in the case of *Varun Pahwa (supra)*, the Supreme Court, in the facts of said case, found that, it was an inadvertent mistake in the plaint which the trial court should have allowed to be corrected so as to permit the private limited company to sue as plaintiff as the original plaintiff has filed suit as Director of the said private limited company. Therefore, the order declining to correct the memo of parties cannot be said to be justified in law.

20. The aforesaid pronouncements are on all four with the facts of the case at hand. There is no element of prejudice to the defendant as it is the stated case of the defendant that, it is a proprietary concern. In the view of this Court, the proposed amendment is indispensable for a correct resolution of the real

dispute between the parties. So far as the aspect of delay and inconvenience caused to the defendant, the same can be taken care of by imposing costs. Resultantly, the Writ Petition deserves to be allowed.

21. Hence, the following order :-

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I) The Writ Petition stands allowed.

ii) The impugned order stands quashed and set aside.

Iii) The Chamber Summons No. 216/2026 stands allowed.

iv) The petitioner is permitted to carry out the amendment in the plaint in accordance with the Schedule appended to the Chamber Summons subject to payment of costs of Rs.25,000/- to the defendant.

v) The costs be paid within a period of two weeks from the date of uploading of this order.

The payment of costs shall be a condition precedent.

vi) Upon payment of costs, amendment be carried out and the amended copy of the petition be served on the defendant, within a period of one week thereafter.

[N. J. JAMADAR, J.]