



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 4009 OF 2024

IN

SUIT NO. 99 OF 2002

Grand Paradi Co-operative
Housing Society Ltd.

.. Applicant
(Orig Plaintiff No.1)

IN THE MATTER BETWEEN

Grand Paradi Co-operative
Housing Society Ltd. & Ors.

.. Plaintiffs

Versus

Mont Blanc Properties &
Industries Pvt. Ltd. & Ors.

.. Defendants

And

K. Raheja Corp Real Estate Pvt. Ltd.

.. Respondent /
Proposed Defendant No.3

...

Mr. Navroz Seervai, Senior Advocate a/w Ms. Lizom Wangdi, Ms. Bindi Dave, Mr. Raghav Gupta, Mr. Kashish Mainkar & Ms. Sanyukta Karne i/b Wadia Ghandy & Co., for Plaintiffs & for Defendant in S/176/2002.

Mr. Janak Dwarkadas, Senior Advocate and **Mr. Vineet Naik**, Senior Advocate a/w Mr. Rahul Dwarkadas, Ms. Sukhada Wagle, Nutash Kotwal i/b Veritas Legal, for Plaintiff in S/176/2022 and for Defendant No.1 in S/99/2002.

Mr. Cyrus Ardeshir, a/w Ms. Radhika Gupta & Saher Naqvi i/b Khaitan & Co., for Respondent in IAL/4009/2024.

...

CORAM : SANDEEP V. MARNE J.

RESERVED ON : 16 FEBRUARY 2024.

PRONOUNCED ON : 23 FEBRUARY 2024.

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JUDGMENT:-

1) Jurisdiction of this Court to decide application for amendment seeking to increase the valuation of suit over which this Court has already lost pecuniary jurisdiction is the issue that I am tasked upon to decide. Owing to loss of pecuniary jurisdiction coupled with a provision for transfer of pending suits to the City Civil Court, a simple order for transmission of papers in the Suit to City Civil Court could have been passed in the present Suit ordinary course. However, Plaintiffs' reliance *inter alia* on a Full Bench judgment of Delhi High Court, ruling in favour of retention of jurisdiction to decide application for amendment in a suit slated for transfer, has necessitated this detailed judgment.

2) The issue arises in the light of the Bombay City Civil Court (Amendment) Act, 2023 (**Amendment Act, 2023**) increasing the pecuniary jurisdiction of the City Civil Court to Rs.10 Crores. The valuation of the Suit filed by Plaintiffs in this Court is Rs.6,75,00,000/-. Under Section 4A of the Bombay City Civil Court Act, 1948 (**City Civil Court Act**) as amended by the Amendment Act 2023, there is a provision for transfer of all suits falling in pecuniary jurisdiction of City Civil Court and pending in this Court, as on the date of coming into force of the Amendment Act 2023, to the City Civil Court. Plaintiffs have filed Interim Application for amendment of Plaint on 5 February 2024, by which they seek to amend *inter alia* the valuation clause to increase the valuation of the suit at Rs. 100 Crores. The Amendment Act, 2023 has however come into force on 28 January 2024 as per the Notification issued by the Law and Judiciary Department of Government of Maharashtra on 16 January 2024. Plaintiffs however contend that notwithstanding increase of pecuniary jurisdiction of City Civil Court, since the revised valuation of the suit after allowing the amendments would be more than Rs.10 Crores,

the suit would again fall in pecuniary jurisdiction of this Court. That therefore this Court has jurisdiction to decide the application for amendment of plaint. On the contrary it is the contention of the Defendant No.1 that this Court no longer has jurisdiction to decide any application, including an application for amendment of plaint, after coming into force of the Amendment Act 2023 and that City Civil Court alone will have jurisdiction to decide Plaintiffs' application for amendment. This is a short controversy which I am tasked upon to decide by this Judgment.

3) Considering the nature of controversy that is being decided in present judgment, it is not necessary to narrate facts of the case in detail. Suffice it to record that Plaintiff No. 1 is a Co-operative Housing Society formed by flat purchasers as well as row houses purchasers in buildings complex known as 'Grand Paradi'. Plaintiff Nos. 2 to 32 are impleaded as Plaintiffs in representative capacity on behalf of and for benefit of all 169 members of Plaintiff No. 1-Society by seeking leave of this Court under Order I Rule 8 of Code of Civil Procedure, 1908. Defendant No.1 is a developer, who has constructed the Grand Paradi buildings. Plaintiffs' suit essentially seeks conveyance of the buildings and lands as per computation of area more particularly described in Exhibit 'D' to the plaint. Plaintiffs have also sought various other incidental reliefs in the plaint. In para 59 of the Plaint, Plaintiffs valued the suit for court fees and jurisdiction at Rs.6,75,00,000/- which is described as the value of all the flats and row houses as on 27 November 1977, being the date on which the Defendant No.1 was expected to execute the conveyance of the suit property. Defendant No. 1 has filed written statement contesting the suit. One of the defences raised by Defendant No.1 is about undervaluation of the suit.

4) Before coming into effect of the Amendment Act 2023, the pecuniary jurisdiction of City Civil Court was Rs.1 Crores. By the Amendment Act 2023, notified with effect from 28 January 2024, the City Civil Court Act has been amended and pecuniary jurisdiction of the City Civil Court has been enhanced to Rs. 10 Crores. There is provision under Section 4A of the City Civil Court Act for transfer of suits pending in this Court as on the date of coming into effect of the Amendment Act 2023, which fall within the pecuniary jurisdiction of the City Civil Court. Since the valuation declared in the plaint is Rs. 6,75,00,000/-, the present suit is slated for transfer to the City Civil Court in accordance with the provisions of Section 4A of the City Civil Court Act.

5) Plaintiff No. 1 has filed an Interim Application (L) No. 4009 of 2024 seeking amendment of the Plaint on 5 February 2024. According to Plaintiffs, the amendment is necessitated on account of occurrence of subsequent events particularly issuance of public notice on 28 November 2023 by Solicitors on behalf of undisclosed clients investigating the right, title and interest of Defendant No.1 in the suit property. Plaintiffs responded to the public notice on 8 December 2023 lodging their objections. Plaintiffs also called upon Defendant No.1 to provide copy of the purported Agreement dated 19 December 1972. Plaintiffs were supplied the purported Agreement by Defendant No.1 vide letter dated 15 December 2023. Plaintiffs then discovered that a Development Agreement was executed on 29 September 2023 between Defendant No.1 and the proposed Defendant No. 3. These Developments according to the Plaintiffs have necessitated amendment of the plaint for which Interim Application (L) No. 4009 of 2024 has been filed on 5 February 2024. In addition to bringing on record the subsequent developments and seeking relief in that regard, Plaintiffs have also sought to amend para 59 of the plaint by increasing the suit valuation to Rs.100

Crores. As observed above it is Plaintiffs contention that since the suit is sought to be valued over Rs.10 Crores, the suit would ultimately fall in the pecuniary jurisdiction of this Court and therefore it is urged on behalf of the Plaintiffs that this Court takes up and decides the application for amendment of Plaint. The request made on behalf of Plaintiffs is premised on an assertion that this Court has not yet lost jurisdiction so as to prevent it from deciding Plaintiff's application for amendment. On the other hand, Defendants as well as the proposed Defendant contend that this Court has already lost its jurisdiction on 28 January 2024 and therefore it cannot entertain the amendment application. The learned counsel appearing for the parties have canvassed extensive submissions in support of their contentions, which are briefly captured in the paragraphs to follow.

