

MHND260007692023



ORDER BELOW EXH. 76

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

2. According to defendant no.5, the plaintiff is not entitled for decree of restoration of possession in respect of 82 R land in gut no. 191 of village Dabhad. Said aspects remain to be brought on record. Defendant no. 5 wants to carry out amendment in written-statement as stated in para no. 3 of this application. He wants to add some material facts and law points on record by way of amendment in written statement.

3. Plaintiffs filed their say below exh. 83 and opposed this application contending that present application is not maintainable. Defendant no. 5 filed present application with ill intention to prolong the matter and to cause delay in the decided the suit. She further contended that, defendant no.5 case for the relief against plaintiffs. Finally prayed to reject the application with heavy costs.

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.5 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. 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.

8. 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.

9. *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.

10. 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. Inconvenience causing to plaintiffs can be cured 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 plaintiffs.
2. Defendant No. 5 is at liberty to amend the written Statement more particularly mentioned in para no. 3 of this application as prayed.

3. Defendant No. 5 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 :- 09.10.2024.

(Q. R. Syed)
Jt. Civil Judge Jr. Div. Ardhapur.

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original order.

Name of the Jr. Clerk: A.V.Shahane

Court of : Jt. Civil Judge Junior Division, & JMFC Court No. 02, Ardhapur
Dist. Nanded.

Date of pronouncement of Judgment/Order : 09.10.2024

Judgment/Order signed by the Presiding Officer :09.10.2024

Judgment/Order uploaded on : 09.10.2024.