

MHKO180006962012



ORDER BELOW EXH.57 IN R.C.S. NO.224/2012
[Sadashiv Yallappa Koli v. Sagar Ramu Aambi (Deceased)
Through LRs.]

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 DEFENDANTS :-

02. In nutshell, according to defendants, this is a suit for specific performance of alleged agreement to sell dated 12.03.2004. During pendency of this suit, original defendant died on 26.08.2021. Defendant Nos.1A and 1B are legal heirs of original defendant. After sad demise of original defendant, they appeared in the suit and filed their written statement vide Exh.48. However, certain essential facts in respect of suit properties remained to be incorporated in written statement (Exh.48) by them. Those facts, 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.12A in written statement (Exh.48).

03. Defendants 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. Moreover, if present application is allowed, no prejudice will be caused to the plaintiff. However, if present application is rejected, defendants will suffer an irreparable loss. Hence, they prayed that, the application may be allowed.

SAY OF THE PLAINTIFF :-

04. The plaintiff has strongly resisted present application by filing his say vide Exh.58. He contended that, original defendant has filed

written statement vide Exh.09. Written statement filed by original defendant is binding on present defendants who are legal heirs of original defendant. Defendants have also filed their written statement at Exh.48. In the backdrop of above facts and circumstances, defendants have filed present application to incorporate certain facts in order to create new defence. Facts sought to be incorporated in written statement by way of present application were already known to defendants at the time of filing of written statement (Exh.48). In spite of that, they have not mentioned said facts in their written statement (Exh.48). When the trial of the suit is commenced, defendants have filed present application in order to delay the suit. Hence, present application is not tenable. The application is devoid of merits. Moreover, the suit is time bound and the Hon'ble Bombay High Court has directed to decide the suit within prescribed period. However, defendants are trying to prolong the suit by filing present application. Hence, he prayed that, the application may be dismissed with costs of Rs.10,000/-.

05. 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.

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

:: REASONS ::

AS TO POINT NO.1 :-

07. Before advertng to merits of present application, it is

significant to note that, defendants have filed present application when the suit is pending for cross-examination of the plaintiff vide Exh.56. Thus, defendants 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.

08. This is an application seeking amendment in written statement. Present application is mainly objected by the plaintiff on two grounds viz. by way of present application defendants are trying to create new defence and that, the application is filed belatedly.

09. 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.

10. 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.

11. 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.

12. If the present case is examined in the light of above well settled principles of law, it appears that, defendants 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 the plaintiff is not withdrawn. It is worthy to note that, it is not the case of the plaintiff that, by way of present application, defendants are trying to withdraw admissions made in his favour. Hence, it cannot be said that, if present application is allowed, it will cause prejudice to the plaintiff.

13. 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.

14. 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.”

15. In the case at hand, 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 the plaintiff and he can be compensated by costs for the delay caused by defendants. Hence, in view of decisions in the case of **Life Insurance Corporation Of India (Supra)**, **Usha Balashaheb Swami and Ors. (Supra)** and **Baldev Singh 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 :-

16. In view of affirmative finding as to point no.1, it is just and proper to allow present application subject to costs. Defendants have filed written statement (Exh.48) on 03.01.2022 and present application on 01.01.2025. Thus, defendants have filed present application almost after three years of filing of written statement (Exh.48). Hence, considering the delay caused by defendants, it is just and proper to impose cost of Rs.3,000/- upon them which shall be payable to the plaintiff. Accordingly, in answer to point No.2, I pass following order :-

:: ORDER ::

1. Application (Exh.57) is allowed subject to cost of Rs.3,000/- (In word Rupees Three Thousand only) payable to the plaintiff.
2. Defendants shall carry out proposed amendment in written statement (Exh.48) 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.48).

(Dictated and pronounced in the open Court.)

Kurundwad.
Date: 24.01.2025.

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