

MHKO180000532012



ORDER BELOW EXH.154 IN R.C.S. NO.133/2012
[Sagar Yallappa Koli and Ors. v. Sagar Ramu Aambi
(Deceased) Through LRs. and Anr.]

Defendant Nos.1A and 1B have filed present application under Order VI Rule 17 and Section 151 of the Code of Civil Procedure, 1908.

CONTENTIONS OF DEFENDANT Nos.1A AND 1B :-

02. In nutshell, according to defendant Nos.1A and 1B, this is a suit for specific performance of alleged agreement to sell dated 25.01.2011. During pendency of the suit, original defendant No.1 died on 26.08.2021. They are legal heirs of original defendant No.1. After sad demise of original defendant No.1, they appeared in the suit and filed their written statement vide Exh.92. However, certain essential facts in respect of suit properties remained to be included in written statement (Exh.92) by them. Those facts, more particularly mentioned in paragraph No.1 of the present application, are necessary for just decision of the suit. Furthermore, after filing of present suit, certain subsequent events and civil proceedings in respect of the suit property in present case were took place. Facts in respect of said subsequent events and civil proceedings, more particularly mentioned in paragraph No.1 of the present application, are necessary for just decision of the suit. Hence, they constrained to file present application in order to incorporate said facts by way of adding paragraph No.5A in written statement (Exh.92).

03. It is further contended that, proposed amendment is necessary for determining real question in controversy between the parties. It is also necessary for effective decision of the case. It will not change nature of the suit. If present application is allowed, no prejudice will be caused to plaintiffs. However, if present application is rejected, defendant

Nos.1A and 1B will suffer an irreparable loss. Hence, they prayed that, the application may be allowed.

SAY OF PLAINTIFFS :-

04. Plaintiffs have strongly resisted present application by filing their say vide Exh.156. They contended that, original defendant No.1 has filed written statement vide Exh.09. Written statement filed by original defendant No.1 is binding on his legal heirs i.e. defendant Nos.1A and 1B. Defendant Nos.1A and 1B have also filed their written statement vide Exh.92. In the backdrop of above facts and circumstances, defendant Nos.1A and 1B have filed present application to incorporate certain facts in order to create new defence. Moreover, facts sought to be incorporated in written statement by way of present application were already known to defendant Nos.1A and 1B at the time of filing of written statement (Exh.92). In spite of that, they have not mentioned said facts in their written statement (Exh.92). When the trial of the suit is commenced, defendant Nos.1A and 1B have filed present application in order to delay the suit. Hence, present application is not tenable.

05. It is further contended that, during pendency of the suit, in order to deny rights of plaintiffs, defendants have malafidely created Will deed of original defendant No.1. Defendants have also instituted a suit bearing R.C.S. No.156/2019 and obtained compromise decree therein. For execution of preliminary decree passed in R.C.S. No.156/2019, defendant have filed Regular Darkhast No.32/2024 in this Court. Diary Application No.1/2023 is also instituted in respect of decree passed in R.C.S. No.156/2019 by defendants. Thus, defendants are trying to deny specific performance of agreement to sell dated 25.01.2011 by initiating above proceedings. Apart from this, present application is devoid of merits. The suit is time bound and the Hon'ble Bombay High Court has

directed to decide the suit within prescribed period. However, defendant Nos.1A and 1B are trying to prolong the suit by filing present application. Hence, plaintiffs prayed that, the application may be dismissed with costs of Rs.10,000/-.

06. Points for determination along with my findings and reasons therefore are as below :-

POINTS	FINDINGS
1) Whether proposed amendment in the written statement is essential, as prayed ?	... Yes.
2) What Order ?	... Application is allowed with costs.

07. Heard both sides, at length. Arguments are set forth in consonance of the pleadings.

08. Learned advocate for defendant Nos.1A and 1B has referred to and relied upon the decision in the case of **Sheela Verma and Ors. v. State of Bihar and Ors., 2023 GoJuris (PAT) 103**, wherein the Hon'ble Patna High Court held that, the whole object and purpose of introduction of Order VI Rule 17 of the CPC is to avoid multiplicity of proceedings and to settle the entire dispute at rest, thus keeping in view the expression "at any stage of the proceedings" employed in Order VI Rule 17 of the CPC, the Court is competent to deal with the application for amendment as it keeps seisin over the case till the controversy is not decided at any point of time even at the stage of second appeal.

