

ORDER BELOW EXH.52
(Passed on 10/03/2026)

This application is filed by the defendant for amendment of the written statement. Plaintiff filed say below Exh.53 and resisted the application.

2. Heard Adv. Shri. Kushwah for the defendant and Adv. Shri. Agrawal for the plaintiff. Perused application, say and evidence on record along with documents.

3. Adv. Shri. Kushwah orally submitted that during the pendency of the suit, plaintiff vacated the shop as it had fallen down and shifted her shop in the house of Rashida Begum near Bunkar Colony, Kamptee. This fact is required to be mentioned in the written statement. He further submitted that this fact must be added in the pleading of the defendant, so that the defendant can prove his case properly. He further submitted that during the cross-examination of the plaintiff, she admitted that the roof and the house is completely fallen down and only the front door is remained. Considering these admissions of the plaintiff during the cross-examination, it is required to brought on record the fact of falling of the house on record. He submitted that there will be no prejudice to the plaintiff if amendment is allowed and if it is not allowed, there will be multiplicity of the proceeding as well as the defendant will be thrown out of the court.

4. Adv. Shri. Agrawal argued that the application is false. He further submitted that the date and the period of the vacation of the shop

by the plaintiff and the falling down of the house is not mentioned by the defendant in the application. This shows that the application is vague. He submitted that the amendment if allowed comes in existence since the filing of the written statement. In such circumstances, it will prejudice to the plaintiff only. If the amendment is allowed, then plaintiff will be thrown out of the court. He further submitted that this amendment is in the nature of withdrawal of the admissions given by the defendant in his written statement. He further submitted that the trial is commenced, the evidence of plaintiff is already closed, the matter is for evidence of the defendant. This application is filed only to prolong the matter and as the date and time of vacation and falling down of suit property is not mentioned in the application, it is not having any merit. He further submitted that the special reasons for allowing the amendment after commencement of the trial have not been mentioned by the defendant. Therefore, he submitted to reject the application.

5. The present suit is filed by the plaintiff for declaration and injunction. The plaintiff prayed that direction be given to the defendant to open the lock of the said shop. It is further prayed that mandatory injunction be granted in favour of plaintiff against the defendants by directing the defendant to remove the wall constructed in front of the suit property.

6. I have carefully perused the written statement of the defendant below Exh.16. In the written statement, defendant has specifically pleaded in Para No.11 that the suit house is in most dilapidated condition and it may ruin at any time. The Municipal Council Kamptee stated to the defendant to demolish the suit house. Plaintiff filed

evidence below Exh.30. During the cross-examination, she has stated that, “साक्षीदार स्वतःहून सांगतो की ईमारतीचे छत व घर पुर्णपणे पाडले आहे. त्या ईमारतीचा फक्त पुढील दरवाजा शिल्लक आहे.” This admitted fact in the cross-examination shows that house property is fallen down. Apart from these, the plaintiff filed application below Exh.28 to restore her possession of the suit property. Necessary to mention here that application Exh.28 is not pressed by the advocate for the plaintiff on 12.12.2023. But the contents mentioned in the application is required to be taken into consideration as those are very much relevant as regards the factual aspects of the suit property. It is mentioned in para no.8 of this application that, “The defendant though having full knowledge of the judgment and decree of this Hon’ble Court had had take law in his hand, had create hurdle to peaceful possession of plaintiff. He also demolished suit room.” It is further mentioned in Para No.10 of application Exh.28 that, “The plaintiff is also ready to repair the suit shop but defendant deliberately evict her without following due procedure of law, therefore it is necessary to restore her possession to suit shop.” These admissions coupled with the admissions in the cross-examination shows that suit property is fallen down. In such circumstances, whatever the amendment prayed by the defendant is actually in the form of addition in the written statement for explanation of the certain facts happened after filing of the suit which are specifically admitted by the plaintiff as regards the falling of suit house.

7. Considering these circumstances, the amendment seems to be necessary. The fact which are prayed by the defendant as regards falling of the suit property by way of amendment are already admitted by the plaintiff. In such circumstances, there will be no prejudice to the plaintiff.

As regards shifting of the shop by plaintiff, defendant must have lead the evidence to prove the fact and plaintiff will get the chance to cross-examine on this point. Therefore, there will be no prejudice to the plaintiff.

8. As regards the due diligence, the defendant has filed this application after so much delay. This delay can be compensated in the terms of cost to be paid to the plaintiff. Permission to amend the written statement will not prejudice to the plaintiff but if application is rejected, it will definitely prejudice the rights of the defendant. Hence, the application is required to be allowed awarding cost to the defendant. Hence, I pass following order.

- ORDER -

- 1] The application is allowed subject to the cost of Rs.500/- to be paid to the plaintiff on or before next date.
- 2] Defendant is allowed to amend the written statement on or before next date as prayed in the application after payment of cost and file amended copy of the written statement.

Kamptee
Date : 10/03/2026.

(Mohan R. Kamat)
Civil Judge, Junior Division,
Kamptee.