

MHRG110005322023



ORDER BELOW EXH. 43 IN R. C. S. NO. 325/2023.
(Passed on 01.10.2024)

This is an application filed by the plaintiff under Order VI Rule XVII of the Code of Civil Procedure. Proposed amendment is relates to remove the words “ the Maharashtra Rent Control Act” and insert the word “the Transfer of Property Act and add provisions thereof”.

2. It is contention of the plaintiff that the plaintiff is still a month-to-month tenant of plots 1, 3 and 4 on the north side of the first floor of the suit property, a decree should be passed against the defendants and the defendants should reinstate plots nos. 1, 3 and 4 on the north side of the said suit property, an order should be made against the defendants that the plaintiff should be given possession of the suit property. Also the defendants, by themselves or through anyone else, should not in any way interfere with the plaintiff in running a dispensary in his ground floor tenancy and should not demolish the ground floor structure, Such a continuous injunction should be issued against the defendants, similarly, an injunction order should be issued against the defendants that the defendants should put up the roof of the plaintiff's said garage on the ground

floor and restore the electricity supply to the plaintiff's garage and other related demands

3. Further the plaintiff contended that, the defendants appeared and filed their written statement and challenged the suit. There were some technical errors and typographical errors in the plaint, provisions of the Maharashtra Rent Control Act are not applicable to Mangaon city. However, the suit has wrongly cited the Maharashtra Rent Control Act instead of the Transfer of Property Act. Therefore, it has become necessary to amend the plaint accordingly. For the above reasons the plaintiff has requested that the amendment be allowed in the plaint.

4. The defendants have filed their say at Exh.48 they opposed the present application. The defendants submitted that it is not clear whether the plaintiff's application is for amendment of pleadings or striking out of the pleadings. Because amendment of pleading and strike out of pleading are two different legal concepts. If so, the plaintiff's application is not valid. There is no provision in the Act to file a single application for both these reasons. Therefore, the application should be canceled.

5. The defendants further submitted that in the clauses 4, 10, 12 and 17 of written statement have made clear statements regarding the legality of the plaintiff's suit and sought proof of their legality. The Plaintiff's pleadings are not technical typographical errors. But, the plaintiff's

ignorance of the law. In such a situation, if the plaintiff's application is granted, the rights acquired by the defendants will be breached and the defendants will suffer irreparable damages and loss.

6. Before the defendants filed their written statement, the plaintiff has made amendment regarding the sale deed in the suit on 13/06/2022. The defendants further submitted that if the contentions of the suit due to a technical or typographical error, the plaintiff should have amend said contends before filing written statement of the defendants. But, the plaintiff has not done so. After filing written statement of the defendants, after seeing the written statement of the defendants, the plaintiff was convinced that his suit was illegal, so the plaintiff has filed a present application to compensate for his own defects in the suit. On this ground the application deserves to be canceled.

7. After a period of three months has passed after the defendants have filed written statement the present application has been filed. The amendment sought by the plaintiff is illegal and the amendment would change the nature of the suit and would prejudice the rights of the defendants. The defendants have contended that the application filed under Order VII Rule 11D of the Code of Civil Procedure should be tried first. The defendants prayed that the plaintiff's application be dismissed with costs on all the above grounds.

8. Considering the contentions in the application and submissions of rival parties, following points arise for my determination which are produced along-with my findings thereon, for the reasons stated as under :

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff proves that proposed amendment is necessary for the purpose of determining the real question is controversy between the parties ?	...Yes
2.	Whether the proposed amendment will change the nature of suit?	...No
3.	What order ?	... As per final order.