:: REASONS ::

AS TO POINT NO.1 :-

09. Before advertng to merits of present application, it is significant to note that, defendant Nos.1A and 1B have filed present application when the suit is pending for cross-examination of plaintiff

No.3 vide Exh.116. Thus, defendant Nos.1A and 1B have preferred present application after commencement of trial. However, while dealing with the issue relating to proviso of Order VI Rule 17 of the Code of Civil Procedure in the case of **Chandar Kanta Bansal v. Rajinder Singh Anand [AIR 2008 SC 2234]** the Hon'ble Supreme Court held that, it is not a complete bar nor shuts out entertaining of any later application. Hence, in view of decision in the case of **Chandar Kanta Bansal (Supra)**, there is no bar on entertaining amendment application after commencement of trial and amendment application has to be decided on merit. As there is no bar on entertaining present application, I proceed to evaluate merits of present application.

10. This is an application seeking amendment in written statement. Present application is mainly objected by plaintiffs on two grounds viz. i) by way of present application defendant Nos.1A and 1B are trying to create new defence and ii) the application is filed belatedly.

11. At this juncture, it is essential to refer to principles governing amendment of written statement. In the case of **Usha Balashaheb Swami and Ors. v. Kiran Appaso Swami and Ors., AIR 2007 SC 1663**, the Hon'ble Supreme Court held that, it is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

12. In the case of **Usha Balashaheb Swami and Ors. (Supra)**, the Hon'ble Supreme Court further held that, in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties.

13. In the case of **Baldev Singh and Ors. v. Manohar Singh and Anr., AIR 2006 SC 2832**, the Hon'ble Supreme Court held that, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

14. If the present case is examined in the light of above well settled principles of law, it appears that, defendant Nos.1A and 1B have a right to take new or alternative defence by way of amendment which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of plaintiffs is not withdrawn. It is worthy to note that, it is not the case of plaintiffs that, by way of present application, defendant Nos.1A and 1B are trying to withdraw admissions made in favour of plaintiffs. Hence, it cannot be said that, if present application is allowed, it will cause prejudice to plaintiffs.

15. As far as delay in filing present application is concerned, it is well established that, the delay in filing an application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

16. Moreover, while dealing with the issue relating to amendment of pleadings in the case of **Life Insurance Corporation Of India (Supra)**, the Hon'ble Supreme Court held as follows :-

“70. Our final conclusions may be summed up thus :

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. .

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

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. .

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.”

17. In the case at hand, on perusal of the present application it appears that, proposed amendment is explanatory in nature. It further appears that, by way of present application, defendant Nos.1A and 1B are trying to incorporate facts relating to subsequent proceedings and events that took place during pendency of this suit. At the face of record, it appears that, proposed amendment is essential for determining the real question in controversy between the parties. It further appears that, proposed amendment is essential for just and effective decision of the suit. Furthermore, if present application is allowed, no prejudice will be caused to plaintiffs and they can be compensated by costs for the delay caused by defendant Nos.1A and 1B. Hence, in view of decisions in the

case of **Life Insurance Corporation Of India (Supra), Usha Balashaheb Swami and Ors. (Supra), Baldev Singh and Ors. (Supra) and Sheela Verma and Ors. (Supra)** as well as considering peculiar facts and circumstances of the case in hand it appears that, proposed amendment in written statement is necessary for the effective decision of the case. Resultantly, I answer point No.1 in the affirmative.

AS TO POINT NO.2 :-

18. In view of affirmative finding as to point no.1, it is just and proper to allow present application subject to costs. Defendant Nos.1A and 1B have filed written statement (Exh.92) on 03.01.2022 and present application on 01.01.2025. Thus, defendant Nos.1A and 1B have filed present application almost after three years of filing of written statement (Exh.92). Hence, considering the delay caused by defendant Nos.1A and 1B, it is just and proper to impose cost of Rs.3,000/- upon them which shall be payable to plaintiffs. Accordingly, in answer to point No.2, I pass following order :-

:: ORDER ::

1. Application (Exh.154) is allowed subject to cost of Rs.3,000/- (In word Rupees Three Thousand only) payable to plaintiffs.
2. Defendant Nos.1A and 1B shall carry out proposed amendment in written statement (Exh.92) and shall file necessary copies of amended written statement till next date.
3. Payment of cost shall be condition precedent to carry out proposed amendment in written statement (Exh.92).

(Dictated and pronounced in the open Court.)

Kurundwad.
Date: 24.01.2025.

(Balasaheb S. Gaikwad)
Civil Judge Jr. Division,
Kurundwad.