


MHKO050018282017 	<u>Order below Exh. 62 in RCS No.193/2017</u> <u>Shri Tukaram Bandu Dhulugade etc Vs.</u> <u>Vijaykumar Raghunath Kulkarni etc</u> <u>CNR No.MHKO050018282017</u>
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This is an application under Order 6 Rule 17 of C.P.C for amendment of written statement filed by the defendants praying that they may be permitted to amend the written statement and file counter claim in the instant suit.

2. Perused the application and read the reply. I have heard counsels for defendants and the plaintiff.

3. At the outset it is submitted that, the instant application is filed by the defendants after receipt of report of Court Commissioner. Defendants are now praying possession of the suit property.

4. In case of Peethani Suryanarayana & Another Vs. Repaka Venkata Ramana Kishore and Others, AIR 2009 SC 2141 wherein Hon'ble Supreme Court has observed in para 15.

Para 15:-

"It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-

appellant succeeding in the suit "

5. In case of *Baldev Singh and Others Vs. Manohar Singh and Another, 2006 (3) Bom C J 185 = 2006 (5) Mh.L.J 634 SC* Hon'ble Supreme Court held that it is well settled that court should be extremely liberal in granting prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side.

6. In case of *B.K.N. Pillai Vs. Pillai and Another, AIR 2000 SC 614* the Hon'ble Supreme Court held that application for amendment cannot be rejected merely on ground of prolonged delay in filing, especially when other party can be compensated by cost.

7. It is well settled by a *catena* of decisions of High courts and Supreme Courts that allowing and rejecting an application for amendment of plaint is really the discretion of the court and the amendment of the plaint also should not be refused on technical grounds.

8. On going through the application for amendment in the light of averment in written statement and arguments canvassed before me, it is seen that the amendment sought is bonafide. This court is satisfied that proposed amendment is necessary for the purpose of determining the real question in controversy between the parties and for the fair adjudication of trial. No prejudice would be caused to plaintiff. Also, objections raised by the plaintiff is technical in nature, which can be dealt while conducting trial. This court is convinced that, the amendment sought will not change the nature of suit as the developments have occurred pursuant to filing of suit. It is not the case that, the pleadings were intentionally shielded from this court. Thus,

considering all the above aspects and being guided by decisions of Hon'ble Apex Court, I am inclined to pass the following order.

ORDER

- 1) The application at Exh. 62 is allowed with costs of Rs. 1000/- (Rs. One Thousand Only) payable to the plaintiff.
- 2) The defendants are allowed to amend their written statement within 14 days from today.
- 3) The defendants are directed to carry out amendment within stipulated period and to file fresh copy of amended written statement/ counter claim on record.

Ichalkaranji
Date : 12/07/2022

(S. A. Ingley)
2nd Civil Judge Jr. Dn. , 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. Jadhav.
Name of Court	S. A. Ingley. 2 nd Jt. Civil Judge, Jr. Dn. & Judicial Magistrate F.C. Ichalkarnaji.
Date of Dictation	12/07/2022
Judgment/order signed by P.O. on	12/07/2022
Judgment/order uploaded on	12/07/2022