

MHKO050005622019



Minakshi Yarn
Vs.
Sagar Takale.

Order below Exhibit No.18 in
Reg. Civil Suit No. 40/2019

This is the application filed by the plaintiff under Order VI, Rule 17 of the Code of Civil Procedure for amendment of pleading.

02. It is contended in the application that, the instant suit is filed for recovery of amount. According to him, the plaintiff adjudged amount of Rs. 1,63,460/- including pre-suit interest. However, due to inadvertence of plaintiff, the interest pendente lite and future interest remains to be claimed. Thus, it is contended that, interest pendente lite and future interest is required to be claimed in prayer clause of plaint. According to plaintiff, the proposed amendment is not change the nature of suit and it is necessary for determination of real question in controversy between the parties. Therefore, plaintiff prayed to allow the application.

03. On the contrary, defendant vide say Exhibit No.20 raised objection to the application. The sum and substance objection of defendant is that, matter is posted for the hearing and plaintiff has not sought proposed amendment before settlement of issues and

trying to prolong the proceeding. It is further submitted that, the proposed amendment is not in formal nature and it will change the nature of the suit. Thus, defendant prayed to reject the application.

04. I have heard both the parties at length.

05. Initially suit is filed in the nature of summary suit. Thereafter, passing order below Exhibit No. 11 defendant is allowed to defend the suit unconditionally. Thereafter, the present suit was registered as Regular Civil Suit and defendant has filed written statement vide Exhibit No.16. On the basis of pleadings of the parties, the issues were framed on 02/07/2019 and matter was posted for hearing. Subsequently, plaintiff has moved application for amendment of plaint under the provision of Order VI, Rule 17. From the above sequence of events one aspect is cleared that, yet plaintiff has not filed his affidavit in lieu of examination in chief. Thus, the trial in this matter yet to be commenced. Therefore, the proviso of Order VI, Rule 17 is not applicable to the present matter.

06 Now, moving further towards the proposed amendment sought by the plaintiff. According to plaintiff, inadvertently he has not claimed interest pendente lite and future interest in prayer clause. Therefore, he sought to incorporate prayer in the plaint about interest pendente lite and future interest. From the averement of the application it is crystal clear that, plaintiff is not sought such amendment which will change the nature of the suit. Therefore, I am of the view that, the proposed amendment sought by the plaintiff is

formal in nature and if plaintiff is allowed to incorporate the prayer in prayer clause no prejudice or harm will be caused to the defendant. Moreover, the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties. Thus, considering the nature of amendment I found it appropriate to allow plaintiff to incorporate prayer in prayer clause of plaint about interest pendente lite and future interest. Hence, I proceed to pass following order.

ORDER

01. Application (Exhibit No.18) is allowed.
02. The plaintiff shall carry out the proposed amendment in the plaint within the period of 14 days from the date of this order.
03. The plaintiff shall also file the amended copy of plaint.

(Dictated and pronounced in open court)

Ichalkaranji.
Date:- 15/02/2020.

(P. M. Mane)
4th Jt. Civil Judge, Junior Division,
Ichalkaranji.

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 stenographer	R. D. Patil.
Name of Court	P. M. Mane, 4 th Jt. Civil Judge Jr. Dvn. and Judicial Magistrate First Class, Ichalkaranji.
Date of Dictation	15/02/2020
Order signed by P.O. on	15/02/2020
Order uploaded on	15/02/2020