

MHRG140025182023

R.C.S. No. 191/2023



Mohan Ramkrushna Mhatre

Vs.

Lake view Gruhnirman Sansta Ltd. and

others

Order below Exhibit 50 and 52

1. The plaintiff has preferred these applications under Order 6 Rule 17 and Order 1 Rule 10 (2) of the Code of Civil Procedure 1908 (CPC).
2. Plaintiff has submitted that the suit property in which the Plaintiff was residing, after the institution of the present suit, has been demolished by Defendant No. 4 with the permission of the Uran Municipal Council. As a result, the Plaintiff has been compelled to reside in rented premises elsewhere. Therefore, Uran Municipal Council must be added as party and necessary amendment with respect to pleadings and prayers needs to be done. Therefore, it is necessary to add the proposed defendant in the suit along with the contentions.
3. Defendant no.1, 5 and 6 have filed say and submitted that the present applications will change the nature of the suit. The amendments could have been brought on record earlier. Hence, the applications may be rejected.
4. Perused the application and say. Heard both sides.

5. Considering the application and say, following points arise for my determination and I record my findings thereon.

Sr. No	Points for determination	Findings
1	Whether the proposed amendment needs to be allowed ?	Yes
2	Whether the proposed party is a necessary party?	Yes
3	What Order ?	Applications are allowed

::Reasons::

Point No. 1 to 3 : All points, being inter- related, are being dealt together.

Plaintiff's arguments:

6. The Plaintiff filed the present suit on 22.12.2023 seeking a declaration, permanent injunction, and other consequential reliefs. Prior thereto, the Assistant Registrar, Co-operative Societies, Uran, by letter dated 24.11.2022, informed the Plaintiff that a complaint had been received from Lake View Co-operative Housing Society and directed the Plaintiff to appear and file his written submissions regarding the complaint. Accordingly, on 06.12.2022, the Plaintiff appeared before the authority and submitted his written statement.
7. Despite the above, the Assistant Registrar, Co-operative Societies, Uran, by order dated 24.02.2023, directed that the redevelopment of Lake View Co-operative Housing Society be carried out. However,

notwithstanding the said directions, the Uran Municipal Council issued a notice dated 30.05.2023 to the Plaintiff directing him to vacate the building. The Plaintiff submitted a reply to the said notice on 07.06.2023, stating that the Uran Municipal Council, in collusion with the Plaintiff's sons, defendant no. 5 and 6 were deliberately acting to deprive the Plaintiff of his rights in the suit property. Accordingly, the Plaintiff raised objections before the Uran Municipal Council. Thereafter, despite the said objections, the Society once again issued a notice dated 01.11.2023 calling upon the Plaintiff to execute the redevelopment agreement in respect of the building. Consequently, the Plaintiff was compelled to institute the present suit on 22.12.2023 against the Society and his sons, defendant no. 5 and 6 seeking appropriate declaratory reliefs.

8. At the time of filing the present suit, Flat No. 01 was in possession, occupation, and enjoyment of the Plaintiff. The Plaintiff, his wife, and his daughter were residing in the said flat. However, after the filing of the suit, the building of Lake View Co-operative Housing Society was demolished during the year 2024 with the permission of the Uran Municipal Council. Therefore, it has become necessary to implead the Uran Municipal Council as a necessary party to the suit by adding it as Defendant No. 9.
9. The events giving rise to the above proposed amendments occurred after the institution of the present suit and while the suit has been

pending before this Court. The proposed amendments are sought before the settlement of issues and are necessary and proper for the effective and complete adjudication of the disputes involved in the present suit. Therefore, the application may be allowed.

Defendant No. 1's arguments:

10. The plaintiff seeks to add Uran Municipal Council and therefore, notice under section 80 of the CPC is mandatory. The suit's nature is likely to be changed. The amendments will change the nature of the suit. Hence, the application may be rejected.

