

ORDER BELOW EXH. 31

This is an application under Order VI Rule XVII of Code of Civil Procedure praying for amendment in Written Statement.

2. According to the defendant, while filing the present suit, the plaintiff has filed some documents alongwith plaint. The defendant has filed his written statement on previous date and matter was posted for T.I. Argument but suddenly at the stage of hearing, plaintiff had filed another documents with new story in said documents and so due to which it has become necessary to amend the written-statement to the respect of contents regarding the above documents. Due to above reason, defendant wants to amend his written-statement and want to add following line in para no. 9 sub para 3 in line no. 5 after the word “alleged date” on page no. 4 of WS : **“The plaintiff has filed some documents alleged to be complaint to Police which clearly shows that the relief of injunction claimed in present suit about crop is no more in existance.”**

3. The Plaintiff filed his say and opposed this application and contending that, the amendment application of defendant is false one only for prolong the matter T.I. hearing in para 9 no specific sub para in para no. 4 is mentioned by defendant therefore no any question arise to amend his para no. 4 of WS line no. 3 sub para 3. None over no any specific want to amend in his WS as a rutin defendant also explained in para no. 9 of his WS. Hence application may please be dismissed with heavy cost.

4. Following points arose for my determination to which my findings with reasons thereon are as under:

Sr. No.	Points for determination	Reasons
1.	Whether proposed amendment is necessary to determining real question in controversy between the parties?	Yes.
2.	What Order?	Application is allowed.

Reason as to point No. 1 and 2 :

5. Read application, say. Heard learned Advocate for defendant No. and plaintiffs and perused the record. Order VI Rule XVII of Code of Civil Procedure deals with amendment of pleading i.e. the Court may at any stage of the

proceeding allow either party to alter or amendment in pleading. In such manner, and on such terms as may be just and all such amendment shall be made as may be necessary for the purpose of determining real question in controversy between the parties. Provided that, no such amendment shall be allowed after trial has commenced unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial.

6. Proviso of Order VI Rule XVII of Code of Civil Procedure speaks about no application for amendment has to be allowed if the party files application or trial has commenced, unless the court comes to the conclusion that, the party could not have raised the matter before the commencement of trial.

7. Perusal of record shows that, present suit is for perpetual injunction restraining defendant from obstructing into the peaceful possession of the plaintiff over the suit property. Admittedly on filing of written statement below Exh. 22 matter was posted for argument on temporary injunction and instantly on 08.05.2024. The plaintiff filed application below Exh. 28 for production of documents alongwith list of documents containing four documents.

8. Considering ratio laid down by Hon'ble Supreme Court in the case of ***Usha Devi v. Rijwan Ahamd***, reported in (2008) 3 SCC 717 relevant paragraphs of the judgment cited supra and ratio are quoted as 7. Amendment of pleadings used to be one of the easiest things in the course of judicial proceedings before the amendments came to be made in CPC in the year 1999. It was felt that the provision for amendment of pleadings (Order 6 Rule 17) was greatly abused and it was one of the significant sources of delay in the judicial process. Accordingly, as per the recommendation of the Law Commission, the provision for amendment of pleadings was altogether deleted by Act 46 of 1999. The deletion of the provision led to widespread protests by lawyers and different legal bodies and as a result the provision was once again introduced, albeit with a rider, by Act 22 of 2002, with effect from 1-7-2002. In its amended form, Rule 17, Order 6 carries a proviso that bars any amendment after the commencement of trial unless the court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of trial.

9. As noted above, the trial court found and held that there was singular lack of due diligence on the part of the appellant-plaintiff inasmuch as the wrong description of the suit property was pointedly brought up by the defendants not only in the written statement but also in course of the proceedings of the miscellaneous case.

10. **13.** Mr Bharuka, on the other hand, invited our attention to another decision of this Court in *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498] . In para 17 of the decision, it was held and observed as follows : (SCC pp. 504-05) “17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings.”

