

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 11470 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Approved for Reporting	Yes	No

KAILASHBEN ARUNKUMAR PRAJAPATI & ANR.

Versus

LH OF DECD SANDIPKUMAR FATEHSINH VASAVA & ORS.

Appearance:

MR P P MAJMUDAR(5284) for the Petitioner(s) No. 1,2

MR V Z BHARDA(12667) for the Petitioner(s) No. 1,2

HCLS COMMITTEE(4998) for the Respondent(s) No. 1.1,1.2,1.3,1.4

MR VASHISTHA M JOSHI(8972) for the Respondent(s) No. 1.1,1.2,1.3,1.4

CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 16/10/2026

JUDGMENT

1. Heard Mr. V. Z. Bharda, learned advocate for the petitioners and Mr. Vashistha M. Joshi, learned advocate for the respondents.

2. The present petition is filed under Article 227 of the Constitution of India, seeking the following reliefs:

“(A) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order dated 02.03.2024 passed by the learned 24th Additional Chief Judicial

Magistrate, Vadodara, in Special Civil Suit No. 442 of 2014 and further be pleased to allow the amendment application filed below Exhibit 104 (at Annexure-A colly hereto);

(B) During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay the further proceedings of Special Civil Suit No. 442 of 2014 pending before the 24th Additional Chief Judicial Magistrate, Vadodara;

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.”

3. The petitioners herein are original plaintiffs and the respondents herein are legal heirs of original defendants. For the sake of convenience and brevity, the parties herein after will be referred to as plaintiff and defendant.

SHORT FACTS:

4. The plaintiff instituted a recovery suit being Special Civil Suit No. 442 of 2014 against the defendant. The suit was originally filed to recover a sum of Rs.31,22,659/-. It seems that the defendant issued cheques in favour of plaintiff, which were dishonoured. The plaintiff has incorporated the details of such cheques issued by the defendant in the plaint and sought recovery by way of the said suit. Since some of the cheques were dishonored and its amount was around Rs.24,75,000/-, prior to filing of

the said suit, in the year 2012, the plaintiff instituted a criminal complaints under Section 138 of Negotiable Instruments Act, 1881 (herein after referred to as “***the Act, 1881***”) against the defendant. The defendant acquitted by the Trial Court. The plaintiff preferred acquittal appeals being Criminal Appeal Nos. 1672 of 2017 and 1673 of 2017 before this Court, which were allowed by learned single judge of this Court vide its CAV common judgment dated 14.06.2018. The operative portion of the aforesaid judgment read thus:

“8. Resultantly, both the appeals succeed and are ALLOWED. The impugned judgments and orders passed by the trial Court in Criminal Case No. 49753 of 2012, Dated: 17.06.2017, so also in Criminal Case No. 2420 of 2013, Dated: 17.06.2017, are QUASHED and set aside.

8.1 So far as Criminal Appeal No. 1672 of 2017 is concerned, the respondent-accused shall pay total sum of Rs.10,00,000/- (TEN LAKH) lakh towards the amount of fine, within a period of SIX WEEKS from the date of receipt of a copy of this order; failing which he shall undergo rigorous imprisonment for one year. Out of the said amount, the appellant, therein, shall be paid compensation of Rs.10,00,000/- (TEN LAKH) by way of an account payee cheque.

8.2 So far as Criminal Appeal No. 1673 is concerned, the respondent shall pay the amount of Rs.16,00,000/- (SIXTEEN LAKH) towards the amount of fine, within a period of SIX WEEKS from the date of receipt of a copy of this order; failing which he shall undergo rigorous imprisonment for one year. The amount of compensation to be paid to the appellant shall be Rs.15,00,000/- (FIFTEEN LAKH) by way of an account payee cheque.”

(Emphasis supplied)

5. Thus, in view of the aforesaid judgment and order

passed by this Court, the defendant was required to pay total compensation of Rs. 25,00,000/- to the plaintiff. The defendant challenged the aforesaid judgment and order passed by this Court before the Hon'ble Apex Court by way of Special Leave to Appeal (Criminal) Nos.5864-5865/2018. The original defendant - accused died during the pendency of the aforesaid appeal on 14.05.2021, the said appeals were dismissed as abated by the Hon'ble Apex Court vide its order dated 23.08.2021.

