

**ORDER BELOW EXHIBIT- 25**

The present application is moved by plaintiff for amendment of plaint.

02 Read application and say. Heard learned Adv. R.G.Waje for the plaintiff and learned Adv. N.H.Katore for the defendant. Following point arise for determination for which I have given my findings for the reasons stated thereafter :

Sr. No.	Issues	Findings
1.	Whether plaintiff is entitled to amend the plaint ?	...Yes
2.	What order ?	...Application is allowed

REASONS

03 Learned Adv. R.G.Waje argued as per contents in the application. He submitted that inadvertently the plaintiff has not made alternative prayer for refund of earnest money. The amendment can be allowed at any stage. It would not change nature of the suit. No prejudice would cause to the defendant.

04 On the other hand the learned Adv. N. H. Katore argued that as contended in reply. He submitted that the suit is filed long back. The plaintiff has not shown just and reasonable cause to amend the plaint at this stage. The application is filed only to prolong the matter. The amendment will change the nature of the suit. He prayed for rejection of the application.

05 I have considered argument advanced by both parties. I have also gone through the contention of both parties.

06 In case of **Praveen Champatrao Revatkar vs. Hanuman Surajmal Sharma, 2018 (4) Mh.L.J. 837**, wherein it is held that, “Under the provision of Section 21 (5) of the Specific Relief Act, no compensation can be awarded in as suit for specific performance of a contract unless such a claim for compensation has been made in the plaint. If such claim has not been made in the plaint, the Court shall at any stage of the proceeding allow the plaintiff to amend the pleadings on such terms as it deems fit to include a claim for compensation. The proviso to section 21(5) of the said Act is couched in mandatory form and it stipulates that the Court shall at any stage of the proceedings allow the plaintiff to amend the plaint. The relief of compensation was being sought as an alternative relief. The cause of action for filing the suit was when the defendant refused to complete the contract and therefore as the plaintiff sought the amendment as an alternative relief, no error was committed by the trial court while allowing the same.

07 The plaintiff has instituted suit for specific performance of contract on dated 14.12.2021. The defendant has appeared and filed written statement at Exh.23. Thereafter, the case is posted for hearing of Exh.5. Thereafter, the plaintiff has moved this application.

08 However, as discussed in rulings relied by parties, the amendment can be allowed at any stage of the suit. Further, it is clear that the proposed amendment would not change cause of action or nature of the suit. Therefore, if the application is allowed, other party would get opportunity to put his case by filing additional written statement, if any, and also to cross-examine plaintiff witnesses, if any.

Therefore, no prejudice would cause to the other party, if the application is allowed. Moreover, whether the plaintiff is entitled for specific performance of contract or for refund of earnest money can be decided on merit, after final hearing of both parties. Therefore, to decide case on merit, and to avoid multiplicity of litigation, and to decide all dispute between parties in single proceeding, the amendment is necessary. Moreover, it would be helpful in deciding the real controversy between the parties. The defendants can be compensated for the delay caused.

As to Point No. (2) :

09 As stated above, the plaintiff is entitled to carry out the proposed amendment. Therefore, this application is entitled to be allowed. Hence, I proceed to pass the following order:

ORDER

1. The application Exh. 25 is allowed.
2. The plaintiff is permitted to carry out the amendment within limitation period, subject to condition that he shall pay Rs.200/- to the defendant.

Date - 12.02.2025

(Manjusha M. Alone)
Jt. Civil Judge Junior Division
Igatpuri