6) Mr. Seervai, the learned senior advocate appearing for Plaintiffs would submit that this Court shall continue to have jurisdiction to decide Plaintiffs' application for amendment notwithstanding notification of the Amendment Act 2023. He would submit that the suit was valued at Rs.6,75,00,000/- based on the value of all the flats and row houses of Plaintiff No. 1-Society as on 27 November 1977, when in fact the value of all those flats and row houses as on the date of filing of the suit was much higher. That the amendment application has not been filed by Plaintiffs for artificially inflating the valuation so as to retain pecuniary jurisdiction of this Court, but the same is necessitated on account of subsequent developments that have occurred in recent times. That therefore the amendment sought is bonafide. Mr. Seervai would submit that since allowing amendment as proposed by Plaintiffs would fit the suit in this Court's pecuniary jurisdiction, interest of justice mandates that this Court decides the application rather than transmission of papers in the suit to the City Civil Court only for the purpose of deciding the

application for amendment and once again transferring the suit back to this Court once the amendment is granted.

7) Mr. Seervai has placed reliance on judgment of Full Bench of Delhi High Court in *Subhashini Malik Vs. S. K. Gandhi & Ors.*¹, in which, according to Mr. Seervai, majority view taken by the two learned Judges of the Delhi High Court is that the Court in which suit is originally filed continues to have jurisdiction to decide application for amendment notwithstanding loss of pecuniary jurisdiction by that Court. He would submit that in *Subhashini Malik*, the Delhi High has dealt with an identical situation where Delhi High Court (Amendment) Act 2015 increased the pecuniary jurisdiction of Delhi High Court, under which only suits having value over Rs.2 Crores could be tried by it in exercise of its Ordinary Original Civil Jurisdiction. That the Delhi Amendment Act also contained a similar provision for transfer of pending suits before Delhi High Court to the subordinate courts on account of increase of threshold limit of pecuniary jurisdiction of Delhi High Court. That under such circumstances a reference was made to the full bench of Delhi High Court to decide whether the application for amendment filed by Defendant No. 2 therein could still be decided by Delhi High Court even though the suit no longer remained in its pecuniary jurisdiction. Mr. Seervai would submit that by majority of 2:1, the Delhi High Court held that it continued to have jurisdiction to decide the application for amendment where amendment effects increase in the pecuniary valuation of the suit resulting in retention thereof in the High Court. Mr. Seervai would take me through the majority judgments delivered by Justice Endlaw and Justice Sanjiv Khanna (as he then was). He would submit that the majority judgment delivered by Delhi High Court in *Subhashini Malik* conclusively answers the issue that is raised for consideration

¹ (2016) 233 DLT 83

before me and that this Court would therefore continue to have jurisdiction to decide Plaintiff's application for amendment.

8) Mr. Seervai would also rely upon judgment of the Supreme Court in *Lakha Ram Sharma Vs. Balar Marketing Private Limited*.² which is considered in the judgment of *Sanjiv Khanna, J. in Subhashini Malik* and would submit that mere ouster of jurisdiction of a Court by allowing proposed amendment cannot be a ground to refuse the amendment. Mr. Seervai would submit that this ratio would apply even in a converse situation where allowing application for amendment results in retention of pecuniary jurisdiction of the Court.

9) Mr. Seervai would also rely upon judgment of the Supreme Court in *Mount Mary Enterprises Vs. M/s. Jivratna Medi Treat Private Limited*³ in support of his contention that Defendant No. 1 cannot be permitted to oppose the application for amendment increasing suit valuation when Defendant No. 1 itself raised an objection of undervaluation of the suit. That in *Mount Mary Enterprises* the Apex Court has held that mere transfer of suit to another court on account of allowing the amendment cannot be a reason for rejection of application for amendment.

10) Mr. Seervai would also rely upon Division Bench Judgment of this Court in *Bharat Babulal Makhwana and Others Vs. Narottam V. Sheth and Another* Appeal No. 319 of 2014 decided on 25 September 2014, in which, according to Mr. Seervai, this Court has held that it is lawful for this Court to entertain application for restoration of suit notwithstanding the increase of pecuniary jurisdiction making the suit liable for transfer to the City Civil Court. Mr. Seervai would submit

² (2008) 17 SCC 671

³ (2015) 4 SCC 182

that applying same analogy, this court can decide the application for amendment notwithstanding increase of pecuniary jurisdiction of City Civil Court.

11) Mr. Seervai would further submit that transfer of suits pending in this Court under Section 4A of City Civil Court Act, is not automatic and that it requires performance of some act on the part of Registry. That this is a reason why Prothonotary and Senior Master of this Court has published a Notice on 22 January 2024 publishing a list of Suits selected for transfer to City Civil Court and giving an opportunity to the Advocates and parties in person to raise objections to transfer of their suits by filing a praecipes/applications. That the present suit does not figure in that list. According to the Mr. Seervai, similar was position the case of *Subhashini Malik* (supra) where transfer of suits was not automatic and required the Registry to take steps for effecting such transfers. That in *Subhashini Malik* the majority view has held that the suit remained pending before the Delhi High Court which was still *in seisin* of the matter. That in present case also, this Court is still *in seisin* of the present suit and that therefore this Court would continue to have jurisdiction to decide plaintiffs' application for amendment.

12) Lastly, Mr. Seervai would submit that this Court must adopt a pragmatic approach, rather than putting parties to unnecessary inconvenience. That refusal by this Court to decide application for amendment would cause inconvenience to all parties as the suit would be first transferred to City Civil Court and upon grant of amendment, will come back to this Court. According to him, following the dictum of the majority judgment wherein particular view is expressed by Khanna, J. in paragraph No. 173 of judgment in *Subhashini Malik*, this Court also

needs to take a pragmatic view and decide the application for amendment which would ultimately result in retention of the suit in this Court.

13) Mr. Dwarkadas, the learned senior advocate appearing for Defendant No. 1 would oppose plaintiffs' prayer for decision of Interim Application for amendment by this Court submitting that this Court has lost jurisdiction to decide any application filed in the suit. That on account of valuation declared in the suit, this Court has already lost jurisdiction in respect of the present suit after coming into effect of Amendment Act, 2023. Inviting my attention to Section 4A of City Civil Court Act as amended by the Amendment Act 2023, Mr. Dwarkadas would submit that all suits pending in this Court, value of which is below Rs.10 Crores, stood transferred to City Civil Court on 28 January 2024. That the Registry is merely conducting a ministerial act of physically shifting the papers of such transferred suits to the City Civil Court. That merely because some time would be required for effecting such transfer, the same cannot be a ground for this Court to exercise jurisdiction in respect of such transferred suits where the jurisdiction is already lost. That the act of transfer of suits is automatic by virtue of Section 4A of amended City Civil Court Act.

