

MH50130003592011

**R.C.S. No.126/2011**
Ashabai Vs. Govardhan & Ors.**ORDER BELOW EXH. NO. 57**

This is an application for amendment in written statement under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred as 'C.P.C.') moved by the defendant No.4.

02. The defendant No.4 contended that the plaintiff No.2 has leaved the company of defendant No.1 in the year 1982. Thereafter, she never came to the defendant No.1 and she is residing with another person openly as a wife. The marital tie between plaintiff No.2 and defendant No.1 had been terminated. These facts already pleaded. However, due to inadvertence, the explanatory facts about the factum of divorce has not been pleaded. The marital tie between the plaintiff No. 02 and defendant No. 01 came to an end, in presence of respectable persons of the society by way of divorce. This fact has not been pleaded. Therefore, the defendants want to amend their written statement by adding para No.18A about the divorce. The defendants also want to amend the written statement about the number of plaintiff which is typographical mistake.

03. As per contention of the defendants, the amendment is necessary. Nature of the dispute is not going to be changed. The proposed amendment is explanatory in nature. No prejudice would cause to the plaintiffs and it is necessary for final determination of the suit.

04. The plaintiffs contested this application contending that trial

has been commenced, chief and cross-examination of witness of the plaintiffs has been completed. The proposed amendment is made with malafide intention and the defendants are not due diligence. Nature of dispute will be changed and prejudice will cause to the plaintiff. The defendants want to add new defence which is surprising to the plaintiff. Lastly the defendants prayed for rejection of the application.

05. Perused the record. Heard both sides.

06. Following points are arisen for my consideration. I have recorded my findings with reasons there on.

Sr. No.	Points	Findings
1	Whether the proposed amendment is necessary for just decision of the suit?	In the affirmative.
2	What order and relief?	Application is allowed.

REASONS

As to point No. 1 and 2:-

07. The Ld. Advocate for defendant No.4 argued that already in para No.18 of written statement, it is pleaded that marital tie between the plaintiff No.2 and defendant No.1 has been come to end. The proposed amendment is more clarificatory and explanatory in nature and no surprise is going to cause to the plaintiff. In support of his argument, Ld. Advocate for defendant No.4 relied upon following citations;

1) Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria & Ors., 2015 AIR SCW 6475,

2) Life Insurance Corporation of India Vs. Sanjeev Builders Private

Ltd. & Anr, 2022 LiveLaw (SC) 729,

3) Chandrakala Sheshrao Sarode & Anrs Vs. Sandip Machindra Karale & Ors., AIR Online 2020 Bom 2171 and

4) State of Bihar & Ors. Vs. Modern Tent House & Anr., AIR 2017 SC 4966.

08. As against this, Ld. Advocate for the plaintiffs argued that the defendants were not due diligence, trial has been commenced, the proposed amendment is not based upon subsequent events. Therefore, there is bar of proviso of Order VI, Rule 17 of the C.P.C. The proposed pleadings are already pleaded. The suit will go back. The application is filed with malafide intention to prolong the matter. There is no explanation for delay. Prejudice would cause to the plaintiffs. New defence will be created. Ld. Advocate for the plaintiffs relied upon following citations;

1) Noor Kabirdin Meghani & Ors. Vs. Sanjeev Manuel D'Souza, 2021(5) Mh.L.J.,

2) Archana Ashok Amburle Vs. Arpana Shankar Dudham & Ors., 2019(2) Mh.L.J. and

3) Chandrashekhar Vs. Balkrishna & Ors., (2016) 4 BCR 63.

09. The defendant No.4 in written statement on para No.18 already pleaded that plaintiff No.2 has abandoned his husband defendant No.1 in the year 1982 and since then marital tie between plaintiff No.2 and defendant No.1 has been come to an end. It is also pleaded that the plaintiff No.2 is residing with one third person Shatrughna Tambare as his wife since 1982. However, the defendant No.4 has not pleaded that there was customary divorce. Now, the defendant No.4 wants to plead facts about divorce.

10. No doubt, the trial has been commenced, chief and cross examination of one witness has been pleaded. Therefore, it is to be seen that whether the defendants were due diligence. In this respect, Ld. Advocate for defendant No.4 argued that previous advocate not pleaded the fact of divorce and when he appeared on behalf of defendant No.4 and while preparing of evidence of defendants, the defendant No.4 clarified him. Due to that reason, specific pleading to the effect of divorce has not been pleaded.

