



**IN THE COURT OF CIVIL JUDGE AND J.M.F.C, SRINGERI**

**PRESENT: Sri. Rahul Shettigar, B.Com (Hons.), LL.B  
Civil Judge & J.M.F.C, Sringeri**

**DATED THIS THE 15<sup>th</sup> DAY OF APRIL 2024**

**ORIGINAL SUIT No. 08/2019**

**BETWEEN:**

Sri. Srinivasa Gowda **PLAINTIFF**  
**-AND-**  
 Sri. Venkatesh Bhat & Others **DEFENDANTS**

**IN I.A.NO.IV**

Sri. Venkatesh Bhat & Others **APPLICANTS/  
DEFENDANT No.1 to 3**  
**-AND-**  
 Sri. Srinivasa Gowda **OPPONENT/ PLAINTIFF**

**PARTICULARS**

<i>i</i>	<i>Provision under which the application is filed</i>	<i>Order VI Rule 17 R/w S.151 CPC</i>
<i>ii</i>	<i>Relief sought for</i>	<i>Amendment of W.S</i>
<i>iii</i>	<i>The date on which the application is filed</i>	<i>25.11.2023</i>
<i>iv</i>	<i>Number of the application</i>	<i>I.A.No.IV</i>
<i>v</i>	<i>The date on which the objections are filed by different opponents</i>	<i>10.04.2024</i>
<i>vi</i>	<i>The date on which the orders were passed on the said application</i>	<i>15.04.2024</i>



### **ORDERS ON I.A. NO. IV**

1. Applicants/ Defendants have filed the instant application under Order VI Rule 17 r/w Section 151 of C.P.C seeking amendment of the Written Statement to the effect made in the application.
2. In the affidavit appended to the application, the contention of the Applicants/ Defendants is that some of the important aspects have been left out while filing the Written Statement and inserting the same by way of proposed amendment is very much necessary for proper disposal of the matter in dispute; the said aspects only came to their knowledge recently while preparing for cross-examination of the Plaintiff and immediately, this Application is filed. With these contentions, the prayer is to allow the application.
3. Resisting the application, Opponent/ Plaintiff has filed his objections contenting that the application is not maintainable; it is not supported by any documents and intention appears to be to drag on the proceedings; it is filed belatedly at the stage of Defendant's evidence with an intention to rectify their case; the amendment would change the very nature of the suit; the defense which is sought to be introduced by way of



amendment is already taken during the cross-examination of PW-1 and hence becomes unnecessary; the amendment now sought, was very much available and within their knowledge at the inception and the Defendants can depose of the same in evidence without even seeking amendment; the application is filed only to harass the Plaintiff. With these contentions, the prayer is to reject the application.

4. Heard both sides.
5. Having heard the rival contentions and on perusal of the materials, the points that would now arise for my consideration are as under -

**Point No.1** : Whether the amendment is necessary to determine the real questions in controversy between the parties?

**Point No.2** : Whether the Defendants show that despite due diligence, they could not have raised the matter before the commencement of trial?

**Point No.3** : What Order?

6. Now, my findings to above points is as follows -

**Point No.1** : In the Affirmative

**Point No.2** : In the Affirmative

**Point No.4** : As per the final order, for the following -



## **REASONS**

- 7. Point No.1:** The instant suit is filed seeking relief of possession of plaint "A" schedule property and other ancillary reliefs. The suit is now at the stage of cross-examination DW-1. At this stage, the Applicants/ Defendants have come with the instant application seeking amendment of their Written Statement. It would now be significant to reproduce the proposed amendment –

*That the plaintiff has approached the court without any proper documents & he has not how he has acquired the suit schedule property. The plaintiff is not the owner of the suit schedule property as sateted in the plaint. The suit for possession without the prayer for declaration is not maintainable. The plaintiff has not properly discribed the suit schedule propety. The plaintiff is always giving troubles to the diffendents in enjoying their property which has acquired by them by way of form No 10 issued by the land tribunal Sringeri. The suit is bad for non joinder & mis joinder of parties.*



8. Before advertng to the factual matrix any further, it would be beneficial to first have a conceptual understanding of the law relating to amendment of pleadings. Order VI Rule 17 of C.P.C governs aspect relating to amendment of pleadings and the following judgement of the Hon'ble Supreme Court of India beautifully encapsulates the scope and ambit of the law relating to amendment of pleadings. In **LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER** reported in **2022 SCC OnLine SC 1128**, the Hon'ble Supreme Court of India has held at Para No.70 as under -

