

SPCS/11/2006

ORDER

IN THE COURT OF 3RD ADDITIONAL SENIOR CIVIL JUDGE,
AT : BHARUCH.

SPECIAL CIVIL SUIT NO. 11 OF 2006.

Plaintiff:

Rohit Harkisandas Chadarwala.
5, Aakurti soc, opp, GuJ., Vij, Board,
Maktampur, Bharuch.

VERSUS

Defendants:

1. Desaibhai Parsottam Patel.
A/2 Patel park opp, K.G.M. School,
Zadeshwar, Bharuch.
 2. Ramjibhai parsottambhai patel
A/3 Patel park opp, K.G.M. School,
Zadeshwar, Bharuch.
 3. Ramanbhai Parsottambhai Patel.
A/3 Patel park opp, K.G.M. School,
Zadeshwar, Bharuch. who died during the pendency
of suit hence his heirs as follows (Vide
Application Exh.51).
- 3/1 3/1.. Kantaben, Wd/o Ramanbhai P. Patel.
A/3 Patel park opp, K.G.M. School,
Zadeshwar, Bharuch.
- 3/2.. Varshaben Chandrakant Patel.
A/3 Patel park opp, K.G.M. School,
Zadeshwar, Bharuch.
- 3/3.. Shobhnaben Dineshbhai Patel.
A/3 Patel park opp, K.G.M. School,
Zadeshwar, Bharuch.

Appearance:

D.N.PATHAK For Plaintiff.
R.J.DESAI For Defendant 1.
R.J.MEHTA For Defendant 2. _

ORDER BELOW APPLICATION EXH.97.

(1) Present application is preferred by the plaintiff under Order-6 Rule17 of Civil Procedure Code for amendment in the plaint.

(2) Learned Counsel for the plaintiff Mr. D.N. Pathak submitted that in Para No.3 of the plaint it is required to amend Rs. 4,00,000/- instead of figure 2,00,000/- which is mentioned in the plaint and second amendment is required to narrate the date 28th March, 2004 instead of 28th February, 2004 in Para No.4 of the plaint. As per the learned counsel for the plaintiff, it is a bona fide typical mistake which is required to be amended. He further submitted that if the amendment is allowed it do not prejudice to the defendant in any manner. So, present application may be allowed.

(3) Learned Counsel for the defendants Mr. R.J. Desai argued that present suit is pending for cross-examination of the plaintiff and trial has already been commenced so at this stage, such amendment can not be allowed. He further submitted that the provisions of Order-6, rule-17 proviso clearly mentions that application for amendment was not be allowed after the trial has commenced. He relied upon the judgment of Hon'ble Supreme Court in case of **Vidyabai V/s. Padmalatha, Law Suit, S.C., decided on 12th December, 2008** and (2) in case of **Saurashtra Fuels Pvt. Ltd. Mahashakti Coke V/s. State of Gujarat through Secretary, Law Suit, decided on 12th August, 2010 (Gujarat High Court).**

(4) After hearing the arguments of both the sides and on perusal of relevant provisions the provisions of Order-6, Rule-17 is as under :-

Order-6 Rule-17 - Amendment of Pleadings :-

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of the diligence, the party could not have raised the matter before the commencement of trial."

On perusal the proviso of that provision it denotes that no application for amendment shall be allowed after the trial has commenced unless court come to the conclusion that in spite of due diligence the party could not have raised the matter before and commencement of trial. In the present case, plaintiff has also filed an application vide Exh.51 and 52 for amendment in the plaint which was allowed by the court and by way of amendment plaintiff has made the amendment in the plaint on date 8th January, 2010. So, plaintiff has previously also availed the opportunity to make amendment in the plaint, at that time, he shall be followed the due diligence to make the amendment. subsequently after lapse of period,

he filed the present second application for further amendment in the plaint at the stage of cross-examination of the plaintiff. Present case is pending for the cross-examination of plaintiff so trial had already been commenced in the present suit and at this later stage the proviso of the Order-6, Rule-17 is prevented the plaintiff to make any amendment in the plaint. As in spite of due diligence the party could not have raised that issue of amendment before commencement of the trial. So, at this stage, he can not be allowed to make any amendment.

On perusal of relevant provisions, it is couched in a mandatory form and the court's jurisdiction to allow such type of application is restrained by this provision to some extent. The Hon'ble Supreme Court also held the principle in cases : **(1)Vidyabai V/s. Padmalatha, Supra** and **(2) Saurashtra Fuels Pvt. Ltd. Mahashakti Coke Supra** regarding the applications of amendment in the pleading. Therefore, considering all facts and circumstances of the case and the relevant provisions, this court has no ground in this application to allow this application for any amendment. Hence, I pass the following order.

- :: ORDER :: -

Present application is dismissed.

Pronounced in open court today, i.e. on this 29th day of August, 2011.

Date : 29-08-2011.

Place : BHARUCH.

**(C.K. CHAUHAN)
3RD ADDITIONAL SENIOR CIVIL
JUDGE, BHARUCH.**