

ORDER BELOW Exh.27 IN REG.CIVIL SUIT NO.181/2012

Ramesh Pilani ... Plaintiff
Vs.
Jagannath Joshi & ors. ... Defendants

Perused application filed by plaintiff at Exh.27. Suit is exparte against defendant no.s 1, 2, 3 & 5 to 9 and abated against defendant no 4 hence, say of defendants not called.

2. Heard Ld. advocate for the plaintiff.

3. This is an application for amendment in the plaint under Order 6, Rule 17 of C.P.C.

4. According to the plaintiff he has filed suit for specific performance of contract against the defendants. The plaintiff was issued notice to the defendants on 10/03/2012 to perform the contract. Even also plaintiff in the plaint mentioned he was issued letter on 29/01/2007. The plaintiff want to clarify some things already mentioned in the plaint. Hence he prayed for amendment.

5. Before going to the discussion it is necessary to see provision of Order 6 Rule 17 of Code of Civil Procedure.

Order 6, Rule 17 – 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 question in controversy between the parties.

6. On reading of above provision it appears 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 question in controversy between the parties. But the proviso to the above said section shows 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.

7. On perusal of plaint and documents on the record it appears that suit is *exparte*. Affidavit of examination-in-chief is filed but yet documents are not proved. On perusal of plaint it appears that the suit is for specific performance of contract. The dates mentioned in this application and the contents of this application also mentioned in the plaint. The plaintiff want to just clarify the things mentioned in application and he wants to amend schedule in para 4 and 5 of this application.

8. The purpose and object of Rule 17 of Order 6 – the court should make all endeavours to avoid multiplicity of litigation

and protraction of the trial in a suit. The purpose of allowing amendment is to set arrest the controversy in the same suit. The intention of the legislature in framing Rule 17 of Order 6 of the Code of Civil Procedure is to encompass the subsequent events, if they can be connected with the original cause of action, and to permit the amendment of pleadings for effective adjudication of all controversial issues in the trial of same litigation. The proposed amendment could not be disassociated from the original claim which is based on the same contract between the parties.

9. It is also settled law that Court should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to other side.

10. In the present suit plaintiff has already mentioned about the dates and cause of action in the plaint. But through this proposed amendment plaintiff want to clarify the contents of plaint. It appears that amendment being mere clarificatory in nature liable to be allowed, delay in moving application would also not be material since proceedings were still not at trial stage.

11. Considering above reasons it appears that through this proposed amendment plaintiff just want to clarify contents in the plaint. The amendment is bonafied. If the proposed amendment is allowed the nature of the suit would not be changed. Even cause of action also would not be changed. To avoid multiplicity of suit it

is necessary to amend the plaint. Hence, I proceed to pass the following order -

ORDER

1)	Amendment Application (Ex.27) is hereby allowed.
2)	The plaintiff is hereby directed to carry out amendment within prescribed time & file the amended plaint.

Uran
Date : 26/04/2018

(A.B. Chavan)
Judicial Magistrate F.C., Uran.