


MHLA050006222019 	Spl.C.S. No.31/2019 Raosahab Vs. Member Secretary
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:: ORDER BELOW EXH.62 ::

01. The application is filed by the defendant under Order VII Rule 17 of the Code of Civil Procedure.

02. It is the contention of the defendants that, the matter is kept for cross-examination of the plaintiff. While filing the written statement, due to lack of documents, certain facts were not mentioned in the written statement. After filing of the written statement, the defendant got knowledge about limitation and jurisdiction of the court. So, contention regarding these points are required to be mentioned in the written statement. So, it is prayed that, the application may be allowed and the proposed amendment may be permitted to be carried out in the written statement. An affidavit is filed in support of the contentions in the application.

03. Say is filed by the plaintiff below Exh.64. According to him, the application is filed after commencement of the trial. Defendants are not diligent. They have not raised the matter at the earliest. Defendants have not disclosed, which documents are not within their knowledge. Admissions in the written statement cannot be withdrawn. They want to prolong the litigation. Hence, it is prayed that, the application may be rejected with costs.

04. Heard Ld. Advocates for the parties.

05. Following points arose for my determination. I am reproducing them along-with my findings thereon as follows.

<u>Sr.NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1)	Whether the defendant proves the necessity of the amendment in the written statement ?Yes.
2)	What order ?	...As per the final order.

REASONS

AS TO POINT NO.1 AND 2 :-

06. An application seeking amendment in the written statement cannot be considered on the same principles as amendment in the plaint. There should not be the same rigour and strictness as prayer for amendment of the plaint. It is also true that, all amendments are should be allowed, which satisfy two conditions namely 1) of not working injustice with the other side and 2) of being necessary for the purpose of determining the real question between the parties.

07. The defendants can take as many defences and for that purpose he can take aid to express as well as implied pleading. Adding a new defence or substituting or altering a defence does not raise the same problem, as adding altering, substituting a new cause of action. The Hon'ble the Supreme Court in the case of **Baldev Sing Vs. Manohar Sing AIR 2006 SC 2832** and in **Usha Swami Vs. Kiran Swami, AIR 2007 SC 1663** has taken a view that, in the case of an amendment of a written statement, the court would be more liberal in allowing than rejecting the

applications for amendment of written statement as there is no question of prejudice to the rights of the plaintiff.

08. Defendants have mentioned that, the State of Maharashtra is necessary party as everything is spent upon the defendant by the state. This is material fact which ought to have been stated by the defendants at the time of filing of the written statement. Issue of limitation is a mixed question of law and facts. So, the defendants have to be given chance to amend the pleading being the Court of first instance. Hence, by answering point No.1 in the affirmative, I answer point No.2 accordingly and pass the following order.

ORDER

1. The application is allowed subject to costs of Rs.500/- each to be paid by defendants to the plaintiff.
2. The defendant to carry out the amendment today and submit the copy of the amended written statement on the next date.

Sd/-

{ **S.N.Sarde** }

Civil Judge Senior Division,

A h m e d p u r

Date : 16/03/2026.