The order reads thus:

“Mr. D. N. Ray and Mr. Shushil R. Shukla, learned Advocates appearing for the petitioner submit that the petitioner died as a result of COVID-19 pandemic on 14.05.2021.

Statement is recorded.

The Special Leave Petitions are dismissed as abated.

Pending applications, if any, also stand disposed of.”

6. After passing of the aforesaid order by the Hon'ble Apex Court, the plaintiff filed the impugned amendment application below Exh. 104 in the pending suit on 17.09.2022, whereby requested the Trial Court to allow him to amend the plaint and sought recovery of amount of compensation awarded by this Court, i.e., Rs.26,00,000/-

with interest thereon plus advocate expenses of Rs.8,50,000/- incurred by him up to Hon'ble Apex Court. By way of the impugned amendment application, the plaintiff prayed for amendment of the claim amount sought to be recovered from the defendant. Now, the plaintiff is claiming that he is entitled to recover Rs.78,85,659/- instead of Rs.31,22,659/-. The defendant objected the impugned amendment application by filing the reply. After hearing the parties, the Trial Court vide its impugned order dated 02.03.2024 rejected the impugned amendment application. Hence the present petition.

SUBMISSIONS OF THE PETITIONER - PLAINTIFF:

7. Mr. Bharda, learned advocate for the petitioner - plaintiff, would submit that the amendment sought for by the plaintiff ought to have been allowed by the Trial Court as due to subsequent event which has taken place, whereby the plaintiff is entitled to recover an additional amount. It is submitted that the amount of compensation awarded by this Court to the plaintiff remained

undisturbed due to dismissal of the appeals filed by the original defendant - accused by the Hon'ble Apex Court. It is further submitted that the plaintiff is also entitled to recover legal expenses borne by him from the defendant.

7.1. Mr. Bharda, learned advocate, would further submit that due to the aforesaid development which has taken place during the pendency of the suit, the plaintiff is entitled to recover an additional amount from the defendant, which could not have been disallowed by the Trial Court. It is submitted that by allowing the amendment, neither the nature of the suit gets changed nor any prejudice would cause to the defendant. It is further submitted that as per the settled position of law, all the amendments should be ordinarily allowed unless it is specifically barred in law.

7.2. Mr. Bharda, learned advocate, would further submit that as per settled law, the real controversy test is the cardinal test and it was a duty of the Trial Court to see as to whether the amendment sought is necessary to decide the real dispute between the parties. It is further

submitted that there is no deliberate negligence on the part of the plaintiff not to incorporate the claim which is sought to be incorporated by way of amendment, inasmuch as at the time of institution of the suit, the criminal proceedings were pending before the Court concerned.

7.3. To support his submissions, he would rely upon the decision upon these three judgments.

1. ***Rajesh Kumar Aggarwal & Ors. Vs. K. K. Modi & Ors.*** reported in ***(2006) 4 Supreme Court Cases 385.***

2. ***Haramani Sahoo & Ors. Vs. Lalita Nayak & Ors.*** reported in ***(2026) INSC 1112.***

3. ***Smt. Mona Grewal Vs. Karan Singh Grewal & Ors.*** reported in ***(2015) SCC OnLine Cal 6527.***

7.4. By making the above submissions, Mr. Bharda, learned advocate for the petitioners, would request this Court to allow the present petition.

**SUBMISSIONS OF THE RESPONDENT -
DEFENDANT:**

8. Per contra, Mr. Joshi, learned advocate appearing for the respondent - original defendant, would support the impugned order. It is submitted that there is no error much less any gross error of law committed by the Trial Court while rejecting the amendment application.

9. No other and further submissions have been advanced by learned advocates for the respective parties.

ANALYSIS AND REASONS:

10. Having heard learned Counsels for the respective parties and upon perusal of the impugned amendment application and also taking into account the aforesaid facts, *prima facie*, it appears that the plaintiff instituted a recovery against the defendant, which includes amount of the cheques issued by the defendant and were subject matter of criminal complaints filed by the plaintiff under Section 138 of the Act, 1881. It is undisputed fact that this Court found the defendant - accused guilty, thereby

convicted and awarded a compensation in favour of the plaintiff. The matter was carried before the Hon'ble Apex Court by the defendant - accused. Since the original defendant died during the pendency of the appeal proceeding instituted by him before the Hon'ble Apex Court, his appeals were dismissed as abated. Thus, the order of compensation passed by this Court referred above remained undisturbed.

