

Order Below Exh. 99 in Civil Miscellaneous Application No.32/2019
(CNR No.MHSN020004102019)
(Gabrial Namaji Mohite and Ors.Vs. Kondiba Subarao Awale and Ors.)

This is an application under Order-VI Rule-17 of the Civil Procedure Code for amendment in written statement.

Abridge facts required for decision of the application are as under:-

2. It is contended that, original application has been filed for restoration of R.C.S.No. 461/2014 which was withdrawn on 14/01/2019. R.C.S.No. 461/2014 was filed jointly by present applicants and respondent Nos.1 and 5 to 12 and respondent No.2 and 4 for declaration and injunction. In said suit in para no.1 of the plaint it is mentioned that, the suit has been filed by respondent No.1 as oral power of attorney holder and no written power of attorney is in existence. However, applicant No.1(A), 2(A), 3(A), 7, 6(A), 12(A) had given power of attorney to respondent No.1(A) in present petition on 29/01/2013. On the basis of said power of attorney R.C.S.No.461/2014 was filed. Therefore, to bring this fact on record amendment is necessary to be carried out in para No.4(A) of main petition (Exh.1). The amendment sought for will not cause any prejudice to the respondents. But, if it is rejected then it may result in to irreparable loss to the applicants. Hence, on all these grounds the applicants prayed for allowing the application.

3. Respondent No.4 submitted his say to application under consideration at Exh.104 and had denied all the contents in the application. It is contended that, application being devoid of merit is required to be rejected at the threshold. Further it is contended that, along with application under consideration the power of attorney which is produced by the applicants is forged and bogus and it has no concern

with R.C.S.No.461/2014. The document which is produced on record by the applicants can not be termed as power of attorney as well. No such power of attorney was executed. There is specific contention in the application that there was oral authorization/power of attorney. When respondent No.4 moved application vide Order VII Rule 11 (a) and 11(d) of the Code of Civil Procedure, application under consideration has been moved to fill up the lacunas. When application under Order VII Rule 11 of the Code of Civil Procedure is pending application under Order VI Rule 17 of the Code of Civil Procedure is can not be considered, which takes away the grounds of defence available to the respondents. Hence, on all these and other grounds respondent No.4 prayed for rejection of the application.

4. Heard both learned advocates. In support his argument learned advocate for respondent No.4 relied upon the decision of Hon'ble Apex Court in the case of ***M. Revanna Vs. Anjanamma (Dead) by Lrs. And Ors.2019 0 Supreme (SC) 160***, I have gone through the decision relied upon respondent No.4, in this decision Hon'ble their lordship has observed that,

“Leave for amendment of plaint cannot be allowed after commencement of trial unless court is satisfied that in spite of due diligence, party could not have raised the matter before the commencement of the trial. Further, leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit-Or, is mala fide money-Instantly suit filed in 1993- Defendant No.4 to 6 not made parties-They making application for dismissal of the suit-Application for amendment of plaint filed on 01.09.2008 on the basis of a memorandum of partition allegedly executed in 1972-By

that time, the evidence of both the parties had been recorded and the matter was listed for final hearing- Nothing prevented plaintiffs making the necessary averment in the plaint itself filed in 1993-Held, application for amendment not only belated but also not bona fide- If allowed, would change the nature and character of the suit and would lead to a travesty of justice, inasmuch as the Court would be allowing Plaintiff Nos.1 to 5 to withdraw their admission made in the plaint that the partition had not taken place earlier- Granting permission for amendment of plaint at this stage would cause serious prejudice to Plaintiff No.6/Respondent No.1”

Whether these observations of Hon’ble their lordship will be applicable in case in hand or not will be discussed in further paras of the order.,

5. First and foremost objection taken by the respondent No.4 to application under consideration is when application under Order VII Rule 11 of the Code of Civil Procedure is pending application under Order VI Rule 17 of the Code of Civil Procedure can not be considered to fill up lacunas or to take away the grounds which were available to the respondents for claiming rejection of the plaint.

6. As far as this objection is concerned in catena of decisions Hon’ble Apex Court has held that, It is only after amendment application is allowed that the court must examine whether the plaint requires to be returned or rejected. In this regard I would like to rely upon the judgment of Hon’ble Apex Court in the case of

1. ***Ganganaml Ramchand Vs. The Hongkong and Shanghai Banking Corporation, AIR 1950 Bom 345 and of***

2. ***Devichand Ratanchand Solanki and Anr. Vs. Premshankar Shivram Bajpai, 1994 Mh.L.J..1001,***

7. Further it has also been held in many decisions that, it is not in every case that the court would consider the amendment applicant first and the application under Order VII Rule 11 of the Code of Civil Procedure for rejection of plaint or under Order VII Rule 10 of Code of Civil Procedure for return of plaint that,

“the Court would consider the amendment application first, and then consider the application Order 7 Rule 11 for rejection of plaint or under Order 7 Rule 10 CPC for return of plaint. The correct approach that the Court would have to follow would be to examine the plaint as it stood when filed, and consider whether on a holistic reading of the plaint, the Court totally lacked or inherently lacked jurisdiction to entertain the suit. If it did, it may not be appropriate for the Court, if it inherently lacks jurisdiction, either because the statute bars its jurisdiction or where the statute confers jurisdiction to try particular types of suits before a different forum, to allow an amendment application and bring a suit within its jurisdiction.”

