

**IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE AND
J.M.F.C. GOKAK**

PRESENT

**SRI.R.CHANDRAPPA HONNUR, M.A.LL.B(Spl.)
II Addl. Senior Civil Judge & J.M.F.C. Gokak.**

DATED THIS THE 13TH DAY OF OCTOBER 2020

OS No.110/2018

PLAINTIFF : Parappa @ Prabu

// Versus //

DEFENDANTS : Siddappa & another

IA No.V

**APPLICANT/
PLAINTIFF : Parappa @ Prabu**

// Versus //

**OPPONENTS/
DEFENDANTS : Siddappa & another**

ORDER ON IA NO.5 AND MEMO FILED BY PLAINTIFF

Plaintiff has filed IA No.5 U/o 6 R 17 R/w Sec.151 of CPC for amendment of the plaint. The plaintiff has also filed memo for dismissing IA No.4 as not pressed.

2. Plaintiff has sworn to affidavit in support of the application. It is stated in the affidavit that the proposed amendment is necessary to adjudicate the matter in dispute between the parties. The proposed amendment will not change the nature of suit and cause of action. The proposed amendment is not barred by limitation. If the application is not allowed, he would be put to irreparable loss and injury. If the application is allowed no harm would be caused to other side. Therefore, he prayed to allow the application and permit him to amend the plaint as prayed in IA No.5. The deponent has filed memo with effect that IA No.4 filed by him on 26.08.2019 is not pressed.

3. The application and memo filed by plaintiff are resisted by defendants by filing objection. The defendants have contended that the plaintiff has already filed similar 3 applications and got dismissed IA Nos. 2 and 3. The plaintiff has also filed memo for not pressing IA No.4. The plaintiff is not diligent in filing the application for amendment of the plaint. Therefore, the plaintiff has to withdraw the suit and file a fresh suit instead of filing applications one after another for amendment of the plaint. The plaintiff has attempted to fill up lacuna after filing the written statement by defendants. Therefore, the defendants have prayed to dismiss IA No.5 and memo filed by plaintiff with cost.

4. Heard learned counsel appearing for the parties.
Perused the material on record.

5. The following points would arise for my consideration:

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

2. What order?

6. My findings to the above points are as follows:

Point No.1 : In the affirmative

Point No.2 : As per the final order for the following-

REASONS

7. **POINT NO.1:** The plaintiff has filed the application for amendment of the plaint. The plaintiff has already filed 3 similar applications viz., IA Nos.2 to 4 and got dismissed IA Nos.2 and 3 by filing memo. The plaintiff has also filed memo for not pressing IA No.4. The plaintiff is not diligent in filing the applications for amendment of plaint. The plaintiff is not definite about his case hence, he is filing applications one after the another and getting dismiss the same by filing memo. The defendants have rightly pointed out in the objection that the plaintiff is not diligent in filing the applications for amendment of plaint hence, they prayed to dismiss the application with heavy costs.

In the decision reported in 2012 SCCR 425 Rameshkumar Agarwal V/s Rajmala Exports Pvt. Ltd. and others, the Hon'ble Apex Court has held that court must not refused bonafide, legitimate, honest and necessary amendments and should never permit malafide and dishonest amendments. It is further held that courts while deciding such prayers should not adopt a hyper technical approach-Liberal approach should be general rule particularly in cases where other side can be compensated with costs. The proposed amendment is formal in nature. The trial is not commenced in this case. Therefore, I am of the view that the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. The defendants can be compensated by way of cost. The memo filed by the plaintiff for not pressing IA No.4 is to be accepted by imposing cost. Accordingly, point No.1 answered in the affirmative.

8. **POINT NO.2:** In view of my finding on the point No.1, I proceed to pass the following.

ORDER

IA No.5 U/o 6 R 17 R/w sec.151 of CPC filed by the plaintiff is hereby allowed on cost of Rs.2,500/-.

The memo filed by plaintiff for not pressing IA No.4 is accepted by imposing cost of Rs.500/- and IA No.4 is dismissed as not pressed.

The plaintiff is hereby directed to carry out amendment and furnish amended plaint in duplicate along with verifying affidavit.

(Dictated to the judgment writer, transcript revised, corrected and then pronounced by me in the open court on this the 13th day of October 2020.)

(SRI. R.CHANDRAPPA HONNUR)
II Addl. Senior Civil Judge & J.M.F.C. Gokak