

ORDER BELOW EXH. 65.

Present application is filed by defendants under Order VI Rule 17 of the Code of Civil Procedure (hereinafter referred as 'the CPC') for amendment in written statement. Perused applications and say filed below Ex.72. Heard both sides.

2. It is submitted by defendants that, plaintiff has filed present suit for specific performance of contract in respect of so called transaction receipt made in the year 2010. In support of their claim, defendants filed written statement at Exh.22 on 07.01.2013. Thereafter, they have changed their previous advocate and appointed new advocate. The transaction in present suit is old one and therefore, defendants collected the information in that regard. So also, old documents has been collected by defendants. Further, defendant no.1 is old age person and he did operation of his kneecaps, therefore, some time lapsed in making arrangements. Thus, at the time of filing written statement, they did not raise whole objection in their written statement and unintentionally legal objections yet to be remained to add in written statement. Therefore, to decide the suit on merit, it is necessary to add some important and legal objections as regards of information and documents collected by defendants in their written statement. If, those objections are not added in the written statement, defendants will suffer irreparable loss and therefore defendants have filed present application for amendment of written statement.

3. On the contrary plaintiff has filed his say at Exh. 72 and contended that, application of defendants, contentions and prayer in the application are false and illegal. Reasons mentioned for amendment of written statement are not cogent and legal one. The proposed amendment in written statement is huge change of written statement already filed on record. Defendants seeking amendment of written statement after laps of so much time and prima facie it is seen with ill-intention of defendants to prolong the matter. Suit was filed on 08.10.2012 and written statement was filed on 07.01.2013. So also, issues were framed on 24.01.2018 below Exh. 98 and written statement of counter claim filed by defendants on 11.12.2013. Examination of chief was taken by the plaintiff on 24.01.2019. As regards of above mentioned proceeding of the suit, it is seen that, defendants have prolonged the proceeding by raising different reasons. Proceeding of the suit was begun and therefore, no amendment in written statement as prayed by defendants can be allowed at this stage. Therefore, application of defendants liable to be rejected.

4. Ld. Advocate for defendants relied upon the judgments of the Hon'ble Bombay High Court in cases of *Kalpvrksha Tub Well Company, Udgaon Vs. Anjana Mahavir Patil and others*, 2012(6) MH.L.J. 451 and *Bharat Petroleum Corporation Ltd Vs. Precious Finance Investment Pvt Ltd*, 2007(1) Mh.L.J. 331.

5. Heard learned advocates for both the parties. Considering the rival submissions of the parties following points arise for my determination. Findings thereon are recorded for the reasons discussed herein under;

Sr. No.	POINTS	FINDINGS
1.	Whether proposed amendment is just and necessary for determining real question in controversy between the parties ?	No.
2.	Whether defendants could have made such amendment before the commencement of trial ?	Yes.
3.	What order ?	Application is rejected.

REASONS

As to point No. 1 and 2 :-

6. It is pertinent to note here that, while adjudicating application for amendment of written statement and say, what must be seen is the necessity of such amendment for the resolution of actual controversy between parties. Truthfulness, falsehood, legality or illegality of proposed amendment cannot be taken into consideration while adjudicating the application for amendment. In proposed lines for amendment, certain relief for defendants are sought to add. In that regard here it is pertinent to note that, the suit is filed by plaintiff for declaration and injunction. Defendants by this application wants to amend written statement and say filed by them.

7. Upon perusal of the plaint, documents and written statement and say filed by the defendants. Upon perusal of it, it reveals that, suit is filed by the plaintiff on 08.10.2012 and written statement filed by the defendants on 07.01.2013. Issues were framed on 24.01.2018. Evidence affidavit filed by the plaintiff on 24.01.2019. It is pertinent to note here

that, since then suit is posted for hearing and after 7 years defendants are seeking amendment in their written statement and say. Moreover, as defendants failed to cross examine plaintiff, no cross order was passed against them on 04.07.2019. Trial is commenced and one witness is examined for the plaintiff. In this background the proposed amendments in written statements need to be considered.

8. Upon perusal of present application it appears that, defendants seeking amendment in his written statement in respect of suit property being ancestral one and he alone has no right to sell it. Further, it is contended by defendants that, since suit property is new undivided conditioned property and for its transfer permission of gazetted officer is required. So also, defendants have proposed amendment in respect of suit property as he has developed the suit property and therefore, its value is changed. At last, defendants are seeking amendment as suit property is only earning source of defendants and if it is sold they will become landless. Upon considering all these proposed amendments and nature of suit it appears that, these are amendments those are not just and necessary to decide the real controversy between the parties. Further, defendants while filing their W.S. had ample opportunities to add these facts as these are not new facts coming into knowledge of defendants after filing of the present suit. Moreover, merely change of advocate can not be sole ground to amend the pleadings of parties.

