

Regular Civil Suit No.323/2012
(CNR No.MHKO11-000743-2012)

Order below Exh.28

1. The plaintiff has moved the present application for amendment of plaint under Order VI Rule 17 of The Code of Civil Procedure, 1908.

2. The Ld. Counsel for the plaintiff submitted that, the present suit is filed for recovery of amount of Rs.2,56,500/-. It is the contention of the plaintiff that, he has repaid the loan taken by late father of defendants. The defendants have agreed to return the said amount to plaintiff. However the defendants have refused to repay the same. The plaintiff has further contended that, the defendant No.1 has paid only Rs.10,000/- on 20/01/2009, however he has not mentioned earlier that, in whose presence the said amount was received by him from the defendant No.1. Inadvertently he failed to mention the names of witnesses, in whose presence the defendant No.1 has paid Rs.10,000/- on 20/01/2009, to that extent he wants to add para No.4-A which reads as under -

'४(अ) - सदर वादी यांना प्र.वादी क्र. १ यांनी रोख स्वरूपात सदर एकुण रक्कमेपैकी रक्कम रु.१०,०००/- (दहा हजार) दिलेली होती व आहे. सदरची रक्कम ही गाव नाटोली, ता. शिराळा, जि. सांगली येथील इसम श्री. जालींदर तुकाराम परीट व श्री. माणीक तानाजी सावंत, रा. हेल्ले, ता. हातकणंगले, जि. कोल्हापूर यांचे समक्ष हाती देय केलेली होती व आहे. तसेच सदर इसमांचे समोर उर्वरीत रक्कम पुढील दोन वर्षांचे कालावधी देय करणेचे प्र.वादी यांनी मान्य व कबुल केलेले होते व आहे.'

3. The plaintiff has submitted that, the proposed amendment will not change the nature of the suit. Hence he prayed to allow the application.

4. The say of defendants was called. They have objected the application by stating that, the contents of the application are not true and correct. So as to fill up lacuna, the plaintiff wants to carry out the proposed amendment with ulterior motive. The proposed amendment will change the basic nature of the suit. Hence they prayed to reject the application.

5. Heard Ld. counsel for the plaintiffs. Perused the record. The following points arise for my determination and I have recorded my findings thereon for the reasons stated herein below :

<u>Sr. No.</u>	<u>Points</u>	<u>Findings</u>
1	Whether the proposed amendment is necessary to resolve the real controversy between the parties ?	<u>Yes.</u>
2	Whether the proposed amendment will change the basic nature of the suit ?	<u>No.</u>
3	What order ?	<u>Application is Allowed.</u>

R E A S O N S

As to Point No. 1 to 3 -

6. The point No.1 to 3 are co-related to each other, hence I have taken up them together for discussion. Heard. Perused the record and documents. On perusal it reveals that, the suit is filed for recovery of amount of Rs.2,56,500/- against the defendants. On perusal of the plaint, it reveals that, plaintiff has contended that, he has repaid the loan of Rs.2,65,000/-, which was taken by the father of defendants. He further contended that, on 20/01/2009, the defendant No.1 has paid Rs.10,000/- to the plaintiff, as he has repaid the loan taken by his father. The said fact

is denied by the defendants in their written statement. Therefore burden lies on the plaintiff to prove that, in whose presence the defendant No.1 has paid Rs.10,000/- to him. Therefore the new para 4-A will be the explanation given to the said transaction which was occurred on 20/01/2009.

7. Further the proposed amendment will not change the basic nature of the suit and will not cause any loss to the defendants. On the other hand, so as to resolve real controversy between the parties and to decide the matter on merits, the proposed amendment deserves to be allowed. On the other hand, the defendants should be compensated with costs. Hence I proceed to pass following order.

ORDER

- 1) The application is hereby allowed, subject to costs of Rs.500/-, it be paid to the defendants.
- 2) The plaintiff is hereby directed to carry out the proposed amendment till next date.
- 3) The plaintiff is hereby directed to file copy of amended plaint accordingly.

Date : 05/12/2018

Sd/-
(J. S. Gaikwad)
Jt. Civil Judge, J.D., Peth-Vadgaon

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

Name of the Stenographer	Sou.K.S.Gaikwad
Name of the Court	J. S. Gaikwad Jt. Civil Judge Jr.Dn., Peth-Vadgaon
Date of Dictation	05/12/2018
Order signed by the P.O. on	05/12/2018
Order uploaded on	05/12/2018