

ORDER BELOW EXH. 59 IN RCS No.101/2018.
(Nandlal Sharma vs. Chief Officer+1)

MHAH050003492018

The application is made for grant of permission to amend the plaint as provided under Order-VI,Rule-17 of the Code of Civil Procedure, 1908.

2. Perused the application, reply Exh.61 and 64, pleadings,documents and record. Heard Ld. Advocate Shri. A.S. Kale for the plaintiff and Ld. Advocate Shri.M.P. Gaware for defendant No.1 and Shri. L.K. Sabnis for defendant No.2.

3. The application is based upon the subsequent events occurred during the pendency of the proceeding i.e. the compromise made between the parties before Lok-Adalat and lodging execution proceeding with reference to the compromise arrived in the other suits and criminal proceedings filed between the same parties. The plaintiff wants to insert the relief of mandatory injunction to regularize his construction inconsonance with the amicable settlement amongst the family members. The amendment would not affect the nature of suit, nor prejudice the defence. It is necessary to resolve the controversy finally. Hence, this application.

4. Defendant No.1 contended that the suit is filed to restrain the present defendant from demolishing plaintiff's

construction. So called action was taken on the complaint of defendant No.2 being the co owner of the suit property. In case of compromise between the family members, they have no objection to allow the application.

5. Defendant No.2 strongly opposed the application. The claim of mandatory injunction alleged in the proposed amendment is not legal and maintainable. The vague submission as made as to propose amendment. There is no cause of action, nor have a reason for delayed the application. Hence, prayed for rejection of application saddling costs of Rs.5000/-.

6. Defendant No.1 initiated action against the unauthorized construction of plaintiff by issuing notice for demolition. Again the said act, the present suit was filed. Other suits were pending in respect of the dispute of family properties. In the other suits, the parties have settled their property dispute and to enforce the settlement, the execution proceeding is pending. In the present matter also, amicable settlement was arrived along with other suits. However, latter on due to the technical aspect and on the objection raised by defendant No.1 against the settlement the present matter did not dispose of by virtue of settlement.

7. By way of this amendment, the plaintiff wants to bring those facts occurred during the pendency of the suit and to

include the relief of mandatory injunction for regularizing his construction. Mere pleading is not amounts to grant the relief as prayed in the plaint. It is to be decided after the adjudication of the proceeding. Whether the claimed relief is maintainable or not it is either to be decided at the end of the proceeding with other issues or by adjudication after framing preliminary issue on the maintainability. Therefore, the plaintiff can not be precluded from inserting such reliefs mere on the count of maintainability. It shall be dealt with independently. Therefore, the relief proposed in the amendment is not maintainable, is not the ground to reject the application. There is a settled principle of law that the amendment can be allowed to bring on record subsequent facts.

8. The plaintiff relied upon the observation made by Hon'ble Bombay High Court in the case of **Baburao Sahebrao Deshmukh Vs. Maharashtra Insecticides Ltd., Akola and others (2004(2) Mh.LJ 717)**. In the said proceeding the amendment was rejected by the Lower Court on the ground of making the application at belated stage of the proceeding. However, in the present proceeding there is no such ground of belated stage. Therefore, with due respects, I am of the view that the observations made by Hon'ble Bombay High Court in the supra are not applicable to the present application.

9. As discussed above, the subsequent event can be inserted by way of amendment. There is no impediment for

claiming relief in amendment. The proposed amendment neither affects the nature of suit, nor cause prejudice to the defence. The facts would assists to resolve the controversy between the parties finally or decide the matter on merit. The application deserves to be allowed. Hence, I pass following order.

Order

1. The application Exh.59 is allowed.
2. The plaintiff is permitted to amend the plaint in view of proposed amendment within 10 days.
- 3 The defendants shall have right to make consequential amendment, if so desire.
- 4 Costs in cause.

Date :-18-01-2020.

(Sudhir M.Bomidwar)
2nd Jt. Civil Judge, J.D.,
Shrirampur.