14) Mr. Dwarkadas would distinguish the judgment of Delhi High Court in *Subhashini Malik* by submitting that there is a marked difference between Section 4 of the Delhi High Court (Amendment) Act, 2015 and amended section 4A of City Civil Courts Act. That under Section 4 of the Delhi Amendment Act, the word used was "may" thereby vesting a discretion in the Chief Justice of Delhi High Court to transfer any suit pending in Delhi High Court to subordinate Courts. That in exercise of discretion, the Chief Justice of the Delhi High Court issued an order that only those suits in which final judgment has not been reserved

to be transferred to the subordinate Courts. Mr. Dwarkadas would submit that as against such discretion vested in the Chief Justice of the Delhi High Court under Section 4 of Delhi Amendment Act, Section 4A of amended City Civil Court Act mandates automatic transfer of suits pending in this Court to City Civil Court. Thus, the Delhi Amendment Act required Chief Justice to issue an order directing transfer of suits whereas under amended City Civil Court Act, there is provision of automatic transfer of suit requiring no order/action of the Chief Justice. He would therefore submit that the judgment in ***Subhashini Malik***, particularly majority view, will have no application to the present case.

15) Mr. Dwarkadas would also rely upon judgment of Single Judge of Delhi High Court in ***Sadhna Sharma & Ors. Vs. Premlata Gautam & Ors.***⁴ in support of his contention that loss of pecuniary jurisdiction is by operation of law. He would therefore submit that mere filing of application for amendment under a hope of increasing valuation of suit cannot confer jurisdiction on this Court, which it has already lost. He would therefore submit that the entire suit alongwith plaintiffs' application for amendment be transferred to the City Civil Court in accordance with Section 4A of the amended City Civil Court Act.

16) Mr. Ardeshir the learned counsel appearing for proposed Defendant No.3 in the Interim Application would also oppose Plaintiffs' prayer for decision on application for amendment by this Court. He would place reliance on a similar provision under Section 31 (1) of Recovery of Debts Due to Banks and Financial Institutions Act 1993, using the same language of '*shall stand transferred to*'. He would then rely upon judgment of the Apex Court in ***Hara Parbati Cold Storage Pvt. Ltd. and another Vs. UCO Bank and others.***⁵ wherein the Apex Court has held

⁴ MANU/DE/2937/2005

⁵ (2000) 9 SCC 716

that transfer under Section 31 of the DRT Act is automatic and the registry merely performs the ministerial act of transfer of papers to the Debts Recovery Tribunal. Mr. Ardeshir would submit that in *Subhashini Malik*, even the majority view has held that if the language to be employed in the Delhi Amendment Act was '*shall stand transferred*' there would have been automatic transfer even of Delhi suit. Mr. Ardeshir would therefore submit that the judgment in *Subhashini Malik*, far from assisting Plaintiffs, actually militates against them. He would therefore urge that the entire suit alongwith Application for amendment be transferred to the City Civil Court.

17) Rival contentions of the parties now fall for my consideration.

18) To decide the issue raised for my consideration, it would be first necessary to refer to the relevant provisions of the City Civil Court Act. Section 3 of the City Civil Court Act (before its amendment) provided for establishment of Bombay City Civil Court having jurisdiction of receive, try and dispose of all suits and proceedings of civil nature not exceeding Rs.1 Crores in value arising within the Greater Bombay. Proviso to Section 3 empowered the State Government, after consultation with the High Court, to enhance the pecuniary jurisdiction of City Civil Court and correspondingly alter the pecuniary jurisdiction of the High Court. Section 3, prior to its amendment in 2023, read thus:

“3. Constitution of City Court.

The State Government may, by notification in the Official Gazette, establish for the Greater Bombay a court, to be called the Bombay City Civil Court. Notwithstanding anything contained in any law, such court shall have jurisdiction to receive, try and dispose of all suits and other proceedings of a civil nature, not exceeding rupees one crore in value, arising within the Greater Bombay, except suits or proceedings which are cognizable—

(a) by the High Court as a Court of Admiralty or Vice-Admiralty as a Colonial Court of Admiralty, or as a Court having testamentary, intestate or matrimonial Jurisdiction, or

(b) by the High Court for the relief of insolvent debtors, or

(c) by the High Court under any special law other than the Letters Patent, or

(c-1) by the High Court under the Parsi Marriage and Divorce Act, 1936 ; or

(c-2) by the High Court in respect of intellectual property matters; or

(d) by the Small Cause Court :

Provided that, the State Government may, from time to time, after consultation with the High Court, by notification in the Official Gazette, enhance the pecuniary jurisdiction of the City Court and correspondingly alter the pecuniary jurisdiction of the High Court.”

19) Section 4A of the City Civil Court Act (before 2023 amendment) provided for transfer of Suits cognizable under Section 3 pending in this Court to the City Civil Court.

20) Maharashtra Act No. XLVI of 2023 is enacted to amend the provisions of the City Civil Court Act and the Act is called Bombay City Civil Court (Amendment) Act, 2023 (**Amendment Act 2023**), which has come into force with effect from 28 January 2024 in view of Notification issued by Law and Judiciary Department of Government of Maharashtra on 16 January 2024. The amendments effected by the Amendment Act 2023 to Sections 3 and 4A of the City Civil Court Act are as under:

"3. In section 3 of the Bombay City Civil Court Act, 1948 (hereinafter referred to as "the principal Act"),—

(i) for the words "not exceeding rupees one crore in value", the words "not exceeding rupees ten crore in value" shall be substituted ;

(ii) the proviso shall be deleted.

4A. In section 4A of the principal Act, in sub-section (1), for the words, figures and brackets "section 4 of the Bombay City Civil Court (Amendment) Act, 2012" the words, figures and brackets "section 2 of the Bombay City Civil Court (Amendment) Act, 2023" shall be substituted.

21) Thus Section 3 of the City Civil Court Act is amended w.e.f. 28 January 2024 increasing its pecuniary jurisdiction to Rupees Ten Crores. The amended Section 4A reads thus:

"4A Transfer of suits and proceedings cognizable under section 3, to City Court.

(1) Notwithstanding anything contained in section 9 of the Bombay City Civil Court and the Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986, all suits and proceedings cognizable by the City Court under section 3, and pending in the High Court on the date of coming into force of section 2 of the Bombay City Civil Court (Amendment) Act, 2023, not being of suits or proceedings falling under clauses (a) to (d) of section 3, shall stand transferred to the City Court."

