

**PATEL J.J. & ORS v DYNAMIC INDIA FUND III (IN ADMINISTRATION) & ORS**  
**2025 SCJ 253**

**Record No. 1714**

**THE SUPREME COURT OF MAURITIUS**  
**[Court of Civil Appeal]**

**In the matter of: -**

- 1. Jayantilal Jiwabhai Patel**
- 2. Gulab Rajaram Patil**
- 3. Gordhan Shewaram Chandiramani**
- 4. Whabi Mahesh Kumar Jethanand**
- 5. Sajnani Rajesh**
- 6. Singh Yogendra**
- 7. Khatwani Khushi Chandanmal**
- 8. Jamani Basant Anita**
- 9. Gehani Arjun Parsram**
- 10. Manglani Haresh Khemchand**
- 11. Sawlani Ramchand Baldev**
- 12. Santani Naresh Nirmaldas**
- 13. Bablani Ashok**
- 14. Rege Suhas Madhavrao**
- 15. Vartak Ashok Govind**
- 16. Dhas Ramesh Bhausahab**
- 17. Pandhare Sandesh Arvind**
- 18. Shah Bhanuchandra Vallbhadas**
- 19. Suresh Jamnadas**
- 20. Jain Sanjay**
- 21. Asnani Ashok Teckchand**
- 22. Kishanchand Lachman**
- 23. Totade Avinash Prabhakarrrao**
- 24. Aranha Hyacinth Jerome**
- 25. Gurnani Harish Kumar**
- 26. Khanchandani Dhanraj Kodamma**
- 27. Ashar Umesh Hansraj**
- 28. Uttamchandani Ashok**
- 29. Jethani Ramo**
- 30. Ved Sharad Lalji**
- 31. Joti Nirmal Anand**
- 32. Khanchandani Murli**
- 33. Shewakramani Ashok**
- 34. Uttamchandani Rakesh Kishinchand**
- 35. Dhar Kiran Kumar Jagannath**
- 36. Chander Jagdesh**
- 37. Sagar Rashik**

38. Mohan Chattaram
39. Kanchwala Sohel Hatim
40. Raman Tirunalveli Kuppuswamy
41. Bhatia Varsha Ajay
42. Dhar Anil Kumar
43. Uttamchandani Murli
44. Prakash Bhatia Valabdas
45. Shah Ketan Bharat Kumar
46. Lakhmichand Mahesh
47. Balachandran Siddharth
48. Uttamchandani Haresh Sugnomal
49. Gupta Rohit Kedarnath
50. Menghani Chandru Hiranand
51. Dhakan Harshad
52. Ashar Khimji Vijaysingh
53. Ashar Shital Bhagwandas
54. Dinesh Kumah Kanji Asher
55. Raja Thanialur Venkataperumal Raja Alaga
56. Jethwani Raju Tejumal
57. Singh Sohinder Singh Tarlock
58. Jaddeesh Manglani
59. Samani Aroon Gokaldas
60. Bharat K. Thakrar
61. Patel Sumantra Purosottam Mangalbhai
62. Patel Harshabhai Vithalbhai
63. Dhirajlal Meghji Dhanani
64. Patel Rasikkumar Dahyabhai Hathibhai
65. Hindocha Jayantilal
66. Patel Kirankumar Manubhai Maganbhai
67. Mrs Patel Neesha Vinit
68. Prakash K. Ved
69. Rajendra P. Ashar

**Appellants**

v

1. Dynamic India Fund III (in Administration)
2. Apex Financial Services (Mauritius) Ltd
3. ICICI Venture Fund Management Company Ltd
4. ICICI Bank Ltd
5. The Western India Trustee and Executor Co Ltd

**Respondents**

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## **JUDGMENT**

This is an appeal from a decision of a Judge of the Supreme Court to strike out *“...specific averments in the plaint with summons which refer to defendants Nos. 3 and 4 ...to enable the plaintiffs to enter an intelligible case against all remaining defendants”*.

We feel bound to set out the chronology of events which has led to the motion to strike out specific paragraphs of the appellants’ fourth amended plaint with summons (“the plaint”) and to the interlocutory judgment of Moutou-Leckning J. which is on appeal before us.

