

ORDER BELOW EXH. 15**IN****SPECIAL.C.S. NO.67/2016**

1. Read the application and the written statement filed against the application by plaintiff at Exh.16.

2. By this application the plaintiff has prayed to amend the plaint under the provision of Order 6 Rule 17 of the Civil Procedure Code. (hereinafter referred as code).

3. Learned Advocate for the plaintiff has argued that, the application is given because of certain facts were left in pleading bona fide. It is also argued that granting the application would not change nature of the suit. It is also argued that the amendment is based on the transaction and documentary evidence and therefore it could not be said that it is manipulated or concocted subsequently. It is also argued that the right of the defendant is never going to be prejudice if such application is granted. Looking to the amended provision of the Code, such kind of amendment is only restricted after the trial has been commenced. Here, trial is yet not commenced. It is also argued that, while granting this kind of application liberal interpretation is required. It is also argued that court should not be hyper technical while dealing with such kind of application, thus, it is prayed to grant the application.

4. On the other hand learned advocate for the defendant has argued that the amendment application is not filed with good faith. No explanation has been given by the plaintiff that why he has not incorporated the present fact in the original plaint. It is also argued that the amendment has been sought to come out of bar of limitation. It is also argued that the application has been moved because the defendant has filed the application under the provision of Order 7 Rule 11(d) of Code. Granting application would seriously prejudice the right of defendant. It is also argued that, the nature of the suit would be changed, if such application is granted. Therefore, it is argued to reject the application with cost.

5. I have gone through the rival submission made by both the sides. Also, gone through the relevant provision of code. It is pertinent to note that this application has not

given when the trial has been commenced. In this, suit the trial is yet to be commenced. As per the new amended provision of code, the amendment is restricted after the commencement of the trial. It is also required to be mention here that, looking to the contentions of the application, it is based on certain documents. And therefore, it could not be said that such fact is concocted or manipulated by the plaintiff. Looking to the ratio of various judgment of Apex court in this subject, this court is convinced with the arguments of the plaintiff that liberal approach is required while dealing with such kind of application. Granting application would not change nature of suit. Defendant have an opportunity to file his detail reply about the facts which are added after granting this application, and therefore no serious harm or prejudice would occur to the legal rights of the defendant. Looking to the judgments of the Apex Court in Catena of decisions, it has been held that, if nature of the suit is going to be changed, in that circumstances the court should refrain to allow such kind of application which is not a case here. Therefore, considering the arguments of both the sides and considering the legal position of code, this court is of the view that the application is required to be allowed. Therefore, following final order passed in interest of the justice.

FINAL ORDER

- The application is hereby allowed with cost of Rs. 500/- (five hundred only) which is to be paid by the plaintiff before the office of Choryasi Taluka Legal Service Authority, Surat.
- Plaintiff is hereby directed to carry the necessary amendment forthwith.
- The plaintiff is further directed to produce amended plaint within seven days.

Surat

Date- 17.04.2017

Prashant. N. Raval
5th Addl. Senior Civil. Judge
UID NO.- GJ-00-708