

Order below Exh.139 in RCS No.101/2018

This is an application filed by plaintiff under Order VI Rule 17 CPC for granting permission to carry out proposed amendment in the plaint by which plaintiff wants to incorporate additional prayer of mandatory injunction by way of para No.6B of the plaint, on the grounds mentioned in the application. Defendants have raised strong objections. Perused application and say. Heard both the sides.

2. Record shows that plaintiff has filed this suit for perpetual injunction. Defendant No.1 has filed its WS at **Exh.24** and defendant No.2 has filed his WS at **Exh.26**. Record further shows that the application filed by plaintiff at **Exh.59** for amendment of pleadings came to be allowed by order dated 18/01/2020. Accordingly, plaintiff carried out amendment in the plaint and defendants have filed their additional WS on record.

3. Issues are framed at **Exh.59** and existing Issue No.5 is in respect of the fact that whether plaintiff is entitled for mandatory injunction. It means, the Court has already considered whether plaintiff is entitled for mandatory injunction after considering the contents of plaint and additional WS. However, the relief of mandatory injunction is not claimed in the prayer clause of the plaint. To avoid any complication that may arise in future, I am of the view to permit plaintiff to carry out proposed amendment in the plaint. However, while doing so, the stage at which the suit is posted and the delay caused by plaintiff in noticing the said defect cannot be neglected and for that purpose it is necessary to saddle costs of Rs.5000/- collectively for both the defendants. For these reasons, I pass following order :-

Order

1. Plaintiff is hereby permitted to carry out proposed amendment in the plaint subject to costs of Rs.2,500/- each to be payable by him to defendants on next date or any other date as extended by the Court.
2. After acknowledgment of costs amount by defendants, plaintiff shall carry out proposed amendment in the plaint and shall provide copy of amended plaint to the defendants at the earliest.
3. Once amended copy is provided, defendants are at liberty to file their additional WS.
4. Plaintiff shall pay requisite Court fee in respect of his additional prayer seeking mandatory injunction, if required.

5. Plaintiff has already adduced his evidence and has claimed mandatory injunction against defendants, thus the question of adducing additional evidence of plaintiff doesn't arise.
6. Parties are directed to proceed with the matter expeditiously so that the suit can be decided within stipulated period provided by Hon'ble Bombay High Court, Bench at Aurangabad in W.PNo.10598 of 2018.

Date : 23/01/2026

(Ashish B. Marlecha)
Civil Judge Senior Division,
Shrirampur, Dist. A.Nagar.