



Order passed below Exh.66 in R.C.S.No.248/2017.

The present suit is filed for Specific Performance of Contract and Permanent Injunction. The present suit is filed originally in the year 2015 which later on in the year 2017 transferred this Court. Hence originally the suit is 7 years old.

02. Defendants have appeared in suit filed W.S. Plaintiff's evidence is on record and so is of defendants. Matter was posted for final argument on 05-04-2022 when this application for amendment was moved. say to the application is received, it is at Exh.67.

03. Heard both side at length. Perused entire record.

04. Before going into contents and merits of application for better understanding it is important to reproduce Order 6 Rule 17 of Civil Procedure Code. It is as follows- *The court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided *that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have*

raised the matter before the commencement of trial.

05. Order 6 Rule 17 of Civil Procedure Code states in which circumstances pleadings can be amended. Our case in hand whether satisfies those conditions has to be seen.

06. Plaintiff is seeking amendment to add Court fee Rs. 1000/- in title clause and correct date of agreement (typographical error) i.e. instead of 16 September 2003, as per plaintiff it is to be amended 16 December 2003. According to plaintiff it is typography error. In his evidence affidavit he has mentioned the correct date of agreement i.e. 16 December 2003 even the documents on record points the same. The amendment does not change the nature of suit. Hence same needs to be allowed.

07. To Support the contentions placed two citations on record.

Soundarajan Vs. Vijayalakshmi LAWS(MAD)-2019-04-711

Court observations- *There cannot be any doubt or dispute that the courts should be liberal in allowing applications for leave to amend pleadings but it is also well settled that the court must bear in mind the statutory limitations brought about by reason of the Code of Civil Procedure(Amendment) Acts; the proviso appended to Order 6 Rule 17 being one of them.*

Thus, both plaintiff or defendant is entitled to amend plaint, written statement or file additional written statement. It is however subject to an exception that by the proposed amendment the opposite party should not be subject to injustice and that any admission made in favour of the other party is not withdrawn. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real

controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings.

**Laws(BOM)2018 1 401 Mrs. Meenacshi Philomena Martins
Vs. Mr. Susruta Agnelo Paulo Gomes Martins and Others.**

Court observations- *It is now well settled that the court can allow amendment at any stage of the suit and all such amendments, which are necessary for deciding the real controversy between the parties, has to be allowed. This in subject to the proviso to Order 6, Rule 17 of CPC, which was introduced in the year 2002. The jurisdiction and the power of the Court to allow the amendment, in the face of the proviso to Order 6, Rule 17 of CPC, has been subject matter of several decisions and it is now well settled that, when the amendment is brought after the commencement of the trial, the party has to demonstrate that in spite of due diligence, the amendment could be brought earlier.*

The Court has to take a broad and pragmatic view, while considering the case for amendment in the context of proviso to Order 6, Rule 17 of CPC. The Court cannot afford to be hypertechnical in this regard. This is because the basic premise, on which the amendment is allowed is that, it is necessary for deciding the real controversy between the parties and also to avoid multiplicity of litigation.

08. Learned advocate of defendant has strongly objected the prayer in the application. Suit is 7 years old and at flag end. Trial has come to an end. Defendant defence is that no agreement took place of 16/09/2003 between parties. Even the issues are casted about the same date. In such situation at this juncture

plaintiff application can not entertained. If considered entire defence of defendant gets washed out. Hence application needs to be rejected.

09. It is evident from case record that matter is indeed at flag end. Therefore, the application at hand falls in criteria of proviso of Order 6 Rule 17. It say that **no application for amend shall be allowed** after the trial has commenced unless Court comes to conclusion that inspite of **due diligence** the party could not have raised the matter before commencement of trial.

10. In present case, the period of nearly 2 years have gone by i.e. from 29-01-2015 to 25-07-2017. On 25-07-2017 the issues are framed. The entire case of plaintiff revolves around agreement on the basis of which specific performance is sought. Hence, the amend sought regarding date of agreement plaintiff was well aware of it. It was not change that occurred during pendency of suit.

11. From entire perusal of record there is no due diligence that can be inferred on the part of plaintiff. With utmost respect to observations and decisions given in cited cases of Appellate Court they are not found applicable to present case.

12. As for the amend in title clause of Rs. 1000/- same being technical one is and can be allowed as it nowhere affects the case. Hence, in this application following order passed:-

Order

1. Application is partly allowed.
2. Plaintiff is at liberty to carry out amend in title clause as prayed.
3. Rest of the amend prayer rejected.
4. Cost in cause.

Kale-Kherivade
Dated-17/08/2022.

(N.K.Nagargoje)
Civil Judge Junior Division,
Kale-Kherivade.