(emphasis and underlining supplied)

22) Thus, after coming into force of the Amendment Act 2023, all suits cognizable by City Civil Court under Section 3 and pending in the High Court stood transferred to the City Civil Court. Since the value of the present suit as declared in Para 59 of the plaint is Rs. 6,75,00,000/-, the present suit stood transferred to the City Civil Court on 28 January 2024. The issue that arises is whether this Court can decide Plaintiffs' application for amendment, which *inter alia* seeks enhancement of valuation of the suit to Rs.100 Crores, after the suit stood transferred to City Civil Court under Section 4A of the City Civil Court Act.

23) Retention of jurisdiction of this Court to decide Plaintiffs' application for amendment of Plaint is sought by placing reliance on Full Bench Judgment of Delhi High Court in ***Subhashini Malik*** (supra). On account of conflict of views expressed in various judgments relating of exercise of jurisdiction by Delhi High Court in respect of transferred suits after increase of its threshold pecuniary jurisdiction, a reference was made by the Chief Justice to Full Bench of three learned judges of the Delhi High Court which is answered by majority of 2:1 in ***Subhashini Malik***.

24) The Delhi Amendment Act came into force on 26 October 2015, whereby the threshold limit for trial of suits by the Delhi High Court was enhanced to Rs. 2 Crores from Rs.20 Lakhs. Section

4 of the Delhi Amendment Act provided for transfer of suits pending in Delhi High Court and falling in pecuniary jurisdiction of subordinate courts after coming into force of the Amendment Act, to such subordinate courts. Section 4 of Delhi Amendment Act provides thus:

“4. The Chief Justice of the High Court of Delhi may transfer any suit or other proceedings which is or are pending in the High Court immediately before the commencement of this Act to such subordinate Court in the National Capital Territory of Delhi as would have jurisdiction to entertain such suit or proceedings had such suit or proceedings been instituted or filed for the first time after such commencement.”

(emphasis and underlining supplied)

25) In *Subhashini Malik*, three learned judges of Delhi High Court have delivered three separate judgments. The judgments delivered by Justice Sanjiv Khanna (as he then was) and Justice Rajiv Sahai Endlaw have formed a majority view holding that the High Court continued to exercise jurisdiction to decide application for amendment of plaint which sought to increase pecuniary valuation of the suit and where allowing such amendment results in suit being retained in the High Court. Justice R. K. Gauba, on the other hand, delivered a dissenting judgment holding that Delhi High Court lost jurisdiction to decide the application for amendment filed in suits, which were required to be transferred as per provisions of Section 4 of the Delhi Amendment Act. It would be apposite to refer some of the findings recorded in the majority judgments delivered by Justice Khanna and Justice Endlaw.

26) Justice Endlaw, in his brief Judgment, held in paragraph Nos. 18 R, 18 U, 19 and 20 as under:

“18.....

(R) The Office Order with which we are concerned also directs the suits below the enhanced minimum pecuniary jurisdiction of this Court ' to be transferred' and the transfer to commence from 24th November, 2015. The language thereof is also indicative of this Court not becoming functus officio with respect to suits below its minimum pecuniary jurisdiction on the issuance thereof because the Office Order requires further steps to be taken for the said transfers. In fact, the order of transfer in

itself is an exercise of jurisdiction over the said suits, again indicating that on the issuance of the Office Order, this Court did not become functus officio. Till the suit is so transferred, this Court would continue to have jurisdiction.

(U). It is also significant that Section 4 permitted Hon'ble the Chief Justice to not necessarily transfer all suits and the words therein "may transfer any suit" are indicative of the Chief Justice being empowered to transfer any category of suits, while retaining another category of suits in this Court. If the intent of Section 4 of the Amendment Act or of the Office Order dated 24th November, 2015 had been to transfer the suits, the valuation whereof for the purposes of jurisdiction was Rs. 2 crores or less, without any further act to be done by the Court the words used would have been that the suits "shall stand transferred" as were used in Section 16 of the High Court Act with respect to transfer of pending proceedings to this Court on creation vide Section 5(2) of the Original Civil Jurisdiction of this Court. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 also uses the words "shall stand transferred". Supreme Court in Allahabad Bank v. Canara Bank (2000) 4 SCC 406 (overruled on another point in Andhra Bank v. Official Liquidator (2005) 5 SCC 75) and in Hara Parbati Cold Storage Pvt. Ltd. v. UCO Bank (2000) 9 SCC 716 explained that the same indicates automatic transfer, with the High Court being required only to perform the ministerial act of transferring the papers to the Tribunal. Similar were the words used in Section 8 of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 which came up for consideration before the Supreme Court in Konda Lakshmana Bapuji v. Government of Andhra Pradesh (2002) 3 SCC 258.

19. We therefore hold that the Amendment Act or the Office Order dated 24th November, 2015 do not come in the way of this Court considering the applications for amendment of the plaint for enhancement of the valuation of the suit for the purposes of pecuniary jurisdiction.

20. We accordingly answer the reference as under:

The judgment in Mahesh Gupta supra to the extent holding that this Court, upon enhancement of its minimum pecuniary jurisdiction, ceases to have jurisdiction to entertain an application in a suit, which on the date of its institution was properly instituted, for enhancement of valuation for the purposes of jurisdiction, does not lay down the correct law and hold that this Court in spite of Amendment Act and the Office Order dated 24th November, 2015 supra can entertain an application to amend the plaint to bring the suit within the pecuniary jurisdiction of this Court."

27) Justice Sanjiv Khanna (as he then was), in a more elaborate judgment, held in para 145, 146, 159, 160, 161, 166, 168, 171, 173, 174 and 175 are as under:

"145. As the question raised pertains to law and not facts, I would refrain from commenting on the facts and would not like to expound and exposit on merits on whether the amendment application seeking enhancement of the pecuniary jurisdiction should be allowed or dismissed. Indeed, if we accept that the Delhi High Court does not have jurisdiction, then as a sequitur, it must follow that we should not comment on the merits of the prayer for amendment. Conversely, the amendment application would be decided by the Single judge on the Original Side on merits. The amendment application is thus either to be decided by the single Judge on the Original Side of this Court or by the Judge presiding over the transferee court. Any opinion on the merits would create difficulty and, therefore, I have avoided any comments touching on merits. Some

reference has been made in the judgments of my brothers to principles of amendment, which I believe are of general nature.

146. *The expression want or lack of jurisdiction means usurpation of power, unwarranted in law. Jurisdiction as a concept is incapable of strict conceptualisation as it has varied shades and hues.*

159. *Lastly, a distinction must be drawn between institution of the suit in the court of competent jurisdiction at the start of the proceedings, and subsequent change resulting lack of jurisdiction. The court or tribunal may subsequently lose jurisdiction in certain circumstances, including when the jurisdiction is ousted by the statutory provisions. This is what has happened and transpired in the present case.*

160. *The suit in question was instituted in the Delhi High Court in accordance with Section 15 of the Code. However, there has been a subsequent change in the pecuniary jurisdiction of the Court. The High Court of Delhi then had jurisdiction to try all civil suits valued at Rs. 20 lacs or more. With the enactment of the Delhi High Court (Amendment) Act, 2015 (the Amending Act, for short) with effect from 26th October, 2015, the words “rupees twenty lakhs” in sub-section (2) to Section 5 of the Delhi High Court Act, 1996 stand substituted for the words “rupees two crore”. Section 5(2) of the Delhi High Court Act prior to and post the amendment dated 26th October, 2015 would read as under : -*

“Pre-amendment

5(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs.

