

ORDER BELOW EXHIBIT NO. 74 IN DISPUTE NO. 96/2011

(Passed on 13/12/2017)

1. This is an application filed by disputants for seeking permission to amend the plaint vide Rule 17 of Order VI of the Code of Civil Procedure, 1908 (in short 'the C.P.C.'). But opponent opposed the application vide its say at exhibit 76.

2. Heard. Read the application and say. Perused record and proceeding. I have also gone through relevant provisions of the the C.P.C. and the Maharashtra Co-operative Societies Act, 1960 (for short 'the M.C.S. Act')

3. The disputants wants to amend the plaint by adding new contentions after the paragraph no.7 and add the paragraph no.7a. They also wants to add new prayers A1, C1, and C2 in prayer clause of the plaint. According to the disputant the opt no.2 filed an appeal no. 102/2016 before the Hon'ble Appellate Court . The Hon'ble Court passed the Judgment on 24/01/2017 and partly allowed the Appeal and set a side the Judgment and remanded back the dispute for fresh hearing. The Hon'ble Appellate Court observed that the resolution no.24 passed in Annual General Body Meeting dated 09/10/2005 is not challenged. The Hon'ble Appellate Court also directed this Court if the parties file amendment application (Para 30 and 31 of the Judgment of the Appellate Court) then same shall be allowed. Hence disputant filed this amendment application.

4. The Learned advocate for the opt society argued that as per the directions of Hon'ble Appellate Court, the parties are appeared before the Court on 16/02/2017. The disputant filed amendment application on 06/09/2017. The disputant filed amendment application after seven months and not mentioned the reason for delay to the filing this application. Thus the application is liable to be rejected.

5. On considering the rival contentions and submissions, following points arise for my determination and I record its findings, with reasons as under-

Sr. No.	Points	Findings
1)	Whether proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties ?	 Yes
2)	What order ?	 The application is allowed.

REASONS

AS TO POINTS NOS. 1 & 2 :-

6. In the present dispute, disputants contended that the resolution no.24 passed in the SGM is not challenged in the present dispute. The Hon'ble Appellate Court directed this Court if the parties file amendment application than the same shall be

allowed. For deciding this dispute it is necessary to carry out the amendment.

I relied upon the Hon'ble Supreme Court Judgment -
CHAKRESHWARI CONSTRUCTION PVT. LTD. vs.
MANOHAR LAL

(a) Civil Procedure Code, O.6, R.17 – Amendment of pleadings – Principles to be taken into consideration while allowing or rejecting application for amendment – Parties are permitted to amend their pleadings at any stage not only during pendency of trial but also at first and second appellate stage with leave of Court provided amendment proposed is bona fide, relevant and necessary for deciding rights of parties.

According to the Order 6 Rule 17 of the C.P.C. requires that the amendment of plaint (i) All amendments will be generally permissible when they are necessary for the determination of the real controversy in the suit.

“On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment :

- (1) whether the amendment sought is imperative for proper and effective adjournment of the case;**
- (2) whether the application for amendment is bona fide or mala fide;**
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in**

terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6, Rule 17. These are only illustrative and not exhaustive.”

In this dispute already Hon'ble Appellate Court given a permission to the parties to make an amendment in this proceeding. It is a true fact that the disputant filed this application after 6 or 7 months but the Court considered this delay and permitted to the disputant to amend the pleadings. According to the Court such amendment is necessary and relevant for deciding the rights of the parties involved in the dispute. It is necessary to give one more opportunity to disputants to amend the plaint. The interest of justice always requires that such matter should be decided on merit, after giving one more opportunity to the party to consent it.

7. In view of discussions supra, the Court is satisfied that the proposed amendment is necessary for determination of real questions in controversy between the parties. Hence, answer of

point No. 1 is recorded in affirmative and in order to record finding of point No. 2, following order is passed.

ORDER

- 1) The amendment application is allowed.
- 2) Disputants to carry out amendment in plaint and to file amended plaint within prescribed period of 14 days.
- 3) No order as to costs.

Pune
Date : 13/12/2017

(A. A. Pund)
Co-operative Court No. 2, Pune