

MHLA110003172018



Order below Exh.39 in RCS No.319/2018
Ashok Vs. Babruwan

This is an application filed by plaintiff under Order 6 Rule 17 CPC for granting permission to carry out proposed amendment in the plaint by which plaintiff wants to incorporate para Nos.3/1 to 3/4 after existing para No.3 in the plaint, on the grounds mentioned in the application. Defendants have filed their say and raised strong objections on several grounds. Perused application and say. Heard learned advocate Shri.M.K.Walande for plaintiff. Defendants failed to argue. Record shows that plaintiff has filed this suit for perpetual injunction. Defendants have filed their WS at **Exh.13** on 17/11/2018. Issues are framed at **Exh.17** on 18/06/2019. Additional issues came to be framed on 08/11/2023.

2. Record further shows that plaintiff had moved an application seeking amendment in the plaint at **Exh.27** on 12/09/2022. This application at **Exh.27** came to be not pressed by him on 05/01/2023. Again, an application claiming similar relief i.e. for granting permission to carry out amendment in the plaint came to be moved by plaintiff at **Exh.32** on 13/03/2023, which came to be allowed by order dated 16/06/2023. By carrying out amendment in the plaint plaintiff incorporated para No.5/A and 6/A in the plaint after existing para No.5 and 6 respectively. In short, the facts which plaintiff wants to plead by way of proposed amendment were well within his knowledge while moving application at **Exh.32**. There might not be due diligence on the part of plaintiff but the trial is yet to be commenced and the proposed amendment is not going to change nature of suit. The proposed

amendment is necessary to decide real controversy between the parties. No prejudice will be caused to defendants. However, it is imperative on the part of this Court to impose cost upon plaintiff for causing delay in the hearing of the suit. In the interest of justice and to decide the suit on merits, I pass following order:-

ORDER

1. Application is allowed subject to cost of Rs.2,000/- only to be payable on or before next date.
2. After payment of cost amount and its acknowledgment by defendants, plaintiff is permitted to carry out proposed amendment in the plaint.
3. Plaintiff shall provide copy of amended plaint to the Court and for the defendants at the earliest.
4. Defendants are at liberty to file their additional WS, if any.

Date : 23/07/2024

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.