Post-amendment

5(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees two crore”.

161. *The aforesaid Section deals with the institution of suits and not with the transfer of suits. It would therefore, not be correct to accept the proposition that on the amendment of Section 5 and substitution of the words “rupees twenty lacs” with “rupees two crores, the suits which were validly instituted in the Delhi High Court, would no longer be triable because the Delhi High Court has lost pecuniary jurisdiction with effect from 26th October, 2015. The difference between institution and transfer of jurisdiction, which happens post the institution, and the triability of the pending litigation was examined and elucidated by the Supreme Court in Ramesh Kumar Soni v. State of Madhya Pradesh, (2013) 14 SCC 696. This decision though in a criminal matter, draws a distinction between jurisdiction at the time of institution of proceedings and an amendment applicable to pending cases, which were validly instituted and have to be transferred to another forum/court. In New India Insurance Company Limited v. Shanti Misra, (1975) 2 SCC 840, the Supreme Court had held that change of forum by way of law can operate retrospectively and would be applicable even if the cause of action or right of action had accrued prior to the change of forum. A plaintiff had a vested right of action but not a vested right of forum. Unless, by express words, the new forum is made available only to such cause of action as arises subsequent to the creation of the forum, the general rule is to give retrospective effect to the change, However, in Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 it has been held that a statute, which affects substantive rights, is presumed to be prospective in operation, unless made retrospective either expressly or by necessary intendment.*

Further, an amendment to a procedural statute, unless such construction is textually impossible, is presumed to be retrospective in application. A procedural statute should not generally be applied retrospectively where the result would be to create new disabilities or obligations or impose new duties in respect of transactions already accomplished.

166. *This brings us to the core issue as to whether the High Court, while examining the question of transfer of a case to the District Court, can also decide and adjudicate an application for amendment seeking enhancement of pecuniary jurisdiction to exceeding Rs. 2 crores (Rs. 1 crore in the case of commercial cases) which would if the application is allowed, have the effect of doing away with the requirement of a transfer order as the suit would the fall within the amended pecuniary jurisdiction of this Court. Before deciding and elucidating my reasons why the High Court would have power and retains jurisdiction and is not functus officio to decide the said application, I would like to first reproduce the office order dated 24th November, 2015 passed by Hon'ble the Chief Justice under Section 4 of the Amending Act of 2015. The same reads : -*

“Notification No. 27187/DHC/Orgl.. Dated 24.11.2015

In exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), which came into force with effect from 26.10.2015 vide notification No. F No. L-19015/04/2012-Jus dated 26.10.2015 issued by the Government of India, Ministry of Law, Justice and Company Affairs, published in Gazette of India Extraordinary, Part II, Section 3 sub-section (ii), Hon'ble the Chief Justice has been pleased to order as under : -

- (i) All suits or other proceedings pending in the Delhi High Court on the Original Side up to the value of rupees one crore, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.*
- (ii) All suits or other proceedings the value of which exceeds rupees one crore but does not exceed rupees two crores, other than those relating to commercial disputes the specified value of which is not less than rupees one crore (as defined in the Commercial Courts, Commercial Division and commercial Appellate Division of High Courts Ordinance, 2015), pending in the Delhi High Court on the Original Side, excepting those cases in which final judgments have been reserved, be transferred to the jurisdictional subordinate courts.*

The transfer of cases to the subordinate courts shall commence from today, i.e. 24.11.2015.”

168. *The primary reason why I feel that the High Court would have the jurisdiction to decide the application for amendment enhancing the pecuniary jurisdiction is that the Original Side of the High Court is still in seisin of the matter till the suit or proceedings are actually ordered to be transferred to the subordinate court. On the question of transfer of a case from the Original Side of the High Court, it is for this Court to examine and determine the valuation of suit made by the plaintiff and decide whether in terms of the said valuation, the suit should be transferred. Section 5(1) of the Delhi High Court Act, 1966 stipulates that the High Court of Delhi shall have all such original, appellate and other jurisdiction as under law in force immediately before the appointed day. Should the Original Side of the High Court in the said matrix not examine the question of valuation or is precluded from examining the question of valuation, is the moot question. My answer to the said question would be in affirmative in view of the discussion above on the general principles relating to jurisdiction. Amendment of a plaint normally, unless otherwise directed, relates back to the date of original filing. The doctrine of relation back stands accepted and recognized in Sampath Kumar v. Ayyakannu, (2002) 7 SCC 559 and in Siddalingamma v. Mamtha Shenoy, (2001) 8 SCC*

561 [See also decision dated 26th August, 2015 in Civil Appeal No. 6595/2015 L.C. Hanumanthappa @ since dead v. H.B. Shivakumar]. Therefore, when the pecuniary clause in the plaint is allowed to be amended, it could relate back to the date of original filing of the plaint.

171. Almost identical question had arisen before the Supreme Court in *Lakha Ram Sharma v. Balar Marketing Private Limited*, (2008) 17 SCC 671 and it was held that it is settled law that merely because an amendment may take the suit out of jurisdiction of the court is no ground for refusing the amendment. In fact, a reading of the ratio would show that even the converse was upheld. In the said case, the High Court had rejected the amendment on the ground that the valuation of the suit was sought to be increased from Rs. 1 lac to Rs. 10 lacs so as to only take the suit out from the jurisdiction of that court. It was observed :

“4. It is settled law that while considering whether the amendment is to be granted or not, the Court does not go into the merits of the matter and decide whether or not the claim made therein is bonafide or not. That is a question which can only be decided at the trial of the Suit. It is also settled law that merely because an amendment may take the suit out of the jurisdiction of that Court is no ground for refusing that amendment. We, therefore, do not find any justifiable reason on which the High Court has refused this amendment. Accordingly, the impugned order is set aside and that of the trial court is restored. We, however, clarify that as the appellant has now raised the claim from Rs. 1 Lakh to Rs. 10 Lakh, the trial court will determine, whether or not Court Fees are correctly paid.

5. The appeal stands disposed of accordingly. No order as to costs”

173. The view we have taken would not only cut short delays, but is a pragmatic view. It enables the Court where the suit is pending to determine and decide the application for amendment relating to pecuniary jurisdiction for if the amendment is allowed or dismissed, the suit will be retained or transferred and parties are not relegated to another court where the application for amendment would then be considered and depending upon the decision, the suit could be re-transferred or returned to be presented in the earlier court. If we follow the second procedure, it would cause delay and make the procedure more cumbersome and difficult. This would not be in the interest of the litigant wanting an expedited and quick disposal. The decision in *Lakha Ram's case (Supra)* adopts a pragmatic view to hold that the court is in seisin of the matter can decide the application for amendment even when an amendment, if allowed, would take the suit/proceedings beyond the pecuniary jurisdiction of that Court. As sequitor the High Court being in seisin of the suit, it would not be barred or prohibited from deciding the application for amendment, which if allowed, would have the effect of the suit being tried and decided in the High Court.