*Our final conclusions may be summed up thus:*

*(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*

*(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.*

*(iii) The prayer for amendment is to be allowed*

*(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and*

*(ii) to avoid multiplicity of proceedings, provided  
(a) the amendment does not result in injustice to the other side,*



- (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
- (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
  - (ii) the amendment changes the nature of the suit,*
  - (iii) the prayer for amendment is malafide, or*
  - (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the*



*amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See [Vijay Gupta v. Gagninder Kr. Gandhi, 2022 SCC OnLine Del 1897](#))*

9. Order VI Rule 17 of C.P.C has undergone a serious change by way of amendment in the year 2002. The amended provision of law reads thus –

*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 question 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 inspite of due diligence, the party could not have raised the matter before the commencement of trial.*



- 10.** By way of inserting the proviso, there is a restriction put on the Court to entertain any request for amendment after commencement of the trial. However, amendment could be allowed if there is sufficient satisfaction to the effect that the party despite due diligence could not have raised the matter before commencement of the trial.
- 11.** Keeping in mind the guidelines issued by the Hon'ble Supreme Court of India in LIFE INSURANCE CORPORATION OF INDIA V. SANJEEV BUILDERS PRIVATE LIMITED AND ANOTHER (Supra) and the very provision of law, it would now be appropriate to delve into the essential facts of the case only to the extent necessary for disposal of this application.
- 12.** To elaborate on the proposed amendment now sought to the made to the existing written statement, it is seen that the Defendants are only intending to place some legal defenses which is in aid of the already existing averments of the Written Statement.
- 13.** No doubt, inconsistent and repugnant pleas are not to be raised by way of amendment of Written Statement. Likewise, admission, if any, in favour of the Plaintiff cannot be allowed to be withdrawn by way of amendment of Written Statement.



But, the proposed amendment extracted supra per se reveals that Defendants have not made any attempts to withdraw any admissions and that they are not raising any repugnant pleas. Defendants of course have right to take alternative pleas in their defence by way of amendment, but, subject to the qualifications that i) proposed amendment should not result in injustice to the other side, ii) any admission made in favour of Plaintiff should not be withdrawn and iii) inconsistent and contradictory allegations which negate admitted facts should not be raised.

- 14.** Amendment of pleadings should be permitted where it would result in solution of real controversy between parties, without altering the cause of action. It is settled law that amendment cannot be claimed as a matter of right under all circumstances, but Court ought not to adopt hyper technical approach while deciding such prayers. In other words, Court should be liberal particularly where any prejudice suffered by the other side can be compensated by costs. Applying these principles, it is found that the proposed amendment is necessary to determine the real questions in controversy



between the parties and accordingly, the Point No.1 which has arisen for my consideration is answered in the ***Affirmative***.

- 15. Point No.2:** Having already answered Point No.1 in favour of the Defendants, it is now necessary to examine if the amendment, with all due diligence could not be sought before commencement of the trial.
- 16.** The reason now ventilated to explain the delay in seeking for the amendment is that such pleadings were inadvertently left out while preparing the Written Statement and while preparing for the cross-examination of the Plaintiff, the same was noticed and immediately this application came to be filed. The said reason assigned given the nature of amendment sought is found acceptable.
- 17.** There is of course some delay in preferring the application seeking amendment but such delay though found to be inordinate, is not one which shocks the conscience of the Court so as to reject the prayer for amendment of the Written Statement. Hence, the delay is decided to be met with appropriate costs and accordingly, the Point No.2 which has arisen for my consideration is answered in the ***Affirmative***.
- 18. Point No.3:** For the foregoing reasons, the following -



**ORDER**

*I.A No.IV filed by the Applicants/  
Defendants under Order VI Rules 17 of C.P.C is  
hereby allowed on cost of Rs.1,000/-.*

*Resultantly, Applicants/ Defendants are  
permitted to carry out the amendment and  
furnish amendment Written Statement within  
the next hearing date.*

(Typed, computerized and corrected by me and then  
pronounced in the Open Court, on this the 15<sup>th</sup> DAY OF APRIL,  
2024)

Sd/-

**(Rahul Shettigar)  
Civil Judge & J.M.F.C,  
Sringeri.**