

ORDER BELOW EXHIBIT - 85.

1. The disputant file present application and sought the amendment in prayer clause-C. According to the disputant instead of word 'owner' the word lessee/tenant/occupier/possessor/holder/allottee be permitted insert in para no.7 prayer clause-C of the dispute and know nature of dispute will change.
2. To this application the opponent no.1 filed reply and objected to the application on the ground that the disputant filed the dispute in 2015 and later on 06/09/16 necessity amendment carried out by the disputant and matter is fixed for final hearing and therefore, at this stage the application is not tenable.
3. Heard the disputant advocate. The opponent advocate absent.
4. The point for consideration as to whether the amendment sought to the disputant required to allot. The disputant filed the dispute in 2015 thereafter certain amendment has been made by the disputant. In the matter the issues are framed parties led their evidence and the matter listed on board for final argument and at this stage this application came to file.
5. The legal provision i.e. Or-VI Rule-17 of CPC dealt with the amendment of the pleadings and according to the said provision the court may at any stage of the proceeding allow either party to alter or amend his pleadings which shall be necessary for the purpose of determining the real questions in controversy between the parties. The proviso of this rule with provide that
' no application for amendment shall be allow after the trial has commenced,

unless the court come to the conclusion that inspite of due diligence, the party could not have raise the matter before the commencement of trial '.

6) On plain reading of above rule it appear that said rule converted into two parts first part give the discretionary power of court to allow the parties to amend the pleadings. Where as second part are the mandatory. In the mater at hand fixed for the final hearing and therefore, the first part of the said rule is not applicable. The proviso which provide that the parties ought to have show due diligence as to why he could not move the application for amendment before commencement of trial and according to this proviso amendment application shall not be allow after commencement of trial.

7) In the present case already trial has been completed and listed for final argument. In such circumstances, it was the disputant who has to show that as to why he could not file the application before the commencement of trial. It appears from the record that the disputant previously as per the order of this court dated 06/09/16 carry out the amendment. The proposed amendment showed in the application was within the knowledge of the disputant before the trial but the disputant neither at the time of amendment applications which was allowed on 06/09/16 nor before that commencement of the trial file the such application. In the application the disputant no where stated the reasons as to why he could not make the applications before trial. The proviso of Or-XVII Rule-6 is prohibited to the court from allowing such applications which file after commencement of trial without showing due diligence.

Hence, the application is deserved to be rejected and I pass following order.

ORDER

- 1) Application is hereby rejected.
- 2) No order as to cost.

Place :- Aurangabad.

Date :- 20th June, 2017.

(B. S. Lakhote)
Judge,
Co-operative Court, Aurangabad.