174. In view of the opinion expressed above, the Original Side of the High Court being in seisin of the matter, would have the jurisdiction to determine whether the suit should be transferred and the jurisdiction would include the power to decide an application for amendment, which if allowed, would mean that the suit is not to be transferred. When the jurisdiction is established, it would be not correct to hold that the procedural laws have been violated.

175. The question referred and answered is in the context in question i.e. the suit was validly instituted as per Section 15 of the Code read with the Delhi High Court Act, Sections 4 and 5 of the Amending Act of 2015, the notification dated 24th November, 2015 and the suit is pending in the High Court.”

28) The final Order of the Full Bench in accordance with the majority view in para Nos. 177, 178 and 179 is as under:

FINAL ORDER

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“177. In view of the majority opinion, the question of law, in the context and matrix in question, is answered in the affirmative, holding that the Original Side of the High Court can decide the application to amend the plaint and increase the pecuniary valuation of the suit, where if the application is allowed, it would result in the suit not being transferred.

178. The amendment application would be listed before Judge of the Original Side of the High Court on 21st September, 2016.

179. The amendment application would be decided on merits without being influenced by any observations in the opinions, which are made to opine on the question of law referred and answered. It is clarified that the observations made in the context of and relating to the principles of amendment are of general nature.”

29) Thus, in ***Subhashini Malik***, a majority judgment held that Delhi High Court continued to exercise jurisdiction to decide application for amendment filed in a suit slated for transfer in a case where proposed amendment results in enhancement of value of suit and consequential retention thereof in the Delhi High Court.

30) However, if the discussion in the majority judgment for arriving at the final conclusion is appreciated, it is seen that the main reason why the Delhi High Court ruled in favour of retention of its jurisdiction in ***Subhashini Malik*** is the peculiar language of Section 4 of the Delhi Amendment Act which did not provide for automatic and instant transfer of suits. The discussion in the Judgment, particularly of Endlaw, J. would indicate that the principal reason why he upheld jurisdiction of High Court to decide amendment application was because the suit remained in jurisdiction of the High Court on account of non-performance of certain acts envisaged under Section 4 of the Delhi Amendment. In para 18 (R) of the Judgment, Endlaw, J. held that the Delhi High Court had not become *functus officio* in respect of suits below

its minimum pecuniary jurisdiction. He further held that the office Order issued by the Chief Justice required further steps to be taken for transfer of suits. He also held that transfer in itself was an exercise of jurisdiction over the suit, indicating that on the date of issuance of the office Order, the Court had not become *functus officio* and till the suit was actually transferred, the Court continued to have jurisdiction.

31) If the findings recorded by Endlaw, J. in para 18 (U) of the judgment is considered in the light of provisions of Section 31 of DRT Act along with ruling of the Apex Court in ***Hara Parbati Cold Storage Pvt. Ltd.*** (supra), it becomes crystal clear that if Delhi Amendment was to use words '*shall stand transferred*', the learned Judge would have ruled otherwise. Endlaw J. has observed in Para 18 (U) as under:

"It is also significant that Section 4 permitted Hon'ble the Chief Justice to not necessarily transfer all suits and the words therein "may transfer any suit" are indicative of the Chief Justice being empowered to transfer any category of suits, while retaining another category of suits in this Court. If the intent of Section 4 of the Amendment Act or of the Office Order dated 24th November, 2015 had been to transfer the suits, the valuation whereof for the purposes of jurisdiction was Rs. 2 crores or less, without any further act to be done by the Court the words used would have been that the suits "shall stand transferred".....

.... The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 also uses the words "shall stand transferred". Supreme Court in Allahabad Bank v. Canara Bank (2000) 4 SCC 406 (overruled on another point in Andhra Bank v. Official Liquidator (2005) 5 SCC 75) and in Hara Parbati Cold Storage Pvt. Ltd. v. UCO Bank (2000) 9 SCC 716 explained that the same indicates automatic transfer, with the High Court being required only to perform the ministerial act of transferring the papers to the Tribunal."

32) Thus Endlaw J. held that if the intent of Section 4 of Delhi Amendment Act or of the office Order issued by the Chief Justice was to transfer the suits without performance of any further act, the words used would have been that '*the suits shall stand transferred*'. The learned Judge made reference to Section 31 of DRT Act as well as the judgment of the Apex Court in ***Allahabad Bank Vs. Canara Bank***⁶ and ***Hara***

⁶ (2000) 4 SCC 406

Parbati Cold Storage Pvt. Ltd. (supra) and held that Section 31 of the DRT Act provided for automatic transfer of Suits by the High Court requiring performance of only a ministerial act of transferring the papers to the Tribunal. Thus, use of the words '*may transfer any suits*' and non-use of the words '*shall stand transferred*' in Section 4 of Delhi Amendment Act was the reason why Endlaw J. ruled in favour of retention of jurisdiction of the High Court to decide the application for amendment. In the present case the amended Section 4A of the City Civil Courts Act uses the words '*shall stand transferred*' thereby entailing automatic and instant transfer of the Suits without performance of any action or passing of any order by the Chief Justice.

33) Even the judgment delivered by Justice Khanna (as he then was) would indicate that the main factor with which weighed with his Lordship was the fact that the High Court was still *in seisin* of the suit till it was actually transferred to the subordinate Court. No doubt his Lordship drew distinction between institution of the suit in the Court of competent jurisdiction at the start of the proceedings and subsequent change resulting in lack of jurisdiction. However, 'pendency' of the Suit in Delhi High Court was the reason why retention of High Court's jurisdiction to decide application for amendment is ruled in his supporting judgment. In Para 173 of his judgment, his Lordship has resorted to pragmatic approach and has held that the parties need not be unnecessarily relegated to another Court where the application for amendment would be considered and depending on that decision, the suit could be retransferred or returned to be presented in the earlier Court. He held that following of such procedure would cause delay and make the procedure more cumbersome and difficult. However those findings of Khanna, J. must be appreciated, as rightly pointed out by Mr. Dwarkadas, only in respect of cases where the suit was 'pending' as the Delhi

Amendment Act did not provide for automatic and instant transfer of suits and the suits continued to remain 'pending' and this could be the possible reason why his Lordship held that a pragmatic view needed to be taken in a case where the suit continued to remain pending in the High Court.