REASONS

As to Point Nos. 1 and 2 :-

9. As these points are closely interlinked, it shall be more appropriate to discuss them together. At the outset, it is worthwhile to discuss the provisions of Order VI Rule XVII of the code and judgment of the Hon'ble Court -

Order VI Rule XVII : Amendment of Pleadings :
The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be

made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

10. Above said Provisions gives power to the civil court to allow parties to alter, amend or modify the pleadings at any stage of proceedings. But the court will allow amendment only if this amendment is necessary to determine the controversy between the parties. The purpose of this provision is to promote ends of justice and not to defeat the law. The Proviso of Order VI Rule 17 states that court will not allow application of amendment after the trial has been commenced unless court comes to the conclusion that party did not raise the relevant facts before the commencement of the trial. This proviso gives discretionary power to the court to decide on the application of pleadings after the commencement of the Trial.

11. At the outset it is worthwhile to mention here that in the schedule of the Maharashtra Rent Control Act, 1999 states that the provisions of the said Act are not

applicable to the area of Mangaon. Therefore, the provisions of the Indian Transfer of Property Act are applicable to the area around Mangaon for rental transactions.

12. The learned counsel of the defendant relied on following judgments of the Hon'ble Apex court and the Hon'ble High court.

a. In the case of M.Revanna vs Anjanamma (Dead) By Lrs. CIVIL APPEAL NO. 1669 OF 2019, decided on 14 February, 2019. The Hon'ble Apex court held in para no.5 as "Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to order VI Rule 17 of the CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings

to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is bona-fide or mala-fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

b. In the case of Alkapuri Coop. Housing Society Ltd vs Jayantibhai Naginbhai(D) Thr.Lrs, AIR 2009 S.C 1948, 2009 (3) SCC 467. decided on 9 January, 2009. The Hon’ble Apex court held that, there cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit.

Applicability of above principles:

In the above judgments the application of amendment was filed after trial commenced. But, in the present matter the trial yet to be commenced and matter is at initial stage. Hence, the principle laid down by the Hon’ble Apex court not applicable in present suit.

c. In the case of Shanti Kumar R. Canji vs The Home Insurance Co. Of New York, civil appeal No..1991/1971 on 24 July, 1974.

In the above judgment, an application seeking an amendment of the plaint was allowed, but on appeal, that order was set aside. On further appeal to the The

Hon'ble Apex court it was contended that no appeal would lie under clause 15 of the Letters Patent against an order allowing an amendment of the plaint. In dealing with this question, The Hon'ble Apex court pointed out that in finding out whether any decision is a 'judgment' within the meaning of clause 15 of the Letters Patent, each case must be looked into to ascertain whether there is a decision determining the rights or liabilities of the parties affecting the merits of the controversy and it also puts an end to the proceedings so far as the court dealing with it is concerned.

The Hon'ble Apex court considered the effect of an order passed by the trial Judge allowing amendment of the plaint and the question at issue was whether such an order would be a judgment within the meaning of the Letters Patent.

Applicability of above principle :

The present suit at initial stage, trial yet to be commenced, facts of above judgment and fact, circumstance of the present suit is different. Hence, the principle laid down in above judgment is not applicable in the present matter.

d. In the case J. Samuel & Ors vs Gattu Mhesh & Ors, CIVIL APPEAL NO. 561 OF 2012 (Arising out of SLP (C) No. 8985 of 2011, decided on 16 January, 2012. The Hon'ble Apex court observed that the entire object of amendment to Order VI Rule 17 as introduced in 2002 is to

stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delay in filing the application. It is further observed by the Hon'ble Apex that the claim of typographical error / mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to in any event, omission of mandatory requirement running in three to four sentences cannot be a typographical error as claimed by the plaintiff.

Applicability of above principle :

In the above judgment after filing written statement by the contesting defendants, the trial of the suit commenced and admittedly both parties adduced the evidence on their behalf and arguments on behalf of both the sides were heard and completed, thereafter the plaintiff filed the application of amendment on ground of type mistake. The present suit at initial stage, trial yet to be commenced, facts of above judgment and fact, circumstance and stage of the present suit is different. Hence, the principle laid down in above judgment is not applicable in the present matter.