11. **14.** Mr Bharuka also invited our attention to a three-Judge Bench decision of this Court in *Sajjan Kumar v. Ram Kishan* [(2005) 13 SCC 89] . In this decision too the proposed amendment related to correction of the description of the suit premises in the plaint. The amendment was sought on the plea that the description of the property given in the rent note itself was incorrect and the same description was repeated in the plaint and there would be complications at the stage of execution to avoid which the description of the suit premises as given in the plaint needed to be corrected. Another similarity with the case in hand was that the prayer for amendment was opposed by the respondent-defendant on the principal ground that although the defendant had taken the plea in the written statement itself that the suit premises were not correctly described, yet the appellant-plaintiff proceeded with the trial of the suit and did not take care to seek the amendment at an early stage. The trial court rejected the prayer for amendment and the High Court dismissed the civil revision against the order of the trial court. Allowing the prayer for amendment this Court in para 5 of the decision observed as follows : (*Sajjan Kumar case* [(2005) 13 SCC 89] , SCC p. 90) “5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in

exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. *It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.*" (emphasis supplied)

12. **15.** In view of the decision in *Sajjan Kumar* [(2005) 13 SCC 89] we are of the view that this appeal too deserves to be allowed. We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in *Sajjan Kumar* [(2005) 13 SCC 89] and following that decision the prayer for amendment in the present appeal should also be allowed.

13. **16.** As to the submission made on behalf of the respondents that the amendment will render the suit non-maintainable because it would not only materially change the suit property but also change the cause of action it has only to be pointed out that in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the respondent-defendants to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement.

14. **18.** This appeal is accordingly allowed. The orders of the trial court and the High Court are set aside and it is directed that the appellant may be allowed to make the proposed amendment in the plaint subject to payment of Rs 10,000 as cost to the respondent-defendants. In this case also temporary injunction order is passed against defendants.

15. Further as per provision contained in Section 35-B of Code of Civil Procedure which reads as (1) If, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit—(a) fails to take the step which he was required by or under this Code to take on that date, or (b) obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the Court, be reasonably

sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of— (a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs, (b) the defence by the defendant, where the defendant was ordered to pay such costs.

16. *Explanation.*—Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs. (2) The costs, ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons. Due to the conduct of plaintiff defendants are suffering hardship which has to be compensated in terms of money i.e. by means of cost.

17. Considering nature of amendment sought by defendant No. and to avoid multiplicity of litigation between the parties proposed amendment is necessary in the eyes of law. Considering the ratio laid down by Hon'ble Supreme Court in the case of Varun Pahwa v. Renu Chaudhary, (2019) 15 SCC 628 (equivalent citation) MhLJ 2019 (6) page no. 827. Para 9 of the judgment. After going through present case law Hon'ble Supreme Court allowed application for amendment by relying upon the ratio laid down in the case of Jai Jai Ram Manohar Lal (1969) 1 SCC 869. which reads as :- 9. In State of Maharashtra v. Hindustan Construction Co. Ltd. [State of Maharashtra v. Hindustan Construction Co. Ltd., (2010) 4 SCC 518 : (2010) 2 SCC (Civ) 207] , this Court held as under : (SCC pp. 525 & 527, paras 17-19 & 22) 22. In Jai Jai Ram Manohar Lal [Jai Jai Ram Manohar Lal v. National Building Material Supply, (1969) 1 SCC 869] this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held : (SCC p. 871, para 5) '5. ... Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated

for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

18. Hon'ble Supreme Court further stated : (Jai Jai Ram Manohar Lal case [Jai Jai Ram Manohar Lal v. National Building Material Supply, (1969) 1 SCC 869] , SCC p. 873, para 7) '7. ... The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. Inconveniency causing to plaintiffs can be curd out by imposing certain cost under section 35 of Code of Civil Procedure. Hence my finding to point no. 1 in the affirmative and in answer to point no. 2 I pass following order :

:-ORDER:-

1. The Application is allowed subject to payment of costs of Rs. 500/- (Five Hundred Rupees only) to be paid to the plaintiff.
2. Defendant is at liberty to amend the written Statement more particularly mentioned in para no. 3 of this application as prayed.
3. Defendant is directed to amend the written statement forthwith failing which application shall deemed to be rejected.
4. Application is disposed off in above terms.

Place :- Ardhapur.

Date :- 03-07-2024.

Sd/-

(Q. R. Syed)

Jt. Civil Judge Jr. Div. Ardhapur.