

ORDER PASSED BELOW EXHIBIT NO.119.
IN R.C.S. NO.26/2016.

By this application filed under Order-VI, Rule-17 of the Code of Civil Procedure, 1908, the defendants have prayed for amendment of written statement.

02. The defendants have contended that, the plaintiff has instituted the present suit for perpetual injunction. They have contested the present suit by filing their written statement. However, there are few explanatory defence pleading remain to be incorporate in their written statement. Therefore, by the proposed amendment the defendants have prayed to rectify and add the pleading is respect of encroachment at the hands of plaintiff and determination of encroachment under measurement report bearing No. 52/2009 dated 30.12.2009. The instant application is supported by an affidavit.

03. The plaintiffs have resisted the instant application and contended that the defendants have not due diligence to file instant application. He has also contended that trial of the suit is also commenced. He has further contended that the defendants have try to change nature of defence by seeking aforesaid amendment in their written statement. Thus, he finally prays for rejection of instant application with cost of Rs. 5000/-.

04. I have heard the learned advocates for the respective parties at length.

05. Considering the rival contentions between the parties,

the following points arise for my determination and I have recorded my findings thereon with reasons as under.

<u>SR.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the proposed amendment ... will change the nature of suit ?	<u>NO.</u>
2)	Whether the proposed amendment is ... necessary for the proper adjudication of the matter ?	<u>YES.</u>
3)	What order ?	... <u>AS PER FINAL ORDER.</u>

-: REASONS :-

AS TO POINT NOS. 1 TO 3 :-

06. Before advertng to the merits of the instant application, it would be appropriate to mention that, in view of provision of Order VI, Rule 17 of the Civil Procedure Code, where the amendment does not alter the nature of the suit or nor substitute the cause of action in the original plaint, then it is always open for the Court to allow the amendment of the pleading at any stage of the proceeding, provided that no prejudice is caused to the other side which can not be compensated by the cost. The object of the amendment is to avoid the multiplicity of the proceedings.

07. On the touchstone of the aforesaid aspect, if the instant application is considered it is seen that by the proposed amendment, the defendants have only sought to rectify the pleading in respect of R.C.S.No. 66/2007 and measurement report bearing No.52/2009 dated 30.12.2009. The defendants have also wants to add detail

pleading in respect of alleged encroachment at the hands of the plaintiff in suit property City survey No. 693/C , 694/A and 694/4. The defendants have also want to sought the pleading in respect of possession over the suit property. On perusal of plaint and written statement both the parties have disputed the possession over the suit property and alleged encroachment in connection with the measurement report by the T.I.L.R. dated 30.12.2009. It is also seen that the defendants have taken said defence in para No.10 to 13 and 15 of their written statement. Therefore, alleged amendment sought by the defendants is nothing but the explanatory pleading of that pleading. The plaintiff has seriously objected the instant application. But, I do not find substance in his resistance as the trial of the suit is not commence. The defendants have relied on ***Andharaka-Bank V/s. ABN Amro Bank and others 2007 STPL 13661 SC***. In which Hon'ble Supreme Court held that at the time of considering the prayer for amendment of the written statement it would not be open to the Court to go in to the facts of the suit and additional ground of the defence may be taken by the defence. It is also held that delay is no ground for refusal of prayer for amendment. In present matter also it is not just to go in to merit of the case. Therefore, ratio laid down in present authority is well applicable to the present case in hand. Thus, considering the tenor of the proposed amendment I am of the considered view that the same is of explanatory nature and would not in any manner alter the defence taken by the defendant. On the other hand, the proposed amendment is necessary for the purpose of effectively adjudicate upon the disputes involved in the present suit.

08. Thus, for the reasons stated supra, I am of the considered

view that the instant application is deserves to be allowed. Hence, I answer point Nos.1 and 2 accordingly and in answer to point No.3, I proceed to pass following order.

ORDER

- 1) Application Exhibit 119 is allowed.
- 2) The defendants shall carry out the proposed amendment within the period of fourteen days from the date of this order, subject to payment of cost of Rs.500/- [Rs. Five hundred only] to be paid to the plaintiff on or before next day.
- 3) The defendants shall also file the appropriate amended copy of written statement.

Date 07.06.2018.

Sd/-
(S.M.Jadhav),
2nd Jt. Civil Judge, Junior Division,
Peth-Vadgaon.

CERTIFICATE.

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	:-	Sou. Rajashari Rajendra Sawant(L.G.)
Name of Court	:-	Shri.S.M.Jadhav 2 nd Jt.Civil Judge, Jr.Dn., and J.M.F.C. Peth-Vadgaon.
Date of Dictation	:-	07.06.2018.
Judgment signed by the P.O. on	:-	07.06.2018.
Judgment uploaded on	:-	19.06.2018.