9. In addition, while deciding the present application for amendment after trial is begun, the very important question needs to be considered that, could defendants have made these proposed amendments prior to commencement of trial. In that regard it needs to be considered that, whether the contentions of proposed amendment arose

after filing of suit or those were in knowledge of defendants prior to filing their written statement. Those proposed amendments are in respect of suit property and defendants were very well aware about it being ancestral one, new undivided conditioned property, they developed it and it is the only property they have. Thus, where all these factors were in knowledge of defendants since beginning, they could have plead the same while filing written statements. In addition, no specific reason is mentioned in the present application as to what caused delay in making present application. Merely some general contentions are made such as since present transaction is old one, defendants required certain time to collect documents and there was operation on kneecaps of the defendant no.1 he could not add these contentions of proposed amendments in the written statement. However, upon considering these reasons and period of seven years since filing of present suit and written statement, those appears to be not believable at this stage.

10. Advocate for defendants relied upon the case law *Kalpvrksha Tube Well Company, Udgaon Vs. Anjana Mahavir Patil and others, 2012(6) Mh.L.J.*, wherein Hon'ble High Court observed that, "amendment of written statement, alternative pleas can be taken by the defendant in the written statement, the amendment is clarificatory in nature and would aid in deciding the lis between the parties. Though there is some delay in filing the said application but, fact that the suit in question have not proceeded beyond the issues being framed". Upon considering these observation of the Hon'ble High Court and present facts of the case it appears that, since present proposed amendments are not only clarificatory but it will change the nature of suit. Thus, in present suit if the proposed amendment is allowed, then nature of suit will be changed

and the delay of seven years in filing present application is huge one and no satisfactory explanation is given for the same. Therefore, fact and circumstances of the present case law is different than the present suit.

11. Moreover, trial is commenced, evidence of plaintiff is recorded, no cross order is passed against defendants and after long time defendants wants to amend the written statement. In support of their contentions advocate for defendants relied upon the judgment in case of *Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd, 2007(1) Mh.L.J.* wherein Hon'ble High Court had given several principle/guidelines which needs to be considered while deciding application of amendment. It was observed that, proviso to Order VI, Rule 7 is procedural and not a part of substantive law. It does not deal with the power of the Court and also does not specifically take away power of the Court to allow the amendment after the commencement of trial. It only empowered the Court to reject the application if it comes to the conclusion that, in spite of due diligence the parties could not have sought the amendment before the commencement of trial. Further, amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. However, adding a new ground of defence or substituting or altering the defence does not raise the same problem as adding, altering or substituting a new cause of action. The Court therefore, required to take more liberal view in allowing amendment of written statement than of plaint in question of prejudice is less likely to operate with the same rigour in former than in latter case.

12. In view of all the guidelines given by the Hon'ble High Court in the case of Bharat Petroleum present application needs to consider. As

per those guidelines liberal view has to take while allowing amendment of written statement, however other factors also needs to consider. In present case, present application for amendment is filed after the period of seven years by defendants and to satisfy the delay defendants had given general reasons. As per above said guidelines parties should offer sufficient and proper explanation mentioning the particular circumstances against which and amendment was sought to enable the Court to reach the conclusion that, in spite of due diligence the applicant could not have raised the matter before the commencement of trial. However, in present case neither such explanation nor particular circumstances are mentioned by the defendants.

13. As per judgments cited by parties amendments in written statement and say after commencement of trial, can only be allowed when defendants satisfies the Court that, in spite of due diligence parties could not have sought the amendment before commencement of trial and those amendments should not change the nature of the suit. In present case, application for amendment is filled after seven years of filing of written statement and there is no satisfactory reasons for such huge delay. Further, it is filed at the stage where plaintiff has filed evidence affidavit and no cross order is passed against defendants. Thus, under these circumstances if, proposed amendment is allowed prejudice will cause to the plaintiff and it will further prolong the trial.

14. In such circumstances, as the proposed amendments are not just and necessary to decide the dispute between the parties and defendants failed to give satisfactory reason for such huge delay, it will not be appropriate to permit these amendments. Further, since present application is filed at be lated stage after seven years and no satisfactory

reasons are given for the same, it appears that this will prolong the trial of the present suit which is already pending for more than nine years. From the above discussion, I find hurdle to allow proposed amendment in the written statement and say for the determination of real controversy between the parties. Accordingly, I answered point nos. 1 and 2 in the negative.

As to point No. 3 :-

15. As I have already answered point nos. 1 and 2 in the negative, I am inclined to not allow this application. Hence, I pass following order;

ORDER

1. Application is rejected.

Date: 15/03/2021

(Sujit A. Rathod)
Civil Judge Junior Division,
Dondaicha.

- Certificate -

I certify that the contents of this PDF File are word to word as per Original Judgment / Order.

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Sd/-
Stenographer (L.G.)