

ORDER PASSED BELOW EXH. NO. 80

1. This application is filed by plaintiff under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to carry out certain amendment in the plaint.

2. As per case of plaintiff, he has paid amount to defendant against transaction mentioned in the suit and details of its is given in the plaint. In para No. 6 it is mentioned that an amount of Rs.16,81,000/- is given in cash. However, if amount mentioned in para No. 4 and 5 is calculated, it comes to Rs.17,31,000/-. Therefore, plaintiff wants to make amendment as Rs.17,31,000/- instead of Rs.16,81,000/- and he wants to make amendment in para No.6 Rs.4,20,000/- instead of Rs.3,70,000/- Hence, this application.

3. Defendant filed his say and opposed to allow this application contending that if we calculate amount mentioned in para No.4 of the plaint, it comes to Rs. 3,70,000/- and not Rs.4,20,000/- as mentioned by plaintiff. Therefore, reason stated for amendment i.e. due to typographical error said amount wrongly shown less, is not true contention and hence prayed for rejection of application.

4. Heard both sides and gone through the record. It is needless to say that in this case issues are framed on 29.3.2017. Plaintiff has filed affidavit. However, defendant has not cross-examined. Therefore, yet trial is not commenced in real sense and hence bar given in proviso of Order 6 Rule 17 of Civil Procedure Code, is not applicable to case at hand. Therefore, what is required to be seen is whether proposed amendment is necessary to decide suit on merit. If it is the case of plaintiff that he has paid an amount of Rs.17,31,000/- to defendant, however wrongly mentioned as Rs.16,81,000/-, opportunity needs to be given to plaintiff to plead his case and to lead evidence to that effect. Unless and until, plaintiff is permitted to amend plaint, he will not be permitted to lead evidence to that effect. Hence, application requires to be allowed and permission needs to be granted to plaintiff to amend the plaint. So far as casual approach on the part of plaintiff while drafting the plaint as well as delay caused due to aforesaid approach of plaintiff is concerned, same can be balanced by imposing cost on him. In result, I pass following order.

ORDER

- (1) Application is allowed subject to cost of Rs.500/- payable by plaintiff to defendants within a period of seven days from today.

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- (2) Plaintiff shall carry out necessary amendment in the plaint and shall supply amended copy on record.
- (3) In case of failure to pay cost and carry out necessary amendment in the plaint, said order will be cancelled automatically and matter will proceed further without any order to that effect.

Jaysingpur.
Dt.: 12.09.2018.

Sd/-
(K.G. Sawant)
Civil Judge Senior Division,
Jaysingpur.

