

KACM710010322020



IN THE COURT OF CIVIL JUDGE AND ADDL. J.M.F.C, TARIKERE

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

Dated this the 21st day of JANUARY, 2025

ORIGINAL SUIT No. 271/2020

BETWEEN:

Sri. Syed Aftab

PLAINTIFF

-AND-

Chief Secretary and others

DEFENDANTS

IN I.A.NO.IV

Chief Secretary and others

**APPLICANT/
DEFENDANTS**

-AND-

Sri. Syed Aftab

OPPONENT/ PLAINTIFF

PARTICULARS

i	<i>Provision under which the application is filed</i>	<i>Order VI Rule 17 R/w S.151 CPC</i>
ii	<i>Relief sought for</i>	<i>Amendment of written statement</i>
iii	<i>The date on which the application is filed</i>	<i>07.06.2024</i>
iv	<i>Number of the application</i>	<i>I.A.No.IV</i>
v	<i>The date on which the objections are filed by different opponents</i>	<i>04.12.2024</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>21.01.2025</i>

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**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 Applicant/ Defendant No.5 *inter alia* contends that while filing the written statement, some important aspects have been inadvertently left out which are very much necessary for establishing the defence of the Defendants; if the application is allowed, no prejudice would be caused to the other side but if rejected, he would be put to irreparable loss and hardship. With these contentions, the prayer is to allow the application.
3. Resisting the application, the Opponent/ Plaintiff has filed his objection contending that the application is not maintainable in law or on facts; the application has been filed subsequent to the commencement of the trial, which is not maintainable; the application is vague and placing pleadings that they intend to seek counter claim in future appears to be totally unnecessary; the application is contingent in nature, which cannot be allowed. There is no explanation for the inordinate

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delay caused in seeking amendment. With these contentions, the prayer is to dismiss 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.3 : As per the final order, for the following -

REASONS

7. **Point No.1:** The instant suit is filed seeking relief of permanent injunction in respect of the suit schedule property and such other ancillary relief. The suit is now at the stage of further evidence on the side of the Defendants. At this stage,

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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 –

"16(ಎ): ದಾವಾ ಸ್ವತ್ತು ಪ್ರತಿವಾದಿ ಅರಣ್ಯ ಇಲಾಖೆಯ ಸ್ವತ್ತಾಗಿದ್ದು, ದಾವಾ ಸ್ವತ್ತಿನ ಕಾನೂನು ಬದ್ಧವಾದ ಹಕ್ಕು ಮತ್ತು ಸ್ವಾಧೀನದಲ್ಲಿರುತ್ತಾರೆ. ಸದರಿ ಸಂಗತಿಯನ್ನು ಮರೆಮಾಚಿ ವಾದಿಯು ತಾನೇ ದಾವಾ ಸ್ವತ್ತಿನ ಸ್ವಾಧೀನದಲ್ಲಿರುತ್ತೇನೆಂದು ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ತಪ್ಪು ಮಾಹಿತಿಯನ್ನು ನೀಡಿದ್ದು ಆ ಸಂಗತಿಯನ್ನು ವಾದಿಯು ನಿಸ್ಸಂಶಯವಾಗಿ ದಾಖಲಾತಿಗಳಿಂದ ರುಜುವಾತುಪಡಿಸತಕ್ಕದ್ದು. ಈ ಪ್ರತಿವಾದಿಯು ತಾನೇ ದಾವಾ ಸ್ವತ್ತಿನ ಕಾನೂನು ಬದ್ಧವಾದ ಮಾಲೀಕನಾಗಿದ್ದು, ಹಕ್ಕು ಮತ್ತು ಸ್ವಾಧೀನದಲ್ಲಿರುವುದರಿಂದ ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಸಿ.ಪಿ.ಸಿ. ಆದೇಶ 8 ನಿಯಮ 6ಎ ರಡಿಯಲ್ಲಿ ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ಕೌಂಟರ್ ಕ್ಲೇಮನ್ನು ಕೇಳಿ ಮಧ್ಯಂತರ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸುವವರಿರುತ್ತಾರೆ."

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. 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

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delve into the essential facts of the case only to the extent necessary for disposal of this application.

10. To elaborate on the proposed amendment now sought to the made to the existing written statement, it is seen that the Applicant is only intending to place some additional facts which were left out while preparing the written statement which in my opinion, is only in aid of the already existing averments of his written statement. Though the amendment only appears to be seek liberty to file counter claim in future, without seeking any counter claim under the application, the amendment being formal, no prejudice could be caused to the Plaintiff if it is allowed.
11. Amendment of pleadings should generally 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

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principles, it is found that the proposed amendment is necessary to determine the real questions in controversy between the parties. 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 plaint. Accordingly, the Point No.1 which has arisen for my consideration is answered in the ***Affirmative.***

12. **Point No.2:** Having already answered Point No.1 in favour of the Applicant, it is now necessary to examine if the amendment, with all due diligence, could not be sought before the commencement of the trial.
13. 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. The said reason assigned given the nature of the amendment sought, is found acceptable. Accordingly, Point No.2 which has arisen for my consideration is answered in the ***Affirmative.***
14. **Point No.3:** For the foregoing reasons, the following -

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ORDER

I.A No.IV filed by the Applicant/ Defendants under Order VI Rule 17 r/w Section 151 of C.P.C is hereby allowed.

Resultantly, Applicant/ Defendant No.5 is permitted to carry out the amendment and furnish amendment plaint within the next hearing date.

(Dictated to Stenographer, after transcription, print out corrected and then pronounced by me in the Open Court on this the 21st of JANUARY, 2025)

sd/-

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