

ORDER BELOW EXH. 51 IN RCS NO.173/2016

1. The present application is filed by the defendants under Order VI Rule 17 of Civil Procedure Code for amendment in the written statement .

2. According to the defendants, they have filed their written statement below Exh 26. By way of this application defendants wanted to make following amendments :-

I) In this written statement defendants have pleaded about the forgery of alleged document. It is further submitted that certain documents were not available at the time of filling written statement. Since those documents become available to defendants after filling written statement. Therefore, to plead those facts which came into knowledge after availability of those documents proposed amendment is necessary to explain the factual matrix.

ii) It is further contended that after court commission they got to know the exact length and width of shop unit i.e. suit property. Therefore, by way of proposed amendment they wanted to correct the length and width pleaded wherever in the written statement.

iii) It is further contended that certain facts which are related to financial position and family background of the defendants required to be pleaded by way of proposed amendment.

On the basis of these circumstances defendants wanted to amend their written statement.

3. Plaintiff opposed present application by filling his say below Exh 56. It is contended by him that the present application is filed to fill up the lacuna in the written statement. There is no subsequent development. It is further contended that there is no reason to file present application. It

is also contended that application is filed only by defendant no 5 and he has no authority to file it for all defendants. On this ground plaintiff prayed for rejection of the application.

4. Heard both the sides at length. Perused application, say and documents on record. Considering rival contention of both the sides following points arose for my determination and I have record my findings to them for the reasons to follow-

Sr. No	POINTS	FINDINGS
1	Whether proposed amendment is deserves to be allowed ?	In the affirmative
2	What order?	As per final order.

REASONS

AS TO POINT NO. 1 and 2

5. It is necessary to show by defendant whether the proposed amendment is necessary to determine real question in controversy between the parties. It is seen from the application that defendants have placed certain facts which are relevant to facts in issue. Defendants have produced following Judgments of Hon'ble Higher Courts -

(a) 2016 AIR CC 1895 (HYD)

J. Yadgir Reddy and others V. J. Hemalatha and others.

(b) 2016 (5)Bom. C.R. 83

Antonio Todoro Marques alias Anthony

Theodore Marques V. Eleuterio Socorro Marques alias

(c) State of U.P. And others Vs. Ashok Kumar and others

(d) State of A.P. And Ors vs. M/S. Pioneer Builders, A.P.

(e) A.K. Gupta and Sons vs. Damodar Valley Corporation.

- (f) Jeremias Serafino Basilio Rodrigues Vs. M/s. P.V. Builders,
Through Its Prop. Mr. Philip Vaz.
- (g) 2016 (03) MDBHC 60
Ahilyabai Holkar Trust Vs. Audumber Nikate and others
- (h) 2016 (05) MDBHC54
Ralin De Souza Vs. Goa Basketball Association.

I have perused the ratio of these Judgments and guidelines given by respective Hon'ble Courts. I am most respectfully state that I am relying on guidelines given in above Judgements, but facts of all these judgments are different than that of facts in the present case in hand. All these judgments are showing liberal approach while deciding application for amendments in pleadings. In present case defendants are adding some facts and trial yet not begin in true sense. Plaintiff also has not objected this application on merits but he has taken objection on procedural ground. It is also contended by defendants that some of the facts came to know to them after obtaining certain documents from licence authority of Medicine Shop. On this ground a fair opportunity required to be given. Hence, I am of the opinion that allowing this application will be helpful to court in finding the facts. Also it is seen from proposed amendment that defendants are not changing their line of defence but only explained the factual aspects and clarify the pleadings for bringing facts on record is always permissible. If this application is allowed then there will be no prejudice to the plaintiff. Defendants have filed Power of Attorneys with list of document below Ex. 60 of defendant No. 1 to 4 and 6 to 10. Therefore the objection of plaintiff regarding lack of authority to defendant No. 5 is not sustainable. Hence I am going to allow the present application and I proceed to pass following order-

ORDER

1. The application below Exh 51 is hereby allowed.
2. Plaintiffs to carry out the amendment within 14 days from the date of this order.
3. Plaintiffs shall file copy of amended plaint on record within 14 days from this order.

Date :01/12/2016

(Shri. P. G. Lambe)

3rd Jt. Civil Judge Jr. Division, Daund