

R.C.S. No.168/2012.

(CNR No. MHST05-000696-2010)

Order below Exh. 61

This is an application under Order 6 Rule 17 of Code of Civil Procedure for amendment.

Brief contents of the application are as under :-

02. It is contended that, at Exh. 53 the plaintiff has moved application for condoning the delay caused in bringing legal heirs of defendant No. 3 on record. Said application was allowed. Along with said application for condonation of delay the plaintiff moved application for bring legal heirs of defendant No. 3 on record. However, at that time, the plaintiff failed to file application for setting aside abatement order passed against defendant No. 3. Failure of the plaintiff to move such application was due to oversight, so plaintiff wants to amend the application moved by him for bringing legal heirs on record and add proposed amendment in said application.

03. The defendant has resisted the application under consideration by filing say below Exh. 62. In which the plaintiff has denied all the contents of the application under consideration. It is contended that, the application is devoid of merit and cannot be entertained under the provision of Code of Civil Procedure. The application will change the nature of the application Exh. 61. There is no such provision in law to amend the application. On all these and other grounds defendant prayed for rejection of the application.

04. Heard both learned advocates and gone through record of proceeding. Perusal of record shows that, on 07.03.2017 the plaintiff moved application for amendment and bring legal heirs of defendant No. 3 on record at Exh. 49. However, as defendant No. 1 died on 06.05.2016 and application had been moved on 07.03.2017. So statutory period for bringing his legal heirs on record was elapsed. At that time while passing order below Exh. 49 this Court has observed that the plaintiff can make

claim of the relief of condonation of delay, setting aside abatement order and bringing legal heirs on record in one application. However, such specific prayer is required to be made and said application was rejected with liberty to move application in proper proforma. Thereafter, the plaintiff has moved application Exh. 53 for condonation of delay, which was allowed by me on 10.07.2017. Then again the plaintiff moved application Exh. 61 for amendment and this time also he had not claim of setting aside abatement order and in said application plaintiff wants to make amendment by this order. However, when the plaintiff was well aware of the fact that, he has to make prayer for setting aside abatement order and for bringing legal heirs of defendant No. 3 on record even then application Exh. 61 had been moved. So also instead of filing fresh application the application under consideration has been moved.

05. As per Order 6 Rule 17 of Code of Civil Procedure the Court may at any stage of the proceeding allow either party to alter or amend his pleadings in such a manner on such terms as may be just. While as per order 6 Rule 1 of Civil Procedure Code pleading shall mean plaint or written statement. Therefore, the amendment in application do not come under the purview of Order 6 Rule 17 of Code of Civil Procedure. At the most the plaintiff is at liberty to move application under other relevant provision of Code of Civil Procedure. But no such application has been moved. Moreover, the reason given is also not satisfactory. Detailed order had been passed below Exh. 49, even then the application Exh. 61 had been moved. Therefore, it shows negligence on the part of the plaintiff. So considering this factual aspect application Exh. 61 is required to be rejected.

ORDER

1. Application (Exh. 61) is hereby rejected.
2. Costs in cause.

Date:- 09/01/2018

[Sou. V. P. Gaikwad]
Jt. Civil Judge, Sr.Division, Karad.