

KADW300001452011



**IN THE COURT OF THE CIVIL JUDGE & JMFC.,
AT KALAGHATAGI**

PRESENT: Sri. G. Sanjeev Kumar., M.B.A., LLB.,
Civil Judge & JMFC,
Kalaghatagi.

DATED THIS 06th DAY OF JANUARY, 2026

O.S.No.124/2011

Plaintiff : Smt. Sairabanu W/o. Nazeerahammed
Nesaragi, Age; 42 years,
Occ: Agriculture, R/o. Gandhinagar,
Tq: Kalaghatagi.

V/s

Defendant: Davalsab Rustumsab Bepari
Age: 38 years, Occ: Vegetable Business
R/o. Kalli Oni, Tq: Kalaghatagi.

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I.A No. 33

**Applicant/
Defendant:** Smt. Sairabanu W/o. Nazeerahammed
Nesaragi

(By Sri. N.S.U., Advocate)

V/s

**Opponent/
Plaintiff:** Davalsab Rustumsab Bepari

(By Sri. N.M.F., Advocate)

**ORDER ON I A NO.33 UNDER ORDER 6 RULE
17 R/W SECTION 151 OF C.P.C.**

The defendant has preferred an application invoking the jurisdiction of this Court U/o. 6 Rule 17 R/w 151 of CPC seeking permission to amend the written statement as per the proposed amendment enumerated in the application.

2. GROUNDS PLEADED IN THE APPLICATION

The grounds pleaded in the affidavit annexed to this application are encapsulated as per below;

a) The defendant is an illiterate person having no legal knowledge had recently changed his advocate and based on legal advise tendered by the said advocate, the defendant prefers to amend the written statement by incorporating the facts enumerated in the proposed amendment to the written statement as the same is essential and necessary for efficient disposal of the suit.

b) That the proposed amendment will not alter the nature of the defense and does not propose to introduce any new case. In pursuant whereof, the defendant prays for allowing the application.

3. CONTENTIONS RAISED IN THE COUNTER TO THE APPLICATION:

The contentions raised in the counter to the application are encapsulated as per below;

a) That the present suit has now ripend for final arguments of the plaintiff after due completion of evidence for both the sides. The suit is of the year 2011 and the defendant has no preferred to amend the written statement on the score of change his advocate.

b) The defendant has not chosen to avail the opportunity of filing written statement when the matter was remanded in the year 2022. Furthermore, the defendant prefers to cure the lacuna which is otherwise admitted through his pleadings.

c) The proposed amendment intents to change the nature of the suit. For the aforementioned reasons, the defendant prays for dismissal of I.A.No.33.

4. Heard learned counsel for the both parties and perused entire records including this application. Following points arise for consideration;

Point No.2: Whether the proposed amendment is necessary for determining the real question in controversy between the parties?

Point No.2: What Order?

5. My finding to the above points are as under;

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

Point No.2 : As per final order

REASONS.

6. Point No.1:

This point is raised to discuss regarding whether the applicant/defendant has made out a case that inspite of due diligence he could not have raised the matter before commencement of trial.

7. At the outset, it is pertinent to note that this suit was instituted in the year 2011 and was remanded back for a second round of trial in the year 2022. This clearly means that the defendant had all the opportunities at his disposal for a period of 15 years to raise the proposed amendment as contentions in his written statement either during the first round of

litigation or thereafter during the appeal. It is pertinent to note that, the defendant has not provided any cogent reasons for his failure to bring the facts contained in the proposed amendment on record during the subsistence of the suit for a period of 15 years.

8. On perusal of the entire grounds made out in the affidavit annexed to the application, the **pivotal** point on which the defendant rests his application is on the factum of change of his counsel. A mere change of counsel cannot establish reason cogent enough to explain the element of due diligence contained in Order 6 Rule 17 of CPC.

9. The provision of law enacted in Order 6 Rule 17 of CPC postulates ***a rule of pleading that after commencement of trial, when either party prefers to amend the pleadings then the said party shall demonstrate before the Court providing explanation as to what prevented him from raising at the earliest point in time despite having due diligence of the same.***

10. In the case on hand, the affidavit does not whisper anything regarding the said aspect of due

diligence of the defendant. Ignorance of law cannot sustained an excuse for having not diligently prosecuted the matter despite having an opportunity of 15 years at his disposal.

11. During the course of arguments canvased by the learned counsel buttressing this application, he had pressed into service five decisions of the Hon'ble Constitution Courts on the aspect concerning entertainment of amendment at the belated stage of trial.

12. In pursuant wherefore, learned counsel for the defendant has pressed into service the judgment of Hon'ble Supreme Court in **Nitaben Dinesh Patel V/s Dinesh Dahyabhai Patel** reported in **2022(1) KCCR SN 79 (SC)**. The said judgment postulates a principle that the Court may at any stage of proceedings either party to amend his pleadings in such manner as may be just for the purpose of determining the real question in controversy between the parties in the suit. The judgment further underlines an important aspect that when the facts have come to the knowledge of the party proposing for an amendment subsequent to the commencement of trial, then the Court shall allow such

amendment to be brought on record. In the case at hand, no part of the affidavit annexed to the application the presents a case of the defendant where he pleads that the fact enumerated in the proposed amendment had come to his knowledge subsequent to the commencement of trial; muchless, it is not case of the defendant that he had acquired the knowledge of the facts enumerated in the proposed amendment now for the first time in 15 years of this litigation.

13. The application and reasons made out in the affidavit apparently fails on the test of prudence concerning the fact that the defendant, despite having due diligence was prevented from bringing the proposed amendment before the commencement of trial.

14. The other judgments pressed into service by the learned counsel for defendant does not aid the defendant in providing explanation for the belated proposal for an amendment. (More specifically after 15 years of litigation).

15. Thus, the defendant has not made out a case fit for allowing the application for bringing the

proposed amendment on record. In the light of the aforementioned reasons Point No.1 answered in the **Negative.**

16. Point No.2: In view of the aforesaid reasons this court is inclined to pass the following;

ORDER

The application filed under Order U/o 6 Rule 17 R/w Sec.151 of CPC is hereby **REJECTED** with cost of Rs.1,000/-.

Accordingly, I.A.No.33 stands disposed.

For final arguments by 07.01.2026.

(Dictated to stenographer directly on computer, computerized by him, corrected and then pronounced by me in the open court on this **06th day of January, 2026**)

Civil Judge & JMFC,
Kalaghatagi.