In their plaint, the appellants prayed *“for a judgment condemning and ordering the Defendants to pay jointly, severally and in solido (or in the alternative, the defendant no 1 and/or the defendant no 2 and/or the defendant no 3 and/or the defendant no 4 and/or the defendant no 5) the sum of USD 103,699,976, together with interests...”*

ICICI Venture Fund Management Company Ltd, then defendant no. 3, and ICICI Bank Ltd, then defendant no. 4, filed an amended “Notice of Preliminary Objections” where at paragraphs 7 and 6 thereof they each averred that *ex facie* the fourth amended plaint with summons, the Mauritian Courts do not have jurisdiction over them.

In a judgment delivered on 09 June 2020, Kwok Yin Siong Yen J. stayed proceedings against those two entities and referred the matter before the Master and Registrar for the appellants to take a stand in the light of her decision.

Before the Master and Registrar, a motion was made on behalf of respondent no. 1, then defendant no. 1 that defendants nos. 3 and 4 be put out of cause and on behalf of respondent no. 2, then defendant no. 2, a motion was made for *“...all averments concerning the defendants nos. 3 and 4 in the plaint...be expunged and that a proposed amended plaint...be filed”*.

At the sitting of 3 February 2021 Counsel Mr S. Dabee appeared for defendants nos. 3 and 4 before the Acting Master and Registrar and moved that the matter be fixed for arguments on whether the Master and Registrar had jurisdiction to rule on the motion made on behalf of respondents nos. 1 and 2.

Arguments were heard on 16 February 2021 and on 27 May 2021 the Acting Master and Registrar ruled that pursuant to section 19 of the Courts Act, she was *“bound by the instructions of the Learned Judge...and since a stay against parties to a case has the effect of preventing the continuance of any proceedings against those parties, defendants nos. 3 and 4 cannot appear or file any pleadings before the Court”*.

The Acting Master and Registrar also decided that *“the motion made on behalf of defendants nos. 3 and 4 has no reason to be since it is clear from the ruling of the Learned Judge that the matter cannot proceed any further against defendants nos. 3 and 4”*.

The matter was then fixed to 22 June 2021 to be in shape.

At the sitting of 6 July 2021, a motion was made on behalf of respondent no. 1 that *“all paragraphs of the Complaint [be] struck out for lack of jurisdiction of the Supreme Court of Mauritius to entertain the complaint in line with the Ruling of the Master and Registrar dated 27 May 2021”*.

A statement was also made on behalf of respondent no. 2 that the latter intended *“to lodge a motion supported by affidavit to have the paragraphs of Complaint struck out in relation to the averments against Defendants Nos 3 & 4...”*.

A motion paper supported by affidavit was filed on 22 July 2021 by the attorney appearing for respondent no. 2. In its motion paper, respondent no. 2 moved-

*“(A) For An order under Rule 15 of the Supreme Court Rules 2000 (and the inherent jurisdiction of the Court) striking out the pleadings in the heading, paragraphs 6, 7, 10, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 43, 44, 46, 47, 48, 49, 50, 51, 52, 58, 60, 61, 63, 64, 65, 66, 67, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 91, 107, 108, 116, 117, 123, 124, 125, 128, 129, 130, 131, 134, 135, 138, 141, 142, 151, 152, 153, 154, 155, 156, 159 in whole or in part, in so far as they refer to Defendants 3 and/or 4, as well as other pleadings which refer to Defendants 3 and/or 4 because they are:*

- A.1. unnecessary;*
- A.2. made vexatiously; or*
- A.3. made with unnecessary prolixity,*

*in light of the interlocutory judgment of the Supreme Court staying the proceedings against Defendants No. 3 and 4; or*

*(B) Alternatively, for an order under Rule 16 of the Supreme Court Rules 2000 (and the inherent jurisdiction of the Court) ordering the Plaintiffs to amend their pleadings, in particular but not limited to paragraphs 6, 7, 10, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 43, 44, 46, 47, 48, 49, 50, 51, 52, 58, 60, 61, 63, 64, 65, 66, 67, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 91, 107, 108, 116, 117, 123, 124, 125, 128, 129, 130, 131, 134, 135, 138, 141, 142, 151, 152, 153, 154, 155, 156, 159 to remove all references to Defendants No. 3 and 4, as the said references and averments with respect to Defendants No. 3 and/or 4 are embarrassing and misleading;*

*(C) And, for such other order or orders as the Court may deem fit, with costs.”*

The motion was supported by respondents nos. 1 and 5 (then defendant no. 5).