8. But, this difference of opinion is in respect of the case is, where there is question of jurisdiction of the court. In this regard here I would like to rely upon the decision of Hon’ble Bombay High Court in the case of

1. ***Mr. Akshay Quenim Vs. Mr. Royce Savio Pereira Writ Petition No.375/2025 decided on 25th September, 2025.***
2. ***M/s. Vivienda Luxury Homes LLP Vs. M/s. Gregory & Nicholas, Judgment dated 27/06/2025 in Writ Petition NO.237/2025 (F) of the High Court of Bombay at Goa.***

3. *HSIL Limited Vs. Imperial Ceramic and Anr. 2018 SCC OnLine Del 7485*

9. Therefore, now it is settled law that, when the question of jurisdiction is not in issue then application under Order VII Rule 11 of the Code of Civil Procedure and under Order VI Rule 17 of Code of Civil Procedure are to be dealt with simultaneously. So in my view there is no bar to consider application under Order VI Rule 17 of Code of Civil Procedure first, when application under Order VII Rule 11 of Code of Civil Procedure is already pending.

10. May it be so, the second objection is in respect of filing of application for an amendment at belated stage to take away admissions and to change nature of proceeding is concerned. Case in hand is miscellaneous application as per section 141 of the Code of Civil Procedure. 'The procedure provided in the Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.' Therefore, definitely order VI Rule 17 of Code of Civil Procedure and its proviso will be applicable to the case in hand as well. Moreover, present petition is of the year 2019. While application has been moved on 23/12/2025. Moreover, proceeding is pending for cross-examination of the application.

11. Further in para No.1 of the application it is pleaded that the suit was filed on the basis of oral authorization and no written power of attorney was executed. By this amendment the applicant wants to introduce the pleading that in the year 2013 on 29/01/2013 one power of attorney was executed and notarized by applicant No.1(A), 2(A), 3(A), 7, 6(A) and 12(A) in favour of respondent No.1(A). To support this contention along list (Exh.102), the applicants have produced Xerox copy of notarized power of attorney. Perusal of which shows that,

this power of attorney was executed on 24/01/2013 by 11 persons in favour of one Kumar Kondiba Awale i.e. present respondent No.1(A) The 11 persons in the power of attorney are the plaintiffs in R.C.S.No.461/2014.

12. Further, in this power of attorney respondent No.1(A) authorized to do all necessary acts in respect of the suit property before revenue authorities, government, municipal corporation or court etc. It includes filing of say as well. But, no specific reference of R.C.S.No.461/2014 has been made in it. Though, it is so R.C.S.No.461/2014 had been filed after execution of power of attorney i.e. in the year 2014. Furthermore, this power of attorney bears signatures of respondent Nos. 1(A), 2(A), 2(B), 3(A), respondent No.7,6(A) and 12 (A) only and it does not bear signatures of other executors.

13. Further, perusal of Order passed (Exh. 87) in R.C.S.No.461/2014 shows that, plaintiff No.12 in said suit as power of attorney of plaintiff Nos.1 to 11. However, no such power of attorney has been brought on record. Moreover, order passed on application to withdraw the suit speaks that the suit was withdrawn by defendant No.12 in said suit for himself and for other plaintiffs excluding plaintiff Nos.1, 5 and 6 who are applicants in present suit. If the power of attorney produced along with Exh.102 is a same power of attorney on the basis of which said suit was filed then suit might have been withdrawn by respondent No.1(A) on behalf of himself and present applicants as well. But, the documents speaks contrary to it. Not only this the power of attorney is of the year 2013 while R.C.S.No.461/2014 was of the year 2014.

14. Moreover, after withdrawal of that suit main petition has

been filed in the year 2019. It means since beginning the applicants were aware of execution of written power of attorney in favour of respondent No.1(A). Even then such pleadings is not made in petition Exh.1. It has been specifically pleaded in petition Exh.1, in para No.1 that the suit was filed or application is filed on oral authorization by the petitioners and no written power of attorney was executed. By this amendment the applicants want to withdraw this admission. It is contrary to their own pleading and the documents on record.

15. Furthermore, application has been moved when the matter is pending for hearing or cross-examination of the applicant i.e. at a belated stage without giving satisfactory reason for doing so or explaining the delay. Which itself shows that it has been made with a mala-fide intention. If it is allowed then it would lead to a travesty of justice. Hence, in my view the observations of Hon'ble their lordship in supra cited decision relied upon by learned advocate for respondent No.4 will be applicable to the case in hand though, both cases differ on facts. Hence, in view of this discussion, I have come to the conclusion that, application deserves to be rejected. Thus, following order:-

ORDER

Application (Exh.99) is hereby rejected.

**Date:11/02/2026.
Sangli.**

**(Vibha P. Gaikwad)
Jt. Civil Judge, Sr. Division, Sangli.**

CERTIFICATE

I affirm that the contents of this P.D.F. file order are same, word to word, as per the original Order.

Name of the Stenographer.	:D. S. Pawar, Grade-2
Court.	:Jt.C.J.Sr.D.,Sangli.
Order Date.	: 11/02/2026
Order signed by	
the Presiding Officer on.	: 12/03/2026
Order uploaded on.	: 12/03/2026