34) Justice Khanna has relied upon judgment in ***Lakha Ram Sharma*** (supra) and has held that the reason of loss of jurisdiction of a Court by reason of proposed amendment cannot be a ground to refuse the application for amendment. He has further held that *"In fact, a reading of the ratio would show that even the converse was upheld."* I have minutely gone through the judgment in *Lakha Ram Sharma* and I am unable to locate any finding by the Apex Court therein that a converse situation has also been upheld therein. In *Lakha Ram Sharma*, the Apex Court had no occasion to deal with nor has it dealt with the issue of retention of jurisdiction by a Court in a transferred suit to decide application for amendment proposing to increase suit valuation. Therefore, the judgment of the Apex Court in *Lakha Ram Sharma* cannot be cited in support of proposition that the Court from whom the suit is transferred due to increase in pecuniary jurisdiction, would continue to exercise jurisdiction to decide the application for amendment of plaint.

35) The Judgment of Delhi High Court, though of a full bench, is not binding on me but definitely has a persuasive value. This a reason why I have considered the entire judgment, and only of majority view, to find out its applicability to the present case. After having noticed a stark difference between the language employed in Section 4 of the Delhi Amendment Act and Section 4A of the City Civil Court Act and also the reasoning adopted by the two learned Judges, who have rendered majority judgment, I am unable to persuade myself to apply the judgment

in *Subhashini Malik* to the present case. I am therefore of the view that the judgment of Delhi High Court in *Subhashini Malik* ruling in favour of retention of jurisdiction of High Court to decide amendment application in respect of transferred suit cannot be made applicable in respect of suits which stood transferred to the City Civil Court under Section 4A of the City Civil Court Act.

36) Though effect of use of words '*shall stand transferred*' in a Statute is already discussed by Endlaw J. in *Subhashini Malik*, it would be necessary to make a quick reference to the observations made by the Apex Court in *Hara Parbati Cold Storage Pvt. Ltd.* (supra), on which reliance is placed by Mr. Ardeshir and where effect of use of same words in Section 31 of DRT Act has been dealt with. Section 31 (1) of DRT Act reads thus:

“31. Transfer of Pending Cases:

(1) Every suit or other proceeding pending before any court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal.”

37) The Apex Court in *Hara Parbati Cold Storage Pvt. Ltd.* dealt with a situation where the High Court refused to transfer a Suit to DRT on the ground of the Suit been once transferred to it on judicial side under Section 24 of the Code of Civil Procedure 1908. The Apex Court considered the effect of use of the words '*shall stand transferred*' and held as under:

3. In a recent judgment in Allahabad Bank v. Canara Bank (JT at pp. 426-27 : SCC pp. 420-21) this Court has observed that all suits from civil courts shall stand transferred to the Debts Recovery Tribunal constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. This transfer under Section 31 of the Act is automatic, and the Registrar of the High Court, where the suit is pending, is only to perform the ministerial act of transferring the papers to the Tribunal. But unfortunately, the learned Single Judge of the Calcutta High Court, Amitava Lala, J. held that this suit was transferred to the High Court earlier on the judicial side, under

*Section 24 of the Code of Civil Procedure and the Registrar could not have therefore directed the file to be sent to the Tribunal. This view was reversed by the Division Bench which held that the transfer was **automatic**.*

*4. The fact that the suit was originally filed in the Assistant District Court and was transferred under Section 24 of the Code of Civil Procedure to the original side of the Calcutta High Court to be tried in its extraordinary jurisdiction, in our opinion makes no difference. If initially a suit is filed on the original side of the High Court, such a suit is liable to be transferred if it exceeds the pecuniary limits mentioned in the abovesaid Act. This is a consequence of Section 31 of the Act. **There is no difference between suits originally instituted on the original side of the High Court and those suits subsequently transferred to the High Court from a civil court under Section 24 CPC. Both types of suits get automatically transferred to the Tribunal and the High Court has no jurisdiction to deal with the matter.**"*

38) Mr. Seervai did attempt to draw a distinction in judgment in ***Hara Parbati Cold Storage Pvt. Ltd.*** by submitting that the issue dealt with by the Apex Court was about transfer of jurisdiction over 'subject matter' under DRT Act, as contradistinct from loss of jurisdiction owing to mere increase in pecuniary jurisdiction in the present case. That this Court has not lost jurisdiction over the subject matter involved in the present Suit. To my mind, this fine distinction between loss of jurisdiction over subject matter and loss of jurisdiction on account of valuation, would make no difference so far as Court's authority to deal with transferred suits is concerned. If the Statute uses the words '*shall stand transferred*' the effect of the provision is automatic transfer of the suit and the reason for loss of jurisdiction becomes irrelevant.

39) Mr. Seervai's reliance on the judgment of the Apex Court in ***Mount Mary Enterprises*** (supra), in my view, has little relevance to the issue in hand. In that case, the application for amendment was rejected by the Trial Court on the ground that allowing the amendment would result in transfer of the suit to the High Court. The Apex Court has held that mere loss of jurisdiction by a Court can never be a reason to reject application for amendment. The Judgment therefore will have no application to the issue involved in the present case.

40) Strenuous reliance is placed by Mr. Seervai on Division Bench judgment of this Court in ***Bharat Babulal Makhwana*** (supra). In that case, Plaintiffs instituted Suit in this Court in accordance with the pecuniary jurisdiction in vogue in 1996. The suit was dismissed for default on 2 July 2003. The pecuniary jurisdiction of this Court was enhanced to Rs.1 Crore by Amendment Act 2012 read with Notification dated 5 September 2012. The application for restoration of the suit was filed in this Court in the year 2013, after this Court lost pecuniary jurisdiction to entertain the suit. In the light of this factual background, the issue before Division Bench was whether the High Court continued to possess jurisdiction to decide Application for amendment. This Court held in para 12, 13 and 14 as under:

“12. In the present case, the suit itself was dismissed for default vide order dated 2nd July, 2003 and therefore, there was no question of notifying the suit and consequently, transferring the same, inasmuch as, there was nothing pending on the file of this Court as on 1st October, 2012. Thus, unless and until, the suit was restored to file, there was no question of notifying and transferring the same to the City Civil Court.

13. Mr. Khandeparkar's contention that the Notice of Motion seeking restoration of the suit, ought to have been filed in the City Court, is completely misconceived, inasmuch as, there was nothing to be transferred as on 1st October, 2012 in view of the dismissal of the suit for default. As Mr. Bhave rightly contended, it is only on the Notice of Motion being allowed and the proceedings being restored that the proceedings could be transferred as contemplated under Section 4A. In view of the dismissal of the suit for default, there were no proceedings which were pending in this Court and the question of transferring non-existing proceedings therefore cannot arise. Section 4A (1) and (2) will have no application to the facts of the present case. An application for restoration would necessarily, therefore, have to be filed in the same Court, which dismissed the suit. As also rightly contended by Mr. Bhave what is pertinent and crucial is that there was nothing pending in the City Civil Court on the date when the Notice of Motion was filed and therefore, any application filed in the City Civil Court was meaningless, as there were no proceedings pending there. The suit, only upon being restored, could be said to be pending and thereafter, would be liable to be transferred to the City Civil Court. In fact, when the Notice of Motion was taken out for restoration of the suit, by no stretch of imagination, could it be said that the proceeding was “pending” inasmuch as unless the suit was restored, the proceedings could not be labelled as pending. Therefore, the restoration of the suit would have to be necessarily done by the same Court which had dismissed the suit and thereafter, the suit would be liable to be transferred in accordance with the Notification dated 5th September, 2012. The Notice of Motion could never have been taken out in the City Civil Court directly, as there was no suit which was notified, transferred or pending in the City Civil Court, as on that date, in view of the dismissal of the suit in this Court in 2003. The Notice of Motion, therefore, could legitimately be taken out only in this Court for restoration of the proceedings i.e. the suit. Undoubtedly, it is this Court alone which had jurisdiction to restore the suit and thus the notice of motion was rightly taken out in this Court.

