

23/03/2023

ORDER ON I.A.NO.5 FILED BY THE
DEFENDANT UNDER ORDER 6 RULE 17
R/W 151 OF CPC

This is an application filed by the defendant under Order 6 Rule 17 R/w Sec. 151 of CPC prays to permit him to amend the plaint as mentioned in the I.A.

2. In the affidavit it is stated that, the plaintiff has suppressed all true facts and he has not come before with clean hands. He has obtained exparte injunction order and also illegally troubling the defendants. By way of amendment the defendants are trying to explain whether subject matter of this suit is coming within the scope of this Court or not. Hence, proposed amendment is very much necessary. Hence, this application.

3. On the other hand, counsel for plaintiff has filed objection and contended that, after lapse of 3 years defendants have come up with this case. The amendment is not required to decide the real controversy between the parties. It is denied that, plaintiff has not come with cleans hands before this Court. Hence, prays to dismiss the I.A.

4. Heard argument on both sides.

5. This Court is relied upon the decision reported in AIR 2007 Gau 20, 2007() GLT 37 between Uttam Chand Kothari -V/S- Gauri Shankar Jalan and others. In para No. 21 it is stated that,

“the Apex Court in B.K. Narayana Pillai -V/s- .Parameswaran pillai, at paragraph 4, page 717 () held as follows: The principles applicable to the amendments of the plaint are equally applicable to the amendment of the written statements. The courts are more generous in allowing the amendment of the written statement as the question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original list was raised or defence taken. Inconsistent

and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement”.

In Para No.23 and 24 is reads as follows:

“Normally, amendment to a written statement is allowed subject to a few exceptions, these exceptions are:(i) The proposed amendment which the defendant seeks to make, should not cause injustice to the plaintiff and the admissions made in favour of the plaintiff should not be allowed to be withdrawn.(ii) The proposed amendment should not be allowed, if

inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts are sought to be incorporated by means of amendment to the pleadings.(iii) The proposed amendment should not be allowed if it amounts to, or results in, defeating a legal right accruing to the opposite party on account of lapse of time.

24. The law, as regards amendment of written statements, is, thus, almost settled. The principles applicable to the amendments of the plaint are applicable with equal force to the amendments of the written statements. However, the Courts are more generous in allowing amendment of written statement as the question of prejudice is less likely to operate in the case of written statement. The defendant has a right to take alternative pleas in defence, which, however, is subject to an exception that by proposed amendment, the opponent should not be subjected to prejudice. All amendments of the pleadings should be allowed, which are necessary for determination of the real controversies in the suit provided that the proposed amendment does not alter or substitute defence taken. However, inconsistent and contradictory allegations in negation to the admitted position of facts or mutually

destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings.”

As per the above decisions amendment of the pleadings should be allowed which are necessary for determination of the real controversies. While allowing the amendment of written statement the court should observe if the amendment is allowed, the plaintiff will going to cause injustice or it creates new cause of action or if it amounts or result in defeating a legal rights accruing to the opposite party. In this case if the IA is allowed no prejudice will caused to plaintiff and new cause of action also does not arise and inconsistency also does not arise. Under such circumstances this court has proceed to pass following:

ORDER

Interim Application filed by the defendant under order 6 Rule 17 R/W. Sec.151 of CPC is hereby allowed on cost of Rs.500/-.

Defendant is hereby directed to carry out the amendment and furnish the amended written statement.

Call on : 01.06.2023.

Sd/-
**Civil Judge & JMFC,
Moodbidri**