11. The plaintiff submitted the impugned amendment application, whereby he wants a recovery of compensation amount with interest as well as the expenses incurred by him towards legal fees. When a query raised by this Court to Mr. Bharda, learned advocate for the petitioner, that whether the compensation amount awarded by the criminal Court can be recovered by way of any civil suit, Mr. Bharda, learned advocate for the petitioner is unable to answer and respond to the query. Nonetheless, Mr. Bharda, learned advocate for the petitioner, would submit that an amount of compensation awarded by the Trial Court can be

recovered as per Section 471 read with Section 461 of BNSS, 2023 (corresponding to Section 431 read with Section 421 of Cr.P.C., 1973). When the compensation amount is already determined by this Court and can be recovered as per the relevant provisions of BNSS/Cr.P.C., no recovery suit can be filed. According to me, the plaintiff has no right to sue against the defendant so far as recovery of amount of compensation by filing any civil suit, inasmuch as the amount of compensation is already determined by the competent Court as per the provisions of BNSS Section 395 (Cr.P.C. Section 357).

12. Thus, in view of aforesaid, the amendment which is sought by the plaintiff cannot be allowed for the simple reason that the amount of compensation awarded by this Court in a proceeding instituted by the plaintiff under the Act, 1881 and he can very well recover the amount as per the procedure envisaged under the BNSS/Cr.P.C.

13. Moreover, such a claim to recover the compensation is based upon a different cause of action than a cause of action for which the suit is instituted by the plaintiff. It is

settled position of law that if any new case or a new cause of action for which an amendment is sought for, it would not ordinarily be allowed. So far as the claim of legal expenses, etc. is concerned, again it is found on a new cause of action, inasmuch as such amount incurred by the plaintiff to prosecute the criminal proceeding before the different Court of law and it has no direct bearing upon the claim made in the suit in question.

14. At this juncture, it would be apposite to refer to and rely upon the decision of Hon'ble Apex Court in case of ***Life Insurance Corporation Of India vs Sanjeev Builders Private Limited*** reported in **(2022) 16 SCC 1**, wherein Hon'ble Apex Court has summarized the law so far as the amendment is concerned. It reads thus:

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is mala fide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the

plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”

(Emphasis supplied)

15. As far as the decisions cited by Mr. Bharda, learned advocate for the petitioner are concerned, they are not going to help him in any respect. Rather, the principle enunciated by the Hon'ble Apex Court in ***Life Insurance Corporation of India vs Sanjeev Builders Private Limited*** (supra) is also referred to and not disturbed by the Hon'ble Apex Court in its recent decision in the case of Haramani Sahoo (supra). In a case of Rajesh Kumar Agrawal (supra), the facts are very eloquent unlike the present case. It is held that to resolve the real controversy, if any amendment is necessary, such amendment is required to be allowed by the Court. No

one can dispute such position of law. So far as the case at hand is concerned, the recovery suit in question instituted by the plaintiff already covered the cheques amount which were subject matter of criminal complaints instituted by him under Section 138 of the Act, 1881, wherein the compensation awarded. The amendment sought for is not to resolve the real controversy rather it is an additional claim made based on different cause of action.

16. Having considered the aforesaid facts and circumstances and taking note of the fact that there is no right to sue available to the plaintiff to recover the amount of compensation by way of civil suit and assuming for the time being that such right is available to the plaintiff, it stands on the different cause of action, inasmuch as the plaintiff is claiming his right to recover the compensation on the strength of the order passed by this Court in a criminal cases instituted against the defendant and not in relation to the cause of action for which the suit in question instituted.

17. Having considered the aforesaid peculiar facts and circumstances of the case at hand, I am of the considered view that no fault can be found with the impugned order. This court is of the considered view that the plaintiff is not entitled to recover the amount of compensation by way of the recovery suit. So far as the recovery of the legal expenses incurred by the plaintiff is concerned, it stands on a different cause of action for which he is required to file another suit. In view of the aforesaid, the amendment cannot be allowed as prayed for by the plaintiff, and the Trial Court has correctly rejected the impugned delay application.

18. In view of the foregoing discussions and reasons, I do not find any merit in this petition. Accordingly, it is dismissed. Notice is discharged. No order as to costs.

SHAHANAZ

(MAULIK J.SHELAT,J)