

MHAU110001762016



R.C.S. No. 18/16
Sulochanabai Chavan Vs. Avchitrao Chavan

ORDER BELOW EXH.44

(Dated:-10/12/2019)

1. This application is filed under Order VI Rule- 17 of Code of Civil Procedure, 1908 for making amendment in the Counter Claim at **Exh. 23**.

2. It is submitted by the defendant that, the main suit is filed for granting perpetual injunction against defendants. The defendants appeared and filed their Written Statement to the plaint alongwith Counter Claim against the plaintiffs at **Exh. 23** for Redemption of Mortgage, Declaration and Perpetual Injunction. The defendants have filed his Written Statement with Counter Claim vide **Exh. 23** on 8.07.2016 with all averrments at relevant time. However, in hasten to file Written Statement and Counter Claim, the prayer of Specific Performance of Contract is remained to be added in the Counter Claim. But, the defendants have pleaded all the essential ingredients of the Specific Performance as per provision mentioned in Specific Relief Act, 1963 in their pleading i.e. in Counter Claim at **Exh. 23**. Therefore, it is necessary to carry out the proposed amendment in his Written Statement and Counter Claim at **Exh. 23**. The proposed amendment would not caused any change in the nature of the suit or Counter Claim nor caused loss to the plaintiff.

3. Plaintiff has resisted the application by filing his say vide

Exh. 45/1 and denied all the contents of the defendant in present application. According to the plaintiff, defendants introducing a new story exactly against his previous pleading by way of the present application, for which law does not permit to do so. The proposed amendment would caused change in the original nature of the suit. There is no specific cause mentioned in the present application to file present application. Another thing is that, the contents mentioned in the present application are totally vague which caused serious prejudice to the plaintiff. Hence, considering all those aspects, plaintiff prays to reject the present application.

4. On perusal of the present application and say of the plaintiff following points arose for the determination and findings with reason are recorded thereto.

Sr.No.	POINTS	FINDINGS
(i)	Whether the proposed amendment is necessary for elucidating the real question of controversy?	Yes
(ii)	What order?	Application is allowed

REASONS

5. Heard Ld. Advocate Mr. N. G. Pawar for the defendant and ld. Advocate Mr. N. B. Sonwane for the plaintiff.

As to point no. 1 and 2 :-

6. After perusing the record of the suit it reveals that, the suit is filed for granting perpetual injunction. Defendants are appeared through their advocate and filed their Written Statement along with Counter Claim at **Exh 23**. on 08/07/2016. They have filed their

Counter Claim for Redemption of Mortgage, declaration and perpetual injunction. However, the prayer of Specific Performance Of Contract is remained to be added in their Counter Claim. But according to the defendants they have pleaded all the essential ingredients of the Specific Performance of Contract as per the provisions mentioned in Specific Relief Act, 1963. Therefore, it would not cause change in nature of the Counter Claim. Therefore, it is necessary to carry out the proposed amendment in his written statement and Counter Claim as the proposed amendment is necessary for determining the real question of controversy in the suit. According to the plaintiff, defendant is introducing a new story exactly against his previous pleading by way of the present application, for which law does not permit to do so. However, the Written Statement and Counter Claim of the defendants at **Exh. 23** discloses that, the defendant has already pleaded the essentials of the Specific Performance of the Contract in the para 14 and 15 of the Counter Claim at **Exh. 23**.

7. On perusal of plaint and Counter Claim of the defendants, it reveals that, the defendants are entitled to carry out the proposed amendment. Obviously, proposed amendment would neither caused any harm to the plaintiff nor would introduced any new case. On the contrary, refusal to allow the proposed amendment would caused prejudice and loss to the defendants. In view of these circumstances, I am inclined to allow defendants to carry out the proposed amendment, as mentioned in detail in this application. However, delay caused for making such amendment has to be compensated. Resultantly I answer point no. 1 in the affirmative and in answer to point no. 2, I passed the following order

ORDER

1. Application (Exh.44) is allowed subject to cost of Rs. 300/- to the plaintiff.
2. Defendant is allowed to amend his Written Statement and Counter Claim vide **Exh. 23**, as mentioned in this application.
3. Defendant is directed to carry out the necessary amendment within stipulated period.
4. Concern clerk is directed to take note of this amendment in concern register.

Sd/-

Dated:-10/12/2019

(Smt. Manasi P. Pardeshi)

Jt. C.J.J.D. Phulambri.

CERTIFICATE

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

Name of the Stenographer	: Smt. S. S. Joshi,
Court	: C.J.J.D. & J.M.F.C., Phulambri
Date	: 10.11.2019
Order signed by the presiding officer on	: 10.12.2019
Order uploaded on	: 10.12.2019