

MHKO050006222020



ORDER BELOW EXH.29 IN
SPECIAL CIVIL SUIT NO.23/2020
(Passed on 26. 10. 2023)

This is an application under Rule 17 of Order VI of the Code of Civil Procedure, 1908 for amendment of plaint.

02. Learned counsel for the plaintiff submitted that plaintiff is claiming the relief of specific performance of the contract. However, relief in respect of refund of earnest amount along with interest is remained to be claimed inadvertently. Moreover, recently certain facts came to the knowledge of the plaintiff. Therefore, it is prayed to grant permission to amend the plaint to incorporate the prayer for grant of relief of earnest amount of money and the facts which are occurred during the pendency of the present suit. It is further submitted that proposed amendment is of formal in nature and the same will not cause substantial change in the pleadings of the plaintiff. Therefore, according to him, no prejudice would be caused to the defendant, if the proposed amendment is allowed. Therefore, it is prayed to grant permission to amend the plaint accordingly.

03. Learned counsel for the defendant submitted that present application is belatedly filed. Moreover, plaintiff is trying to change the nature of the present suit. Moreover, in view of bar

contained in Rule 17 of Order VI of the Code of Civil Procedure, 1908 present application is not tenable in the eye of law. Hence, it is prayed to reject the application.

04. Perusal of proposed amendment shows that it is with a view to show real dispute in controversy between the parties. Moreover, by way of proposed amendment plaintiff is seeking to incorporate the facts which aer occurred during the pendenc of the present suit and the prayer in accordance with the provision of Section 22 of Specific Relief Act, 1963.

05. it is significant to note that the affidavit in lieu of examination-in-chief of the plaintiff is yet to be filed. Therefore, trial cannot be said to have commenced. Moreover, Section 22 of Specific Relief Act is having overriding effect over the provisions of the Code of Civil Procedure, 1908. Furthermore, in ***Lotu Bandu Sonavane vs. Pundalik Nimba Koli*** reported in ***MANU/MH/0267/1985*** Hon'ble Bombay High Court held that proviso to sub-sec. (2) of S. 22 of the Specific Relief Act permits the plaintiff who has not claimed any such relief contemplated by Cl. (a) or (b) of sub-sec. (1) of S. 22 to amend the plaint for including a claim for such relief. The amendment can be sought at any stage of the proceeding and if the plaintiff moves for such an amendment the Court is bound to allow him to do so, of course on such terms as may be just. Therefore, embargo contained in proviso to Rule 17 of Order VI of the Code of Civil Procedure, 1908 is not applicable to the proposed amendment.

06. In view of aforesaid facts and circumstances of the case and ratio laid down in the authority cited supra, it is necessary to grant the present application. It is true that there is delay in filing the present application. However, considering the above said facts and circumstances of the case, said delay cannot be a sole ground to reject the present application when other side can be compensated for such delay. Hence, in view of above said facts and circumstances of the case, I pass the following order:

ORDER

- 1) Application at Exhibit No.29 is hereby allowed subject to cost of Rs.1,000/- payable to the defendant.
- 2) Plaintiff is directed to carry out the proposed amendment till next date without any fail and to supply the amended copy of the plaint forthwith after carrying out of the proposed amendment.

Sd/-

Ichalkaranji
Date :- 26. 10. 2023

(H. A. Wani)
Civil Judge, Sr.Dn., Ichalkaranji