

ORDER BELOW EXH.49 in RCS No. 52 / 2013
(Passed on 02.09.2016)

1) Application is for amendment of written statement. Perused say (Exh.51). Heard arguments advanced by learned advocates representing both sides at length.

2) This is the application for amendment of written statement under Order 6 Rule 17 of Code of Civil Procedure. Some contents as to addition of para 14a relates to cause of relinquishment deed which is previously also narrated to be illegal document. Some explanation is prayed by this proposed amendment. Same is supported with affidavit. Hence now, Defendant no. 1 want to add these facts in his written statement.

3) Plaintiff in say opposed application by submitting that the proposed amendment is not tenable under law. Evidence as trial is commenced in this suit, so amendment cannot be allowed. He relied on Chandrashekhar Pandurang Tumsare vs. Dr. Balkrishna Shivkaran Changani, 2016 (4) Mh.L.J. 389 wherein it was held that party has to show that despite due diligence, amendment application could not be carried earlier. Hence, he prayed to reject the application.

4) Keeping in mind the settled position, it is not necessary for this court to go in proof of amendment sought. Proof of facts is not to be looked at this stage. Proposed amendment will help adjudication of suit on merits. Only explanation of earlier plea is sought and no much new defence is raised. Basic nature of the suit will not be changed, if application is allowed. Party has shown that how after evidence of Plaintiff witness, some new facts came to knowledge which will explain facts on record. So with great respect, no reliance is placed on Chandrashekhar ratio as it is not applicable to facts of present case.

5) In fact, no prejudice will be caused to Plaintiff. Same is necessary for adjudication of real dispute between parties. Inconvenience caused to Plaintiff can be compensated by costs. Hence I proceed to pass following order as under.

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ORDER

1) Application (Exh.49) is allowed as prayed subject to costs of Rupees Two Thousand only to be paid to Plaintiff for causing inconvenience to him.

2) Defendant no. 1 is then directed to carry out amendment in written statement (Exh.11). He is also directed to supply copy of his amended written statement on record and to the parties.

Saoner.

Date : 02.09.2016

Gajanan G. Soni

CJJD, Saoner.

C E R T I F I C A T E

“I affirm that the contents of this P.D.F. File of order are word to word, as per original order.”

Name of Stenographer: N. B. Payade