

**IN THE COURT OF JUDGE, CO-OPERATIVE COURT NO. 1
AT PUNE**

DISPUTE NO. 12/2012

Dt. 10/02/2022

**Shree Chatrapati Sahkari Sakhar
Karkhana Ltd., Bhavaninagar,
Tal. Indapur, Dist. Pune. Disputant**

VERSUS

**Shree Mahalaxmi Trading Company,
Proprietor – Chandulal Karva,
Shugar Merchant & Commission
Agent, 40- Marvad Peth, Faltan,
Dist.Satara.Opponent**

Adv. Nasikwala H.A. h/f Adv.A.V.Prabune for Disputant

Adv. Khomane V. J. for Opponent& proposed Opponent No.2

: ORDER ON APPLICATION AT EXH.44 :

1) Heard advocate for disputant, the Opponent and the proposed Opponent No.2. The advocate for disputant also submitted notes of arguments at Exh.56.

For the reasons and grounds more particularly stated in the application titled as application under O-6 Rule-17 of the CPC, the disputant - a Co-operative Sugar factory askfor permission to make amendment in the cause title of the dispute and to include certain pleadings more particularly mentioned in para-6 of this application in the dispute.

2) . The Opponent called upon to record his Say and the proposed Opponent No.2 been served with show cause notice of this application. Accordingly the Opponent filed his reply at Exh.48. The proposed Opponent No.2 appeared through advocate and filed his reply at Exh.52, both of them denied this application, contents therein and resisted this application. Thus, the point for consideration arose that,

**Whether disputant is entitled &
permitted to amend the cause
titleof the dispute and consequential
amendment in the dispute ?**

The answer is “**No**” for the following reasons :

: **REASONS** :

3) Before deciding with this application and prayer made therein, it is significant and necessary to mention that the dispute is partly heard, disputant led their evidence, Opponent chosen not to lead evidence, obviously dispute posted for final arguments on 02/04/2019 by the predecessor. On 02/04/2019 the predecessor heard arguments of either side and dispute posted for judgment on 12/04/2019. However, on 12/04/2019 and subsequently on 30/04/2019: the predecessor couldn't deliver the judgment. On 30/04/2019 the disputant made application at Exh.40 for permission to withdraw the dispute with liberty to file fresh dispute, alternatively disputant submitted that if the said application is rejected, leave be granted to prefer application under O-6 Rule-17. On the said application the predecessor called upon the Opponent to file Say, accordingly Opponent recorded his Say at Exh.41 and dispute adjourn for hearing of application at Exh.40 on 10/06/2019. On 11/07/2019 the disputant

filed an application at Exh.42 for permission to not press the application at Exh.40 subject to prefer application for amendment and to adjourn the dispute. After hearing, the disputant allowed to not press the application at Exh.40 and only the adjournment was granted and dispute adjourn. Thereafter, present application came to be filed.

4) On the backdrop above described eventualities transpired from the record and proceeding of the dispute the present application said to be made by the disputant knowing all the facts happened in the dispute and after due deliberation with the record and proceedings of the dispute. Undisputedly the disputant posed Opponent as 'proprietary firm' & "Chandulal Karva" as its 'proprietor' in the dispute. The Opponent in their Written Statement vide para-17 denied that the Opponent firm belongs to said Chandulal Karva nor he had any firm in the name of present Opponent. Opponent Chandulal Karva also denied that he is and was 'proprietor' of said firm namely 'Shree Mahalaxmi Trading Company'. It is

significant to mention here that the then predecessor pleased to frame additional issue No.(2 A) in respect of proprietorship of said Chandulal Karva. On 18/01/2018 said Mr. Chandulal B. Karva made an application at Exh.15 to frame preliminary issue and decide the same at first instance wherein he alleged that the Opponent proprietary firm as and was never belonged to him and he is and was never proprietor of said Opponent firm which was rejected by the then predecessor. Moreover,the first witness of disputant in his cross-examination in specific word submitted the fact that the disputant has not produced any document and proof to show that Chandulal Karva is and was the proprietor of Opponent firm . The application marked as Exh.45 for nominal membership filed on behalf of the firm seen to be filed by 'M.K.Karva' as 'proprietor' of the firm. The disputant also examined at Exh.32 witness No.2 belongs to Bharat Sanchar Nigam Ltd., Phaltan in respect of Mobile No.9423263303 who produced customer application form at Exh.35 of 'Mahesh Kantilal Karva' and nothing else. These facts reveal the fact that the disputant under the guise of amendment

in cause title and consequential amendment to existing pleadings trying to pose 'Mahesh Kantilal Karva' as **"Malak Vahivatdar"** of Opponent firm & 'Chandulal BalmukandKarwa' a person who claims to have represented Opponent firm which is dealing with disputant sugar factory. Thus the disputant at its own whims &fancies trying to change the status of the parties to the dispute by incorporating another person in place of existing Opponent. Its amazing that in this application the disputant not mentioned the status and capacity of 'Chandulal Balmukand Karwa' who posed to be proprietor of Opponent firm. The disputant while making this application must have forgotten the admission given by their witnesses and evidence came on record. Thus the Opponent as well as said Chandulal Karva posed to be the proprietor of Opponent firmacquiredmaterial rights in respect of their respective status for the purpose of present dispute and claim thereunder and the same can't be ignored and/or taken away at the instance of disputant under the guise of amendment to the dispute. In the result

present application needs to be rejected, so following order :

:ORDER :

- Application rejected.
- No order as to costs.

Date : 10/02/2022

Pune
Co-Operative Court No. 1
Pune.

Judge