

Order below Exh.42 in Civil M.A.No.54/2023
(Sanjay Karve V/s. Dnyaneshwar Gadache)
(CNR NO.MHSN02-000429-2023)

This is an application made by opponent for amendment in his pleadings as per Order 6 Rule 17 of the Code of Civil Procedure. According to opponent, the present proceedings have been initiated by applicant for contempt of the order of temporary injunction passed by this Court. It is the case of opponent that, after closing the evidence of applicant, the affidavit in lieu of examination in chief of opponent was filed on 24.06.2024. Therefore, the case was posted for cross-examination of opponent. Later on, applicant on 31.07.2024, applied for directions for production of documents as per Order 11 Rule 14 thereby applicant sought the production of electricity bills and payment receipts regarding to the electricity consumer No.279941354445. The said application was allowed by this Court on 12.09.2024 and thereby directions were given to opponent to produce the concerned documents. Accordingly, opponent produced the said documents vide Exh.40 on 18.11.2024. However, the electricity consumer number of opponent, electricity bills and payment thereof is not mentioned in pleadings of applicant. Therefore, the said was not included by opponent in his pleadings. However, it is necessary for opponent to lead evidence regarding the same. The opponent has demolished the wheat four/flour mill and the new construction has been erected thereon. For the construction of new building as well as fitting of material therein and pouring of water on the new construction, the said electricity connection was used thereon. The opponent intends to give evidence on said fact. Therefore, it is necessary to amend the pleadings of opponent. If the proposed amendment is allowed, no hardship will be caused to applicant. Accordingly, opponent prayed for allowing the application to carry out the proposed amendment.

2. Applicant filed his reply at Exh.44. According to him, on the contents of the application at Exh.42 are false. As per Order 6 Rule 17, no amendment can be sought after commencement of trial in the proceedings. The applicant has closed his evidence and opponent has filed his affidavit in lieu of examination in chief at Exh.33. The flour mill is in dispute and was running even after orders of the Court. Still opponent has suppressed the said fact. Therefore, opponent cannot seek the proposed amendment. Therefore, the application is liable to be rejected.

3. Perused the record. Heard both sides.

4. It occurs from the perusal of record that, the applicant has closed his evidence vide pursis at Exh.30. Thereon, opponent filed his affidavit in lieu of examination in chief at Exh.33. Therefore, it is clear that, the case is part heard. The opponent has not filed any document in support of his submission. Therefore, it can be said that, the present application can be inspired from the production of documents which he was compel to produce by the order of this Court at Exh.37. Undisputedly, the electricity consumer No.279941354445 belongs to opponent. Therefore, the opponent was able to plead the defence regarding said consumer number at time of filing of his pleadings. But, he has not done so. Therefore, this fact cannot be said to be arisen due to subsequent events or the events for which opponent was unable to plead despite of due diligence.

5. Learned Advocate for applicant has pointed out that, no amendment can be sought after commencement of trial. From the contents of said application it occurs that opponent himself became aware about the facts mentioned in proposed amendment after order of production of documents by this Court at Exh.37. Thus, it can be said that the present application may

be inspired from the documents ordered to be produced vide Exh.37. From the facts of the proposed amendment it occurs that the so called new construction was commenced in July-2022. However, the opponent looks to have filed his pleadings on 11.09.2023. Therefore, as discussed above, the application looks to be made at a belated stage. The opponent was able to plead the facts mentioned in proposed amendment while filing his pleadings, but he has failed to do so. Hence, there looks no adherence to the proviso of Order 6, Rule 17 of the Code of Civil Procedure in proposed amendment. It is the settled position of law that, the defendant in a civil trial can raise alternate defences. Therefore, the amendment to plaint and amendment of the written statement cannot be placed on same footings. However, looking at the above mentioned circumstances, if opponent is permitted to amend his pleadings accordingly, then the possibility of causing prejudice to the applicant cannot be overlooked. In such case, it will not be proper to allow the proposed amendment. Accordingly, I pass following order.

ORDER

Application is rejected.

Sangli.
Date:-04.03.2025

(Onkar S. Shastri)
11th Jt. Civil Judge Jr. Dn., Sangli.

CERTIFICATE

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

Name of the Stenographer	:	Shri. R. B. Samalewale,
Court Name	:	Shri. Onkar S. Shastri, 11th Jt. C.J.J.D. and J.M.F.C., Sangli.
Date	:	04.03.2025
Signed by P.O.on	:	04.03.2025
Uploaded on	:	04.03.2025