Defendant No. 5 and 6's arguments:

11. According to the Plaintiff's own pleadings, the present suit was instituted on 22.12.2023. At the time of filing the suit, the last Defendant was an officer of the Uran Municipal Council against whom reliefs had already been sought. Therefore, the Plaintiff was fully aware that Lake View Co-operative Housing Society was in the process of redevelopment. The Plaintiff had also corresponded with the Society on 06.12.2022. The present application has been filed only after the building has already been demolished and redevelopment has commenced. Therefore, the Plaintiff's rights have not been, and will not be, prejudiced or defeated in any manner.
12. While seeking amendment of the description of the suit property,

the Plaintiff has referred to a future flat proposed to be allotted in the redeveloped building. Such a description is vague and uncertain. The building has been demolished strictly in accordance with the applicable laws, the Society's bye-laws and the relevant statutory provisions, and redevelopment is presently in progress.

13. The Plaintiff further seeks a declaration that the redevelopment agreement is not binding upon him. However, the old building no longer exists. Upon redevelopment, the rights in respect of the earlier flat will be governed by the redevelopment agreement and the sanctioned building plans. Consequently, the relief now sought by the Plaintiff has become infructuous and incapable of implementation. The proposed amendment is therefore unnecessary and therefore the application may be rejected.

:Reasoning:

14. Heard both parties i.e. plaintiff, defendant no.1, 5 and 6.

15. **Order 1 Rule 10 (2) of the CPC is read as under:**

'The Court may at any stage of the proceedings, either upon or without the application of either party, and on such term as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the

Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.'

16. Thus, it is clear that where the presence of a party is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, a party can be added to the suit.
17. The two parameters for exercising the power under Order 1 Rule 10 of the CPC are (a) such person ought to have been joined, either as a plaintiff or as a defendant, but is not so joined; or; (b) Without his presence, the question involved in the suit cannot be decided finally and effectively.
18. The suit is for declaration and injunction. Earlier the prayer in the suit was to declare that the suit property is the self-acquired property of the Plaintiff, the Defendant No. 1 to 4 be directed to execute a redevelopment agreement with the Plaintiff and injunction.
19. In the present case, it is the specific contention that the suit property in which the Plaintiff was residing was demolished by Defendant No. 4 with the permission of the Uran Municipal Council after the institution of the suit. As a result, the Plaintiff has been compelled to reside in rented premises elsewhere.

20. The subsequent events that occur during the pendency of the suit needs to be brought on record. If such developments are not brought on record, it will lead to multiplicity of proceedings. The said amendment does not change the nature of the suit.
21. The contention of the Ld. Advocate for defendant no.1 that mandatory notice under section 80 of the CPC has not been given is not tenable. Because, in the case of City Municipal Council Bhalki v. Gurappa, (2016) 2 SCC 200, the Hon'ble Supreme Court has held that as a municipal council is not a public officer, no notice is necessary under Section 80 of the CPC when a suit is filed against a municipality.
22. The prayers sought in the amendment can be granted or not, cannot be ground to reject the application. Plaintiff will have to prove its case on its own merits. The tenability of prayers cannot be adjudicated in amendment application.
23. Further, the presence of the proposed party is essential to effectually and completely adjudicate upon all the questions involved in the suit. Thus, the proposed defendant is necessary party to the suit. The contentions with respect to the proposed defendant needs to be added. It will not change the nature of the suit.

24. Therefore, it is necessary to allow the application to enable the court to adjudicate upon and settle all the questions involved in the application. Hence, I answer **point no.1 and 2 in affirmative** and in **answer to point no.3**, accordingly, I proceed to pass the following order:

::ORDER::

1. Applications at Exhibit 50 and 52 are allowed.
2. Proposed defendant be added in the plaint.
3. Plaintiff shall carry out necessary amendment within 14 days from this order.
4. Costs in cause.

Sd/-

Place:Uran

Date : 03.08.2026

(Ms. G. K. R. Tandon)

2nd Jt Civil Judge, J.D.,

Uran