

13.03.2026

Present: Sh. Surendra, Id. counsel for the plaintiff along with plaintiff.
Sh. Deepak Tanwar, Ld counsel for the defendant no. 4 through VC.
Sh. Raj Kumar Chandiwal, Ld counsel for defendant no. 1 to 3.

Ld counsel for the defendant submits that an application VII rule 11 CPC is pending for disposal.

Ld counsel for the plaintiff submits that he has filed an application under order VI rule 17 CPC and firstly, the said application be decided.

In the following judgements, it is held by the Hon'ble Higher Courts that firstly, application under order VI rule 17 be decided before deciding the application filed under order VII rule 11 CPC.

In a case titled Dera Baba Bhumman Shah Sangar Sarista vs Dr. Subhash Narula, decided on 8 October, 2020, Hon'ble Punjab & Haryana High Court, has held as follows:

“[4]. In view of first principle of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564, the executant of the sale deed if seeks cancellation of the deed, then the plaintiff has to pay the ad valorem Court fee on the consideration as shown in the deed. In such eventuality, the application under Order 6 Rule 17 CPC has to be decided before the decision of the application under Order 7 Rule 11 CPC. The impugned order dated 07.03.2020 passed by the trial Court prior to decision of the pending application under Order 6 Rule 17 CPC, in my considered opinion is an illegality committed by the trial Court. In any case, the pending application under Order 6 Rule 17 CPC ought to have been decided prior to the decision in the application under Order 7 Rule 11 CPC.”

In a case titled Anita Anand Vs Gargi Kapur SCC ONLINE DEL 11794, decided on Nov 20, 2017, the Hon'ble High court of Delhi has held as follows:

6. There is no doubt to the position of law that pending an application under Order 7 rule 11 CPC, the amendment can be allowed under Order 6 Rule 17 CPC as was held in Wasudhir Foundation... Plaintiff; v. C. Lal & Sons... Defendant. 45 (1991) DLT 556 and also in Mrs. Binu Anand Khanna v. Mr. Ratan Tata, Chairman, Taj Group.

In a case titled Kohli One Housing & Development Pvt Ltd V. C.S. Agarwal And Others, DHC 2289, decided on 18.03.2024, Hon'ble High court of Delhi, has held as follows:

“40. It may be noted that after the filing of the suit the defendants No.4 to 13 had filed an application under Order VII Rule 11, CPC for rejection of the plaint viz-a- viz them on the ground that there was no cause of action disclosed against them and there was no plea of lifting of the corporate veil. Further, there was no cause of action disclosed against them. During the course of the arguments the plaintiff had introduced the concept of lifting of the corporate veil which prompted the plaintiff to move the present amendment application to incorporate the relevant facts. The core question, therefore, is whether the amendment application filed subsequent to the filing of rejection of suit application, can be resorted to, to introduce a cause of action which is non-existent in the plaint”.

“41. Reference may be had to the case of Gaganmal Ramchand vs. The Hongkong & Shanghai Banking AIR 1950 BOM 345, wherein the Bombay High Court had permitted the amendment of the plaint by the appellant to amplify the facts constituting the cause of action. In Hari Bhagwan Sharma vs. Badri Bhagat Jhandewala Temple Society 27 (1985) DLT 68, this Court had permitted the amendment in order to rectify the insufficiency of cause of action by furnishing additional particulars. It was observed that those amendments which are sought to be made bonafide can be allowed by way of amendment even though the application under Order VII Rule 11, CPC is pending.

“42. Similarly, in *Wasudhir Foundation vs. C. Lal & Sons* (1991) 45 DLT 556 , the Division Bench of Bombay High Court reiterated that if ouster of application under Order VI Rule 17 is done, it would throttle the very life of Order VII Rule 11 CPC and instead of promoting, it would defeat the ends of justice.

“43. Likewise, in *Beenu Anand Khanna vs. Ratan Tata, Chairman Taj Group*, 2006 III AD Del. 129 , this Court permitted the amendment of the plaint in similar backdrop.

“44. From the above said judgments, it may be concluded that despite pending application under Order VII Rule 11, CPC the amendment application under Order VI Rule 17, CPC may be considered and may be allowed if it is bonafide and only intends to amplify the facts in regard to cause of action. However, the amendment application may be dismissed, if it is found to be malafide or tries to introduce a new cause of action of which there is not even a vestige in the original plaint. With these observations, the present application under Order VI Rule 17 CPC may be considered.”

In a case title *Wasudhir Foundation vs C. Lal & Sons*, 45 (1991) DLT 556, decided on 28 October, 1991, The Hon’ble High court of Delhi has held as follows:

“(5) This is the righteous path And, if this be so is it not necessary, in the ends of justice, to extend the beneficial legal principles enconced in Order 6 rule 17 More so, when one hardly discerns any-thing in Order 7 rule 11 which may lead one to take the view that it takes away the power of the court to allow amendments of places hurdles in performance of its duty ? After all. what is the effect of Order 7 rule 11 ? It is, if I understand correctly, that the plaintiff would not be precluded from filing a fresh suit in inspect of the same cause of action. If he so desires see Order 7 Rule 13. If such be the effect, why not permit the amendment of the plaint so as to remove the defect and prevent the operation of the Rule ? Why make him first invite the rejection of the plaint, then allow him to file a fresh suit at the expense of delay and heavy costs ? Why not straightaway allow him to amend the plaint, remove the defect and permit him, thereby, to proceed with the same suit ? Why this rigmarole ? After all,procedural law is intended to facilitate and not to obstruct the course of justice. With respect, it has rightly been held in *Baganmal v. Hongkong and Shanghai Banking Corp.* : "It is perfectly true

that it is incumbent upon the Court to reject a plaint that does not disclose a cause of action, but it does not open to the Court to allow a plaint to be amended so that it should disclose a cause of action. It is only when a plaint does not disclose a cause of action that the Court is called upon to exercise its power under Order 7 Rule 11. But the Court may prevent the operation of Order 7 Rule 11, and may save the plaint from being rejected by exercising its power under Order 6; Rule 17, and, allowing the plaint to be amended."

"(7) The ouster of Order 6 rule 17 will throttle the very life line of Order 7 rule 11. Instead of promoting, it would defeat the ends of justice. I refuse to be a party to such an approach".

"(9) Order 6 rule 17 is thus held to be neither restricted nor controlled by Order 7 rule 11.

In view of the abovesaid judgments, this court deems it fit, firstly, to decide the application filed under Order VI rule 17 CPC before deciding application filed under Order VII rule 11 CPC.

Part arguments heard on the application filed under Order VI rule 17 CPC.

Put up for further arguments on the abovesaid application on **12.05.2026**

Interim stay order stands extended till NDOH.

(SHIV KUMAR)
DJ-02 (W)THC:Delhi
13.03.2026