

Shri. Yashwant Suryakant Mane,

V/s.

Shriram Education Society and others.

Order below Exh. 65

(Date – 29.10.2025)

The present application is filed under Order VI Rule 17 of the Code of Civil Procedure for the amendment of the appeal memo. Respondents nos. 1, 2, and 6 filed their say below Exh. 70, and respondent no. 3 filed his say at Exh. 73, they strongly objected to the application.

2. According to the appellant, said appeal was filed against the order of termination passed by the respondent management. At the time of filing the appeal, inadvertently, some material facts and legal points remained to be pleaded; therefore, for the interest of justice and fair play, and for proper adjudication, the appellant wants to amend the appeal memo by inserting para 7(a) and para (I) in the pleading. It is further contended by the appellant that recently inquiry committee has been added as a party to the proceeding; therefore, the amendment sought is necessary for proper adjudication. According to him, the proposed amendment would not change the nature of the appeal, and no prejudice would result if the amendment were allowed.

3. According to respondents no. 1, 2, and 6, after the lapse of many years, the appellant, by way of amendment, is taking out a new case which does not find place in the original appeal. By the proposed

amendment, the appellant intends to challenge the constitution of the committee, the issuance of the charge sheet and the inquiry itself. The appellant wants to take various grounds relating to the inquiry examination of witnesses and also the role of the advocate in the process. There is no whisper in the application as to why the amendment is proposed after the lapse of several years, when the grounds were available from the very beginning. The present application is filed long after the appeal was filed and after various orders were passed therein. Therefore, at this delayed stage, the amendment application does not merit; they have consequently prayed for its rejection.

4. Respondent no. 3 in his say has contended that the proposed amendment is not necessary for the adjudication of an appeal on merit; moreover, the appellant is introducing a completely new case. The amendment at the delayed stage without any sufficient reason cannot be allowed; therefore, he has prayed for the rejection of the application.

5. Ld. Counsel Mr Patil, who appeared on behalf of the appellant, has argued that, in the present appeal, he filed his Vakalatnama on 21.08.2023 when the matter was pending for compliance. After compliance with the Tribunal's order and the appearance of the newly added respondents, he reveals that the earlier advocate did not plead the material facts in the appeal memo. The proposed amendment regarding the constitution of the inquiry committee, the inquiry committee's work, and the opportunities denied to the appellant are necessary for the adjudication of the matter.

6. Ld. defence Counsel Mr. Shaha appearing on behalf of the respondent no. 3 has argued that no reason for the delay is mentioned in the application. In the absence of sufficient cause, the Proviso to O. 6 R. 17 of the Code of Civil Procedure creates a bar to allow the amendments. As per oral arguments, the change of lawyer is the appellant's reason; however, a change in the lawyers or representatives in the matter will not be a good reason to allow the amendments after a lapse of nearly 07 years. Ld. defence Counsel Ms. Galadage, appearing on behalf of respondents no. 1, 2 and 6, has adopted the arguments advanced by Ld. defence Counsel Mr. Shaha.

7. In the case at hand, the appeal was adjourned for arguments in 2020; thereafter, vide order dated 09.03.2022, the appellant was directed to implead 03 members of the inquiry committee as respondents in the appeal. Subsequently, parties were added, and the members of the inquiry committee appeared as respondents no. 6 to 8. It is further transpired that respondent no. 6 has filed his statement to appeal below Exh. 63 on 01.10.2024 and appeal proceeds exparte against the respondent no. 7 and 8. After filing a written statement by respondent no. 6 on 01.10.2024, the matter was adjourned for evidence. Thereafter, the appellant filed the present application on record on 04.12.2024. Thus, considering this aspect, it can be concluded that, though the appeal was filed in 2018. Before the 2022 amendment, it was adjourned for final arguments. After impleading respondents nos. 6 to 8, the appeal was reversed, and after respondent no. 6 filed a written statement on 01.10.2024, the matter was fixed for evidence, i.e., the production of documents. After the filing of the

written statement by respondent no. 6, the present application is filed within 2 months. Thus, it cannot be said that the matter is its flag end.

8. Now moving to the contentions of the application. I do agree with the arguments advanced by the Ld. Counsel Mr. Patil, the constitution of the inquiry committee and the procedure followed during the inquiry go to the roots of the matter; therefore, a proposed amendment is required. But while accepting the arguments, a question arises: why has the appellant not mentioned a single reason for delay, and what restrained him from explaining the record? In case of ***Rajkumar Gurawara (Dead) Thr. Lrs. vs. M/S S.K. Sarwagi & Co. Pvt. Ltd. & Anr.,2008(14) SCC 364***. Hon'ble Apex Court had laid down guidelines in para 7, the relevant portion is reproduced hereinafter;

“It is settled law that, the grant on application for amendment is subject to certain conditions, namely, I) when the nature of it is changed by permitting amendment, ii) when the amendment would result in introducing a new cause of action and would prejudice the other party, iii) when allowing the amendment application would defeat the law of limitation.”

9. As per the guidelines laid down in the supra, in view of the present proposed amendment, it reveals that the proposed amendment neither introduced a new cause of action nor changed the nature of the appeal, which resulted in prejudice to the other parties. Moreover, the question of the constitution of the inquiry committee and the procedure followed by it is a mixed question of law and facts that goes to the root.

10. I have gone through the contents made in the application. In para no. 1 of the application, the appellant has contended that, “At the time of appeal, inadvertently, some material facts and legal points remain to be pleaded. Hence, for the interest of justice and fair play as

well as for proper adjudication, the appeal is to be amended by adding para 7(a) and para (I), except that no explanation is offered by the appellant for the proposed amendment. I do agree with the arguments advanced by the Ld. defence Counsel, Mr. Shaha and Ms. Galadage that the appeal filed in 2018 was amended in March 2022 by order of this Tribunal. The appellant has not offered any reason for the amendments after the lapse of 7 years and 3 years, respectively.

11. The question of the constitution of the inquiry committee and the procedure followed by it is a mixed question of law and facts that goes to the root. In such a situation, the proposed amendment seem necessary for the adjudication of the matter; thus, it would not be justifiable to reject the application for want of an explanation for the delay. As a matter of fact, the pleadings are prepared by advocates, not by the parties. If the counsel drafts the application and no single reason for the delay is mentioned in it, why should the parties suffer for a mistake on the part of their advocate? In such a situation, as per the observation of the Hon'ble Apex Court laid down in *B. K. Narayana Pillai Vs. Pararneswran Pillai & Anr and Baladev Singh & Ors. Ete Vs. Manohar Singh & Anr. Etc., AIR 2006 Supreme Court 2832*, amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. As discussed above, the constitution of the inquiry committee and the procedure followed by the inquiry committee go to the root of the matter; therefore, an amendment in respect of said controversy is necessary for the purpose of determining the real question. Though the proposed amendment appears necessary for proper adjudication of the

appeal, the delay caused by the appellant cannot be ignored. Hence, following order.

ORDER

1. Application is allowed under Order VI Rule 17 of the Code of Civil Procedure to amend the appeal memo by inserting para 7(a) and clause (I) within 15 days from the day of the order, subject to costs of Rs. 5000/-. Same to be credited to the District Legal Services Authority, Kolhapur.
2. On failure, the necessary order will be passed as per Order VI Rule 18.

Date :- 29.10.2025
Place:- Kolhapur.

(V.N.Dhavle)
Presiding Officer,
School Tribunal, Kolhapur.