



ORDER BELOW EXHIBIT 20 IN RCS No.31/2016

The present application is moved by the plaintiffs under order 6 Rule 17 of the Code of Civil Procedure. (Hereinafter for short “the CPC”).

2. It is the contention of the plaintiff that he has instituted the present suit for specific performance of agreement and in the alternative for possession of his Auto-Rickshaw and for compensation. During the pendency of the suit, the defendant failed to repay the loan amount to the Finance Company. Therefore, the Finance Company attached the property of the father of the plaintiff and began its sale proceedings. In order to avoid the sale proceedings, the plaintiff has repaid the entire loan amount. Now the plaintiff wants to amend the suit so as to add the pleading regarding recovery of the said amount from the defendant. It is his contention that the cause of action for the amendment has occurred during the pendency of the suit. Therefore, it is necessary to allow the amendment. It is lastly contended by the plaintiff that due to proposed amendment the nature of the suit will not change. Hence it is prayed that the application may be allowed.

3. The defendant has strongly resisted the application by filing his say. It is his contention that no documents in respect of attachment or sale of the property of the plaintiff’s father are filed on record. The proposed amendment is likely to change the nature of the suit. The defendant has specifically averred in his written statement

that he has sold the auto-rickshaw to one Golu Bhiku Ajmeriya. But the plaintiff has failed to implead him as party to this suit. Therefore, the suit is liable liable to be dismissed for non-joinder of necessary party. It is lastly contended by the defendant that the application is not tenable. Hence it is prayed that the application may be rejected.

4. Heard the learned Advocates for both the sides. Perused the application, say and the record of the case.

5. The plaintiff has instituted the present suit for specific performance of the agreement and in the alternative for recovery of possession of the auto-rickshaw and for compensation. The record shows that the defendant has appeared and resisted the suit by filing his written statement. Further the plaintiff has filed his affidavit in lieu of examination of chief. However, the cross-examination of the plaintiff has not yet began. As such, the trial of the case is yet to begin. Therefore the bar contemplated under the proviso to order 6 Rule 17 of the CPC will not be applicable to the present application.

6. So far as the proposed amendments are concerned, the plaintiff has contended that during the pendency of the suit he has repaid the entire amount due towards the Finance Company as the Finance Company had initiated attachment and sale proceeding of the property of his father. Now he intends to add pleadings to the effect that the said amount of loan paid by him, which the defendant was responsible to repay, be recovered from him and for recovery of the said auto-rickshaw. The contention of the defendant that no documents regarding the attachment and sale proceedings are filed

cannot be accepted at this stage as there is no need to go into the merits of the proposed amendment. Further if the nature of proposed amendment is seen, it does not in any way change the nature of this suit. The pleadings of the parties reveal that the real controversy in between the parties is whether the defendant had agreed to repay the loan in the name of the plaintiff to the Finance Company. In my view, the proposed amendments are necessary to decide the real controversy between the parties. Further the objection raised regarding non-joinder of necessary parties cannot be considered while deciding this application. Therefore, in view of the above discussion, I am of the opinion that the objection raised by the defendant to the present application are not tenable. The proposed amendments are necessary for proper and effective adjudication of this suit. Hence, the application is liable to be allowed.

ORDER

1. The application is allowed.
2. The plaintiff shall carry out amendments in the plaint on or before next date and file an amended copy of the plaint on record without fail.
3. The defendant is at liberty to file additional written statement, if any, to the proposed amendments.

Date : 22.7.2022.
Place : Akot.

Bhanupratap B. Chouhan.
Joint Civil Judge (Junior Division.)

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer : A.M.KALE.
Name of the Court : Jt. Civil Judge (J.D.), Akot.
Date of Judgment : 22/7/2022
Signed by Presiding
Officer on : 22/7/2022
Judgment uploaded on : 26/7/2022