

Order on I.A.No.14

1. The application I.A.No.14 is filed by the defendants U/O 6 Rule 17 of CPC praying for an order to permit the defendant No. 1 to carryout amendment as stated in the application.

2. The application is supported by the affidavit of the defendant No.1 and it is sworn that, at the time of filing of written statement, the defendant No. 1 had given instructions to file written statement but the earlier counsel did not plead the said pleadings and the defendant No. 1 came to know about the said fact when he engaged this new counsel. It is further stated that the defendant No. 1 was not able to understand the written statement filed by his earlier counsel and the proposed amendment is very much necessary to determine the dispute between parties. Hence prayed to allow the application.

3. The plaintiffs counsel has filed objection to the application and it is stated that as per order 6 Rule 17 of CPC, the court may allow the party to amend his pleadings when he has made out that inspite of due diligence, he could not plead such pleadings. It is further stated that the defendant in his affidavit has not stated such due diligence which prevented him from pleading such facts. It is also stated that if the application is allowed the same will alter the issues and nature of suit. Hence prayed to dismiss the application.

4. Heard the arguments of counsel for both parties.

5. The points that arise for consideration of this court are as under;

Point No.1. Whether the defendant No.1 has made out that the proposed amendment is very much necessary to prove his defence and the same is required for proper adjudication of the suit ?

Point No.2. What order?

6. The findings of this court on above points are as under:

Point No.1:-In Affirmative

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

REASONS

Point No.1:

7. The defendant No.1 has filed the present application to permit him to carryout the proposed amendment to his written statement as stated in the application. On perusal of the proposed amendment, the defendant No.1 intends to state that the suit of the plaintiffs is barred by the limitation and also intends to plead that the plaintiff is a money lender.

8. On perusal of order sheet, the present application is filed when the case is adjourned for cross-examination for PW-1. The defendant No. 1 has already filed his written statement through his earlier counsel but now after changing his counsel, the defendant No.1 intends to plead the said two facts before the court. The plaintiff has raised the objection that the defendant No.1 has not stated the reason which prevented him from pleadings said new facts. As it is stated above the defendant No.

1 by swearing his affidavit has stated that even though he instructed to his earlier counsel about said new pleadings but his earlier counsel did not plead the said fact. The defendant No. 1 intends the plead about fact of limitation and intends to state that to plaintiff is a money lender. The burden lies upon the defendant No. 1 to establish the said fact. The present application is filed when the case is adjourned for cross-examination of PW 1. The defendant No.1 by swearing the affidavit stated the reasons for not pleading said facts when he filed his written statement. The proposed amendment will not change the nature of suit or it will take away any admission. Therefore by considering the reasons stated in the application, the same deserves to be allowed. Hence for the said reasons, this court answers Point No.1 in Affirmative.

Point No 2:

9. For the reasons discussed above, this court proceeds to pass the following:

O R D E R

The application I.A.No.14 filed by the defendant No.1 U/O 6 Rule 17 of CPC is hereby allowed.

The defendant No.1 is hereby permitted to carryout proposed amendment to his written statement as stated in the application.

No order as to cost.

**For amendment and amended written
statement**

Call on: 27.04.2024

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected
and then pronounced by me in the open Court on this the 19th day of April, 2024)

**(Sandesh Prabhu. B)
Senior Civil Judge & J.M.F.C
H.D.Kote**