The appellants resisted the motion on the grounds that-

- “1. It constitutes a disguised attempt to seek dismissal of the Plaintiffs’ claim.*
- 2. It is a derogation to the Ruling of the Supreme Court 2020 SCJ 121 and also derogates from the Ruling of the Master and Registrar issued on the 27<sup>th</sup> of May 2021.*
- 3. It goes against the Principles of Stay of Proceedings.”*

Before we consider the merits of the appeal, we must place on record that although the name of ICICI Venture Fund Management Company Ltd and ICICI Bank Ltd appear as respondents nos. 3 and 4 in this appeal, no notice of appeal was served on them.

Contrary to the submissions of learned Senior Counsel for the appellants, there was no *preliminary objection* to the motion of respondent no. 2 and therefore, no need for the learned Judge to pronounce on the *preliminary objection* before deciding on the merits of the motion. What is apparent from the court record and the submissions made before the learned Judge is that the appellants formulated three grounds, which we have set out earlier, to resist the motion of respondent no. 2. We are, therefore, unable to agree with the argument that the learned Judge had overstepped a procedural hurdle.

However, in view of certain disquieting features in the judgment, this appeal must succeed for the following reasons.

At paragraph 7 of her judgment, the learned Judge wrote “[t]he defendant no. 2 made a motion for an order that the plaintiffs be ordered to amend their pleadings with summons, or alternatively, for certain specific provisions of the pleadings to be struck out”.

It would appear from the above that the learned Judge was labouring under the mistaken belief that the primary motion was **to amend** the pleadings pursuant to **Rule 16** of the Supreme Court Rules 2000 whereas it is abundantly clear from the motion paper that the application was **to strike out** “paragraphs 6, 7, 10, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 43, 44, 46, 47, 48, 49, 50, 51, 52, 58, 60, 61, 63, 64, 65, 66, 67, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 91, 107, 108, 116, 117, 123, 124, 125, 128, 129, 130, 131, 134, 135, 138, 141, 142, 151, 152, 153, 154, 155, 156, 159 in whole or in part” of the pleadings pursuant to **Rule 15(1)** of the said rules.

For ease of reference, we shall set out Rules 15(1) and 16 of the Supreme Court Rules 2000 (“the Supreme Court Rules”).

Rule 15(1) provides as follows-

**“15. Striking out pleadings**

(1) Where any pleading contains a statement which is –

- (a) unnecessary;
- (b) made vexatiously; or
- (c) made with unnecessary prolixity,

**the Court or the Master may strike out that pleading or amend it with or without costs.” [Emphasis ours]**

On the other hand, Rule 16 provides-

**“16. Pleadings calculated to embarrass or mislead**

- (1) *Where any pleading is, by reason of its duplicity, argumentativeness, uncertainty, omission, defect, lack of form or other imperfection, framed in a way to embarrass or mislead the other party, the latter may apply to the Master to have the pleading amended.*
- (2) *Upon hearing the parties, the Master may order the appropriate party to amend the pleadings in such manner and on such terms as he may direct.*
- (3) *Where the party fails to amend the pleadings as ordered by the Master, the pleading shall be struck out.*
- (4) *Nothing in these rules shall be deemed to prevent alternative pleadings, including the pleading of averments in tort or in alternatively in contract.”*  
**[Emphasis ours]**

Inasmuch as the parties are still at the stage of exchange of pleadings before the Master, in other words the case is not yet in shape, respondent no. 2 should not avail itself of Rule 16 of the Supreme Court Rules for an application to the Court for an amendment of the appellants' pleadings as it has done in its motion paper. If the respondent no. 2 wants to avail itself of Rule 16, it has to direct its application to the Master before whom, for all intents and purposes, the case is still pending for exchange of pleadings and its *mise en état* before it is fixed for merits.

It was, therefore, incumbent on the learned Judge to consider the motion to strike out under **Rule 15(1) of the Supreme Court Rules only** in view of paragraph (A) of the motion paper which we have taken the liberty to reproduce above.

Before ordering the striking out of a statement in a pleading under Rule 15(1), which is a drastic measure, the Court must satisfy itself, and this must be transparent in its decision, that the impugned statement is either (i) unnecessary, (ii) vexatious or (iii) unnecessarily prolix. The learned Judge ought to have considered and determined whether any or all of the grounds enumerated in Rule 15(1) had been established and give reasons for her decision. In other words, by virtue of which provision of Rule 15(1) the impugned paragraphs of the pleadings were being struck out.