*e. Globela Pharma Private Limited vs Jigar Thakar
Sole Proprietor Of M/S, SPECIAL CIVIL APPLICATION NO.
6595 of 2023, decided on 9 November, 2023.*

In this judgment the amendment sought by the defendant that he was using the trademark since 2005 as per his earlier case, has to be viewed also in the context that the case of the plaintiff about user since 2006 did not receive a specific denial in the original written statement. The date of user is an important aspect in the trademark suit. The case of the plaintiff that he was using the trademark since 2006, when not initially controverted, but by way of amendment, it was sought to be superseded by the defendant that his user was 2005.

The Hon'ble Gujrat High court held that the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favour of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken.

Applicability of above principles :

It is clearly appeared that in the above

judgment the application of amendment was made by the defendant. However, in the present suit the amendment application moved by the plaintiff, further in above judgment the matter relating to Trade Mark law, fact and circumstances of the above judgment and present suit is totally difference. Hence, the principle laid down in above judgment is not applicable in the present matter.

13. The learned counsel of the plaintiff relied on following judgments of the Hon'ble Apex court and the Hon'ble High court.

a. In the case of Jayanti Roy Versus Dass Estate Pvt. Ltd. Civil appeal No.3189/2002, decided on 30th April 2002 the Hon'ble Apex Court held that if there is no material inconsistency between the original averments and those proposed by the amendment, application for amendment should be allowed.

b. In the case of Shashikant Shankar Jadhav vs State of Maharashtra. Writ petition No. 12545 of 2022, decided on 9 December, 2021. The Hon'ble Bombay High Court held that, where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it

had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

c. In the case of S. Malla Reddy vs M/S Future Builders Co-Op.Sty. & Ors. Civil Appeal No.3914 of 2013, decided on 18 April, 2013. The Hon'ble Apex court held that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

14. Aforesaid principles laid down by the Hon'ble Apex court and the Hon'ble High court is helpful to the submission of the plaintiff.

15. The purpose and object of Order VI Rule XVII of the C. P. C. is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hyper technical approach. Liberal

approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties.

16. In the present case, it appears that, the plaintiff felt that the Maharashtra rent control Act is applicable in Mangaon but as said Act is not applicable in Mangaon. Therefore, the provisions of Transfer of property Act apply to the rental transaction at Mangaon. The plaintiff stated that the Maharashtra Rent Control Act has been mentioned in the plaint due to technical error.

17. In the light of aforesaid discussion and ratio laid down by the Hon'ble court in above judgments, I am of the opinion that, there is no material inconsistency between the original averments and proposed amendment, matter is at initial stage, trial yet to be commenced. It appears that application moved at proper stage. If proposed amendment is allow, it will not change the nature of the suit, only provisions of the Transfer of property Act and its provisions are to be added instead of the Maharashtra Rent control Act and its provisions in the plaint. if the proposed amendment is allowed, no prejudice will be caused to defendants, it will be helpful for proper adjudication of rights of the parties and to avoid the multiplicity of proceedings so also to determine the real controversy between the parties

18. The inconvenience caused to the defendants due to delay can be compensated by imposition of sufficient costs. So far as, delay in filing written statement and say is concerned, by awarding costs to the defendants, it will suffice the purpose. In such circumstance, it is just and proper to allow application. Hence, I answer point No. 1 in the positive and point No. 2 in negative accordingly.

AS TO POINT NO. 3 :-

19. Hence, on the backdrop of above discussion and in answer to this point, I pass the following order :

ORDER

1. Application is hereby allowed subject to cost of Rs. 12000/- (Twelve Thousand Rupees only) be paid to the plaintiff on or before next date.
2. The plaintiff shall carried out proposed amendment on or before next date.
3. Cost amount if paid it be given to the defendants.

Mangaon,
Date : 01.10.2024.

Sd./-
(G. C. Fulzalke)
Jt. Civil Judge, Junior Division,
Mangaon, Dist. Raigad.