

Regular Civil Suit No.167/2013

CNR Number MHAH-23-001279-2013

1.Jalindar Shivaji Hirde

..... Plaintiffs

Versus

1.Ashru Babu Bhole

..... Defendants

ORDER BELOW EXHIBIT 60

- 1) The suit is for perpetual injunction. The defendant number 2 has filed the application for amendment of plaint as per the provisions of Order 6 rule 17 of Code of Civil Procedure vide exhibit 60. The defendant has stated that, there is typing mistake and names of parties, age, occupation and address of both parties are not mentioned in the counter claim. Therefore, amendment is necessary. It will not change the nature of counter claim. Hence, defendant number 2 prayed to allow the application.
- 2) The plaintiffs have not filed say but raised strong objection during argument. The plaintiffs prayed that, application vide exhibit 60 is to be rejected.
- 3) Upon hearing of defendant, plaintiffs and on perusal of application vide exhibit 60, the following points arise for my consideration –

Sr. No.	Points	Findings
1.	Whether proposed amendment will change nature of suit ?	No
2.	Whether proposed amendment is necessary to decide real dispute between parties ?	Yes.

3.	Is defendant number 2 entitled for relief of amendment in counter claim?	Yes
4.	What is Order ?	The application is allowed.

REASONS

As to point number 1 to 4 –

4) The point number 1 to 4 are interlinked with each other. I have clubbed point number 1 to 4 together and discussed accordingly. The suit is for perpetual injunction. The defendant has filed the application at exhibit 60 for amendment of counter claim as per the provision of Order 6 Rule 17 of Code of Civil Procedure.

5) On perusal of application vide exhibit 60, it reveals that, defendant number 2 has stated that, there is typing mistake and names of parties, age, occupation and address of both parties are not mentioned in the counter claim. At this juncture, recourse must be taken to order 6 Rule 17 of Code of Civil Procedure. The gist of Order 6 Rule 17 of Code of Civil Procedure says that amendment must be necessary for the purpose of determining real questions in controversy between the parties. The amendment in the pleading must be in just terms.

6) The defendant has stated that, amendment is necessary, if it is not done so then it may result in injustice to defendants in future. Hence, application vide exhibit 60 may be allowed. The plaintiffs will get opportunity to put forth their defence in future.

7) In view of court, the nature of proposed amendment is not causing any change in the nature of counter claim. It will not damage

or change the nature of counter claim, rather the amendment will sort out the dispute between parties. It seems that, the proposed amendment is bona fide one. The proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. If the application vide exhibit 60 is rejected then it may result in multiplicity of litigation. In order to avoid multiplicity of proceeding, it will be appropriate to allow the said application. The proposed amendment will help the court to adjudicate the dispute on its merit. The plaintiffs will get the opportunity to put forth their defence.

8) In the view of the court, if proposed amendment is allowed, it will not cause prejudice to plaintiffs. The proposed amendment will not affect rights of plaintiffs. The plaintiffs will get the opportunity to put forth their defence if amendment application is allowed. And the hearing of suit is not yet begin. Therefore, defendant can very well amend the counter claim at this stage. Hence, application vide exhibit 60 is very well maintainable. The terms of amendment are just. Therefore, after considering the provision of Order 6 Rule 17 of Code of Civil Procedure and in view of above facts & circumstances, the application is very well maintainable. It is just & proper to allow application in the interest of justice. In the result the following order is passed.

ORDER

1. The application vide exhibit 60 is allowed.
2. The defendant number 2 is to carry out amendment on or before the next date.

3. The defendant number 2 must file the copy of amended counter claim on or before next date and hearing of the suit is to proceed further in accordance with provisions of law.
4. There is no order as to cost.

Shrigonda
Date -18/11/2022

Sd/-
Smt. K. A. Katkar
Joint Civil Judge(J.D)
Shrigonda.

:-CERTIFICATE:-

I affirm that, the contents of this pdf file order are same,
word for word as per original order.

Case No.	:-	R.C.S. No. 167/2013
Name of Stenographer	:-	Smt. S. V. Jadhav
Court Name	:-	Smt. K.A.Katkar, Jt. Civil Judge, J.D.& J.M.F.C, Shrigonda.
Date of Decision	:-	18/11/2022
Order signed by P.O. on	:-	18/11/2022
Order uploaded on	:-	18/11/2022