14. Mr. Khandeparkar's submission is contrary to the plain language of Section 4A. Section 4A contemplates transfer of all suits and proceedings "pending in the High Court on the date of coming into force of Section 4 of the Bombay City Civil Court (Amendment) Act, 2012". Neither the suit nor the notice of motion for restoration were pending on the date on which Section 4 had come into force. Thus, Section 4A did not operate in respect of the above proceedings till the above suit was restored."

41) Thus the Division Bench ruled in favour of retention of jurisdiction of High Court to decide application for amendment as the suit was not actually transferred to the City Civil Court on account of its dismissal in the year 2003. This Court held that Section 4A of the City Civil Court Act did not operate in the facts of that case and no transfer was effected in accordance with Section 4A. This Court therefore held that the restoration would necessarily have to be done by the 'same court' which had dismissed the suit and thereafter the suit was liable to be transferred in accordance with Section 4A. In my view, therefore the judgment of Division Bench in ***Bharat Babulal Makhwana*** (supra) is of little assistance to the proposition set forth by the plaintiffs.

42) Mr. Dwarkadas did attempt to draw my attention to some of the findings of the minority judgment of Justice Gauba in ***Subhashini Malik***. The same is obviously and strongly objected to by Mr. Seervai. Since I have held that even the majority view in *Subhashini Malik* cannot be applied for upholding jurisdiction of this Court to entertain the application for amendment filed in the present suit, in my therefore, I would steer clear of the issue of permissibility of making any reference to any findings recorded by Gauba J. in his dissenting judgment.

43) Mr. Dwarkadas has also relied strenuously on judgment of Single Judge of Delhi High Court (*Swatanter Kumar J.*, as he then was) in ***Sadhna Sharma*** (supra). Mr. Seervai has objected to placing reliance in *Sadhna Sharma* on the ground that the view taken by *Swatanter Kumar J.*

in *Sadhna Sharma* was held to be laying down a correct law by *Gauba J.* in his dissenting judgment in *Subhashini Malik*. Since I have refrained myself from considering the findings of *Gauba J.*, in my view, it is not necessary to consider the view expressed in *Sadhna Sharma*, which does not seem to be in tune with the majority view expressed in *Subhashini Malik*. However one factual aspect observed in Para 10 of *Sadhna Sharma* can be taken note of. A reference is made in Para 10 of judgment in *Sadhna Sharma* to the Order of Chief Justice of Delhi High Court, who had transferred only those suits under the 2003 Delhi Amendment Act where the final Judgments were not reserved. Thus even in respect of 2003 Amendment Act, the Chief Justice had a choice not to transfer some of the suits though they fell outside the High Court's jurisdiction. It appears that even after increase of the threshold limit of pecuniary jurisdiction of Delhi High Court by Section 4 of Delhi High Court Amendment Act 2003, and despite Delhi High Court loosing pecuniary jurisdiction, the Chief Justice had passed an Order retaining suits in the High Court wherein the judgments were finally reserved. In stark contrast here, no such choice or discretion is left with the Chief Justice of this Court where all suits having value of upto Rs.10 Crores stood automatically and instantly transferred to the City Civil Court.

44) After considering the express language employed in Section 4A of the amended City Civil Court Act, I am of the view that the present suit stood transferred to the City Civil Court as on 28 January 2024 and this Court has lost jurisdiction over it. Once the High Court has lost jurisdiction in the present suit, propriety requires that all applications filed in the suit are decided by the Court to which the suit stands transferred.

45) Independent of the judgments cited before me, I am of the view that permitting a Court to entertain or decide any application filed in a Suit, which is already transferred to another Court, would set a dangerous trend where Courts, despite losing jurisdiction, would continue to exercise jurisdiction in an indirect manner over those suits. Jurisdiction is an authority conferred on a court to decide or adjudicate any dispute and it also signifies a limit or restriction within which a court has to exercise such authority. It is therefore necessary that clear boundaries of Court's jurisdiction are set out and Courts do not transgress the same on case to case basis. Clarity on Court's pecuniary jurisdiction must be achieved so as to prevent any chaos amongst the parties. Plaintiffs' submission, if accepted, would amount to retention of Court's jurisdiction only to decide one class of application, viz. only application for amendment of Plaint, with a further sub-class of amendment pertaining to suit valuation only. In the present case, Plaintiffs' application is mainly to add subsequent events, an additional Defendant as well as to add fresh prayers. It is an extensive amendment, with replacement of valuation clause being just a minor part of thereof. Whether under the guise of permitting alteration of valuation clause, this Court can usurp the jurisdiction of City Civil Court to decide the other amendments also? The answer to this question, to my mind, appears to be in the negative. Plaintiffs' insistence on this Court deciding application for amendment is premised on a sanguine hope that this Court would allow the amendment. If after hearing parties, Court decides to reject the proposed amendment, would the order deciding application for amendment in a transferred suit be valid? If Plaintiffs' contention is accepted, only an order allowing the amendment can be passed by a Court in a transferred Suit and not an order of rejection. Such selective and result oriented jurisdiction cannot be conferred on Courts.

46) It must be borne in mind that pecuniary jurisdiction of subordinate courts are also altered from time to time. Permitting one class or sub-class of applications to be entertained by courts even after loss of pecuniary jurisdiction would create confusion and chaos as well as result in misuse of such liberties by usurping jurisdictions by Courts who have already lost jurisdiction over particular category of suits. Seen from this angle also, I am of the view that entertainment of any application in a Suit, which is transferred out of jurisdiction of a Court, is neither permissible nor desirable. This is particularly true where the enactment, under which jurisdiction is taken away, provides for automatic and instant transfer of suits.

47) I am therefore of the view that application for amendment of plaint filed by Plaintiffs cannot be decided by this Court and that it needs to be decided by the City Civil Court, to which the suit has already been transferred on 28 January 2024. Registry to take immediate steps for transmission of all papers in the Suit to the City Civil Court so as to enable the Plaintiffs to press their Interim Applications for amendment and for Interim Orders before the City Civil Court. Nothing observed in this Judgment shall influence the City Civil Court while deciding any applications filed in the Suit. Let necessary action for transfer of papers in the Suit be completed by the Prothonotary and Senior Master within one week.

[SANDEEP V. MARNE J.]