11. In the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Ltd. & Anr***, 2022 LiveLaw (SC) 729, the Hon'ble Supreme Court has issued guidelines in respect of amendment of pleading. I reproduce para No.70 for ready reference;

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not

seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to

the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) 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. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).”

12. In this case, the Hon’ble Supreme Court has categorically held that Court should be liberal while allowing the application of amendment.

13. Similarly, in the case of **State of Bihar & Ors. Vs. Modern Tent House & Anr., AIR 2017 SC 4966** in para No.8, it is held that;

“8) We have perused the amendment application filed by the appellants. We find that firstly, the proposed amendment is on facts and the appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defense already taken; thirdly, it does not introduce any new defense compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defense already taken nor will result in withdrawing any kind of admission, if made in the written statement; fifthly, there is no prejudice to the plaintiffs, if such

amendment is allowed because notwithstanding the defense or/and the proposed amendment, the initial burden to prove the case continues to remain on the plaintiffs; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the Courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises.”

14. In view of above citation, if no ground of defence is raised and trial is yet to be completed, the amendment should be allowed. In the present case, the factum of termination of marital tie between plaintiff No.2 and defendant No.1 has already been pleaded. Therefore, the proposed amendment is clarificatory and explanatory in nature to the already pleaded facts. No new defence is going to be raised. It is not the case that the plaintiff defendant No.4 wants to withdraw his previous admission. Therefore, the surprise or prejudice would not cause to the plaintiffs.

15. In the case of ***Baldevsing & Ors. Vs. Manoharsing & ors. (2006) 6 SCC 498***, the Hon’ble Supreme Court has held that the rules of amendment of pleading of plaint and written statement are not necessarily governed by exactly the same principle and the Courts are inclined to be more liberal in allowing the amendment in written statement that of plaint. I reproduce para No.15 for read reference;

“Let us now take up the last ground on which the application for amendment of the written statement was rejected by the High Court as well as the Trial Court. The rejection was made on the ground that inconsistent plea cannot be allowed to be taken. We are unable to appreciate the ground of rejection made by the High Court as well as the Trial Court. After going through the pleadings and also the statements made in the application for amendment of the written statement, we fail to

understand how inconsistent plea could be said to have been taken by the appellants in their application for amendment of the written statement, excepting the plea taken by the appellants in the application for amendment of written statement regarding the joint ownership of the suit property. Accordingly, on facts, we are not satisfied that the application for amendment of the written statement could be rejected also on this ground. That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16. In this case, amendment of pleadings in written statement has been sought. Therefore, I am inclined to accept liberal approach in this case.

17. The citation No.1 and 2 relied by the plaintiffs are not applicable to the case in hand for the reason that in those cases amendment in the plaint was sought. In the case of **Chandrashekhar Vs. Balkrishna & Ors., (2016) 4 BCR 63**, it has been held that after commencement of trial the Court have no jurisdiction to entertain the application for amendment unless the party satisfied the Court that inspite due diligence, the application seeking amendment could not be filed earlier. In this case, I

have already mentioned that advocate of the defendants has been changed and while discussion with new advocate, new advocate came to notice about the proposed amendment. Due to inadvertence, the defendants could not plead the proposed amendment.

18. In this case, evidence of the plaintiffs is yet to be completed. The evidence of the defendants is yet to be started. As such, the evidence of both parties is not yet over. The trial in the suit is going on. Therefore, the citations relied by the plaintiffs would not be applicable for the reason that the defendant has satisfied that despite due diligence, he could not have filed amendment application. Moreover, the opposite party can be compensated by imposing costs to the applicant. In view of above reasons and discussion, I am inclined to allow the application for amendment. Accordingly, I record my finding to point No.1 in the affirmative and in answer to point No.2, I pass following order;

ORDER

1. The application Exh.57 for amendment in written statement is allowed subject to costs of Rs.10,000/-(Rs. Ten Thousand Only) to be paid to the plaintiffs.
2. After payment of costs, the defendant No.4 is directed to carry out amendments as per above order within 14 days from the date of this order and furnish amended copy of written statement.

(Dictated and pronounced in open Court.)

Date : 18/01/2024

(Jahangir R. Pathan)
2nd Jt. Civil Judge, J.D., Barshi.

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment / Order

(a)	Name of the Stenographer	:	S.R. Barangule
(b)	Court	:	J.R. Pathan, 2 nd Jt. C.J.J.D. & J.M.F.C., Barshi.
(c)	Judgment /Order declared on	:	18/01/2024
(d)	Judgment /Order signed by P.O. on	:	18/01/2024
(e)	Judgment /Order uploaded on	:	18/01/2024