

ORDER BELOW EXH.26 IN
SPECIAL CIVIL SUIT NO.42/2018
(Passed on 19. 10. 2024)

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

02. Learned counsel for the plaintiff submitted that defendant and his brother namely Appaso Ghunke are jointly looking after the firm namely 'Aananda Gopal Ghunke'. Moreover, they have jointly entered in to transaction of purchase of yarn goods with the plaintiff. Furthermore, gate pass produced on record also bears the signature of Mr. Appaso Ghunke. Similarly, defendant has also raised a plea of non joinder of necessary party due to plaintiff's failure to implead Mr. Appaso Ghunke. As such, he is the necessary party to the present suit and it is necessary to incorporate the facts regarding joint business of defendant and proposed defendant namely Appaso Ghunke. It is further submitted that due to inadvertence plaintiff could not file the present application at the earlier point of time. Hence, it is prayed to grant permission to implead the Mr. Appaso Ghunke in the present matter as defendant no.2 and to incorporate the necessary facts in the plaint regarding the role of Mr. Appaso Ghunke in the transaction of sale as specified in the plaint.

03. Application is resisted by the plaintiff on the ground that defendant has not shown diligence in filing the present application. Moreover, trial has already commenced. Hence, it is prayed to reject the application.

04. It is significant to note that proviso to Order VI, Rule 17 of the Code of Civil Procedure, 1908 provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. In ***Vidyabai Vs. Padmalatha*** reported in ***AIR 2009 SC 1433*** Hon'ble Apex court has held that proviso to Order VI, Rule 17, is couched in a mandatory form. It is further held that the Court's jurisdiction to allow amendment application after commencement of trial is taken away unless conditions precedent therefore are satisfied. It is further observed that filing of an affidavit in lieu of examination-in-chief of the witness, would amount to 'commencement of proceeding'.

05. In the case at hand, as the plaintiff has filed his affidavit in lieu of examination in chief, trial can be said to have commenced. Therefore, plaintiff is required to offer reasonable and cogent reasons to show that inspite of due diligence the proposed amendment could not have been raised before the commencement of trial.

06. Plaintiff has submitted that due to inadvertence, proposed facts could not be incorporated in the plaint. This explanation leads to infer that facts proposed to be incorporated by way of proposed amendment were well within the knowledge of the plaintiff since prior to the institution of suit. Therefore, it is clear that plaintiffs could have mentioned the facts of the proposed amendment at the time of institution of the suit or even by amending their plaint before the commencement of trial. However, plaintiff has failed to do so. It is significant to note that present application is filed after the period of two years from the date of filing of examination in chief of the plaintiff. In these circumstances, mere inadvertence cannot be a ground to grant permission to amend the plaint after commencement of trial. In these circumstances, it is clear that plaintiff has failed to show that in spite of due diligence he could not move the present application before the commencement of trial.

It is pertinent to note that plaintiff has pleaded in his plaint that defendant has purchased the goods from him on his own account. Now plaintiff wants to plead that defendant and his brother namely Appaso are jointly doing the business and they have jointly purchased the goods from him. Therefore, it is clear that proposed pleading is contrary to the previous pleading of the plaint. Therefore, it is clear that plaintiff is seeking permission to introduce altogether a different case from what he has introduced in his plaint. Therefore, plaintiff cannot be allowed to take the said

plea at this belated stage when matter is fixed for cross examination of the plaintiff since last two years.

08. In view of afore-said facts and circumstances of the case, it is clear that present application is barred by proviso to Rule 17 of Order VI of the Code of Civil Procedure, 1908. As such, if the proposed amendment is allowed, it will cause serious prejudice to the rights of defendant. Therefore, plaintiff is not entitled to incorporate the proposed amendment at this stage. It is pertinent to note that as the proposed amendment is disallowed, it will not be just and proper to grant permission to implead the proposed defendant whose impleadment is sought on the basis of proposed amendment. Hence, application is liable to be rejected. Hence, I pass the following order :

ORDER

- 1) Application at Exhibit No.26 is hereby rejected.
- 2) Costs in cause.

Sd/-

Ichalkaranji
Date :- 19. 10. 2024

(Hitendra Urmila Anilkumar Wani)
Civil Judge, Sr.Dn., Ichalkaranji