

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION AT
GANGAKHED DIST. PARBHANI
(Presided over by Shri G.B Yadav)

SpCS No. 04/2026

Rahila Begum W/o. Atta-ur-rehman & ors
Vs
Madhusudan Manikrao kendre & ors

ORDER BELOW EXH. 44

1 Perused the application and say filed on behalf of defendants. Heard Adv. K.S. Daithankar for plaintiff and Adv. S.D. Tarkase for defendants. It is contended on behalf of plaintiff that Due to tyrographical mistake, oversight and due to previous suit mistakes were taken place in the pleading, if it is corrected neither it is going to change the nature of suit nor it will cause any prejudice to the defendent. Moreover the proposed amendment and amenment in application at Exh. 31 and 36 are different therefodre learned advocate requested to allow the application. Ld Advoate relied upon judgment of Hon'ble Bombay High Court in Dagu Gangadhar Dongre Vs Gopinath Mahadu Thore 2019 (1) Mh.L.J. 375.

2. Learned Adv.for defendnats strongly opposed and submitted that the proposed amenment is not at all necessary for determining the real question in controversy and it is the same which were rejected in Exh. 31 and 36 therefore application liable to be rejected.

3. Before proceeding further it is necessary to mention here that All amendments which are necessary for the determination of real questions in controversy between the parties are required to be allowed, unless the

proposed amendment has the propensity to cause irretrievable prejudice to the adversary. The considerations like the proposed amendment would completely alter the nature and character of the suit, the relief sought to be claimed by way of proposed amendment is barred by law of limitation, the proposed amendment, if permitted would embrace the trial, are few of the important factors, which also weigh in the exercise of the jurisdiction.

4. It is also well settled that at the stage of the consideration of the application for amendment in the pleading, the merits of the proposed amendment are not required to be delved into. More liberal approach is warranted where the defendant seeks amendment in the written statement as the potentiality of prejudice to the plaintiff is relatively less. The defendant is also entitled to take inconsistent defences and alternative pleas more freely than the plaintiff. The stage at which the amendment is sought assumes significance where the case is covered by the proviso to Order VI Rule 17 of the Code. The proviso envisages, that the Court shall not allow an application for amendment after the trial had commenced unless it comes to the conclusion that, in spite of due diligence, the party seeking the amendment could not have raised the matter before the commencement of the trial. In a sense, the element of due diligence and satisfaction by the Court about its existence, is a jurisdictional condition to permit the amendment in the pleadings after the commencement of the trial.

5. Keeping in mind the above settled principle of law and upon scrutiny of fact and circumstances of the case at hand it seems that prior to this twice application for the amendment of pleading was rejected at exh 31 and 33. But the proposed amendment in the present application and previous

application not seems to be similar. It is pertinent to note here that while passing order below application for continuation of status quo order dated 07.05.26 and 11.05.2026 this court has made observation about the incorrect pleading and therefore such application seems to have been made. It is an opportunity to correct the mistakes which are inconsistent with the documents on record and if it continued to be incorrect then the matter in question or controversy will not be decided effectively.

6. It is also pertinent to note here that suit is at the stage of deciding application for interim injunction therefore question of commencement of trial does not arise. The proposed amendment is not going to change the nature of suit and will not cause any prejudice to the Opponent therefore I proceed to pass following order.

ORDER

- 1 Application is allowed.
- 2 Plaintiff to carryout the amendment in the plaint and submit amended plaint on or before next date.
- 3 Next date will be for argument on Exh. 5

Date: 19th June 2026

(Gajanan B. Yadav)
Civil Judge Sr. Dn. Gangakhed