As matters stand, the learned Judge, rather than considering and spelling out under which provision of Rule 15(1) she was ordering the striking out of the impugned paragraphs, and giving reasons for her decision, chose to borrow certain phrases from the

speaking notes of Mr A. Sunassee (Counsel who appeared for respondent no. 2) and certain extracts from judgments, which were irrelevant to the issue she was called upon to determine, in order to justify her decision.

Not only it is obscure from the judgment whether the order to strike out was made pursuant to Rule 15(1) of the Supreme Court Rules but also her decision that “...*the paragraphs...highlighted by defendant No. 2 show that [they] have no ‘raison d’être’ as the plaintiffs cannot ignore the stay against defendants Nos. 3 and 4 and maintain their allegations or seek to adduce evidence to establish them when the Court has found that it has no jurisdiction over these claims*” and her findings, which we shall reproduce verbatim below, can hardly be said to fall under Rule 15(1) of the Supreme Court Rules:

- “1. ....*Although the matter has been stayed against defendants Nos. 3 and 4, the plaintiffs insisted to continue their case as originally cast, with prayers sought against those defendants.*
2. *Plaintiffs have not given valid reasons as to why they insisted on maintaining those averments, notwithstanding the finding of the Court that it has no jurisdiction over those defendants and that the case against them be stayed.*
3. *Plaintiffs have failed to indicate how the presence of defendants Nos. 3 and 4 will serve the Court. No evidence was adduced by plaintiffs to this effect and they fail to establish any prejudice they may suffer if defendants Nos. 3 and 4 are not present.*
4. *It has been admitted by plaintiffs and defendant No. 2 that a stay is not a dismissal of the proceedings. The plaintiffs have averred in their written submissions that a stay of proceedings against defendants Nos. 3 and 4 holds no incidence whatsoever on the finding of fact with respect to the liability of defendants Nos. 1, 2 and 5.*
5. *A close look at the paragraphs of the plaint whenever reference is made to defendants Nos. 3 and 4 are clearly found to be ‘embarrassing, that is , so irrelevant that to allow them to stand would involve useless expenses, and would also prejudice the trial of the action by involving the parties in a dispute that is wholly apart from the issues’ (see **Mayor etc of London v Horner [1914] 111 L.T at p 514 and Willoughby v Eckstein [1936] 1 All E.R 650, as referred to in Odgers 14th edition at page 141).***”

Equally unsustainable is her statement that she was ordering the striking out “*to enable the plaintiffs to enter an intelligible case against all remaining defendants*”.



We regrettably have to observe that the interlocutory judgment, granting the application to strike out specified paragraphs of the appellants' plaint, lacks fundamental legal reasoning.

We, therefore, agree with learned Senior Counsel for the appellants that the learned Judge has failed "*to carry out the proper exercise to consider the application of the said Rules before ordering the striking out of the various paragraphs...*" and has failed to substantiate her decision to accede to the motion of respondent no. 2.

In the circumstances, the decision to strike out paragraphs "6, 7, 10, 12, 13, 14, 15, 16, 18, 19, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 41, 43, 44, 46, 47, 48, 49, 50, 51, 52, 58, 60, 61, 63, 64, 65, 66, 67, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87, 88, 91, 107, 108, 116, 117, 123, 124, 125, 128, 129, 130, 131, 134, 135, 138, 141, 142, 151, 152, 153, 154, 155, 156, 159" of the appellants' plaint cannot be allowed to stand.

We, accordingly, allow the appeal, quash the decision of the learned Judge and order a fresh hearing on the application of respondent no. 2.

For obvious reasons, the application to be heard by a differently constituted bench.

We shall, exceptionally, make no order as to costs.

**N. Devat**  
**Senior Puisne Judge**

**R. Teelock**  
**Judge**

**10 June 2025**

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**Judgment delivered by Hon. N. Devat, Senior Puisne Judge**

- For Appellants** : Mr G. Ramdewar, Senior Attorney  
: Mrs U. Boolell, Senior Counsel  
: Mr N. Boolell, of Counsel  
: Mr F. Soreefan, of Counsel
- For Respondent No. 1** : Mr T. Koenig, Senior Attorney  
: Mr R. Chetty, Senior Counsel  
: Mrs N.D. Jeetah, of Counsel  
: Ms L. Veerapen, of Counsel
- For Respondent No. 2** : Mr J. Gujadhur, Senior Attorney  
: Mr A. Sunassee, of Counsel  
: Mr B.M. Marie Joseph, of Counsel
- For Respondents No 5** : Mrs V. Babooa-Bissonauth, Attorney-at-Law  
: Mr Y. Reesaul, of Counsel