

Regular Civil Suit No. 69/2015

Smt. Parveen Vs. MCA
(Order Below Exh.-34)
(Passed on 10th February 2016)

Present application is filed by plaintiff under Order-6 Rule-17 of the Civil Procedure Code for inserting some portion in respect of subject matter for the incident occurred after filing of suit.

02. Plaintiff contended that original owner of the suit property is one Ibrahim Khan who is Ex-President of District Congress Committee and friend of her son and one of the party men by name Azizkhan Ganikhan. One Jahagirkhan Abbas Khan Mulani is elected as Municipal Councillor in the year 2015 against which Azizkhan filed election petition. At present Jahagirkhan is the Opposition Leader in Municipal Corporation Aurangabad. Due to act of Azizkhan said Jahagirkhan annoyed and filed complaint before the Municipal Corporation Aurangabad on 02.07.2015 and 06.07.2015 by using his influence and without verifying anything, the Municipal Authorities started issuing notices to the wrong persons. Plaintiff have filed suit on 09.09.2015. Defendant corporation authority demolished the suit property without waiting for the orders of the Court. Due to illegal act of demolition of suit property by the defendant corporation, plaintiff sustained loss of Rs.6,00,000/-. Therefore,

present application is filed for making amendment in respect of mandatory injunction for issuance of directions to the defendant corporation restoring the construction as was existed at the time of filing suit prior to demolition on 14.09.2015 and for loss cause to the plaintiff.

03. Defendant objected the application stating that suit property was unauthorized construction and it was demolished.

04. While considering present application, plaintiff contended that he wants to bring event occurred after filing suit in respect of the alleged incident of demolition of suit property. If application is allowed, it will not cause loss to the either party. Defendant contended about construction and demolishing the same prior to their appearance. In that circumstances, if application is allowed, naturally defendant will have opportunity to file written statement for amendment implemented by the plaintiff. Moreover, present amendment will be beneficial for deciding controversy between the parties in respect of subject matter. Defendant objected about non existence of subject matter at the time of demolition. This aspect can be decided by framing issue at due stage. It has been observed in Kamlesh Vs. Kalyan, 2013 (6) Mh.L.J. 193 that,

“Order-6 Rule-17 – amendment in pleading must be allowed to do substantive justice between the parties and amendment sought by litigants either as plaintiff or defendant ought to be allowed by the Court to

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reduce/minimize litigation between the parties to avoid multiplicity of the proceedings – while allowing amendment application in respect of pleadings, Court cannot be expected to go into the merits or demerits of amendment – delay to prefer amendment or negligence may be penalized by imposing reasonable costs but not complete and blanket refusal to amend the plaint”.

05. Considering observations in the cited case and stage of present matter, I found that application is to be allowed in the interest of justice. Hence the order.

ORDER

01. Application is allowed.

02. Plaintiff to carry out amendment within stipulated period.

03. Costs in cause.

Sd/-

(S.J.Biyani)

Civil Judge Senior Division

Corporation Court, Aurangabad

Date :- 10.02.2016

CERTIFICATE

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

Name of the Stenographer	: Manoj S. Nangre
Court	: Civil Judge S.D.(Corporation), A.bad
Date	: 10.02.2016
Order signed by the presiding officer on:	10.02.2016
Order uploaded on	: 11.02.2016