

CNR MHRG06-000852-2014

ORDER BELOW EXH. 18 IN RCS NO. 131/2014

(Passed on 20/08/2018)

1. This application is filed by plaintiff for amendment in the plaint.

2. It is argued that, Nippon Ispat Private Limited Company was now take over by J.S.W. Private Limited Company. Consequently, all assets, liabilities, rights, duties and all transaction of Nippon company has been merged into J.S.W. Company Limited. Therefore, there is no more existence of Nippon Ispat Private Limited Company. In these circumstances, plaintiff prayed that, J.S.W. Private Limited Company may be substituted in place of Nippon Ispat Private Limited Company, as party defendant.

In my view the propose amendment does not change nature of the suit. The amendment is not inconsistent with the contents in main suit. If propose amendment would have been allowed it will not cause prejudice to the defendant or not it create any new cause of action. Application is required to be allowed to avoid multiplicity of proceeding. Propose amendment is in connection with the subsequent event which is alleged to be happened after filing of the suit. Therefore, it cannot be said that propose amendment is within knowledge of plaintiff and consequently there is no question of awarding costs to the other side.

As held by their Lordship the Hon'ble High Court in the case *Chandrakant V/s. Nandalal, reported in 2018(3) Mh.LJ page no.165.*

“Para 6-Learned counsel for the respondent relied on the judgment of the Supreme court in the case of Ravjeetu Builders and Developers

V/s. Narayanswamy and Sons and ors., reported in 2009 Mh.L.J. online (S.C.12)=(2009) 10 SCC 84. Relying on this judgment, it is submitted that the amendment sought by the plaintiff in the present case does not satisfy the principles laid down by the Supreme court. In Revajeetu Builders and Developers V/s Narayanswamy and Sons and ors. (supra), the Supreme court, after analyzing English and Indian cases, laid down the following six basic, principles, which ought to be taken into consideration whilst allowing or rejecting an amendment. These principles are as follows :

- “(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
- (2) Whether the application for amendment is bonafide or malafide?
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

This case law is perfectly applicable to the present facts of

this case. There is no hesitation in my mind that proposed amendment will not change nature of the suit. Defendant has opportunity at the time of trial to put his defence. He can file consequential written statement. To conclude, I passed following order.

ORDER

- 1) Application is hereby allowed.
- 2) plaintiff shall carry out amendment immediately and shall furnish fresh copy of plaint along with copy for defendant on record.

Sd/-

Pen
Date-20/08/2018

(V.V. Kulkarni)
Civil Judge, Jr. Division Pen
District- Raigad.