

MHKO070009292012



ORDER PASSED BELOW EXH. 95

1] This application is filed by defendant No.6 under Order 6 Rule 17 of Code of Civil Procedure, seeking permission to carry out amendment in Written Statement as well as affidavit of examination-in-chief. It is contended by defendant that, in para No.8, page No.4 of W.S. in first line, date '11/5/2012' is mentioned, in fact it should have been mentioned as '18/5/2012'. So also, same mistake is committed in affidavit of examination-in-chief, which is filed at Exh.94. According to defendant, proposed amendment is formal in nature and it will not change the nature of proceeding.

2] Plaintiff filed his say and opposed to allow this application contending that, trial has commenced, evidence of plaintiff is already closed and therefore, as per proviso given to Order 6 Rule 17 of C.P.C., permission for amendment can not be granted after commencement of trial. Amendment can not be granted at a time in written statement and affidavit of examination-in-chief. After amendment in W.S. plaintiff will get opportunity to file re-joinder. Hence, prayed for rejection

of this application.

3] Heard both side and gone through record. It is no doubt true that, as per proviso given to Order 6 Rule 17 of C.P.C., after commencement of trial, permission can not be granted to amend the pleadings, unless court comes to conclusion that, inspite of due diligence, party could not have raised the matter before commencement of trial. However, in the case at hand, amendment sought by defendant is very formal in nature. It is necessary to note here that, only at one place due to typographical error wrong date is mentioned. However, in respect of same transaction correct date is mentioned by defendant at another places. Therefore, it can not be said that, by way of amendment, defendant is going to change nature of proceeding. Though trial is commenced, in the larger interest of justice permission needs to be granted to defendant to amend written statement as prayed. Considering nature of amendment, I am of the view that, it will not cause any prejudice to the plaintiff. Amendment in affidavit is concern, there is no provision in law to amend the affidavit. However, plaintiff can correct date by taking further examination-in-chief of defendant. Application deserves to be allowed to the extent of written statement. In result, I proceed to pass following order.

ORDER

1. Application is partly allowed.

2. Permission is granted to defendant to carry out amendment in Written Statement and he is permitted to take further examination in chief of the witness at Exh.94 to correct the date.

Sd/-

(K.G. Sawant)

Civil Judge Senior Division,
Jaysingpur.

Date : 25/03/2021.