

MHST160013102018 	<u>Order Below Exh.48 in R.C.S.No.87/2018.</u> <u>(Sanjeev Ranjanprasad Srivastav</u> <u>V/s.</u> <u>The Head HR Garware Technical Fibers</u> <u>Ltd. M.I.D.C. Chinchwad Pune)</u> (Passed on 23.04.2024)
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This is an application filed by the defendant under Order VI Rule 17 of the Code of Civil Procedure 1908.

2. Through this application defendant submitted that this is the suit for mandatory injunction directing defendants to resume and reinstate the plaintiff in their company.

3. Defendant submitted that it is necessary to properly order and express the material facts covered in written statement. Similarly, to raise certain serious issues of jurisdiction of this Court to entertain this suit. It is essential for deciding the suit. Suit cannot be decided unless the said issues are incorporated in the written statement. Hence, defendant prayed for amendment of written statement in this regard.

4. Per contra plaintiffs filed his say at Exh.50. He submitted that the application of defendant is false, illegal and not admitted to plaintiff. The trial has already commenced. Plaintiff

has filed his affidavit in lieu of examination-in-chief. There is bar of proviso of order VI Rule 17. Defendant did not mention any ground regarding due diligence. The trial of suit is commenced. This application is filed for causing mental and physical agony to plaintiff. Therefore, the application be rejected.

5. The points of determination along with my findings thereon with reasons are as under:

Points of Determination	Finding
1. Whether application of plaintiff for amendment of the plaint deserves to be allowed?	No
2. What order?	Application is rejected.

REASONS

Point No.1:

6. Ld. Advocate of defendant in his argument submitted that it is necessary to amend the plaint. There is necessary to decide issue of jurisdiction of the suit.

7. He further argued that according to section 34 of Specific Relief Act 1963, personal contracts are not enforceable. For performance of contract, it's enforceability is necessary. If the application is allowed then it will adjudicate the matter properly. Though the hearing is commenced, the trial yet not concluded.

Delay is not the ground of rejection of application. The amendment is of technical in nature. There is no prejudice to plaintiff. Hence the application be allowed.

8. Ld. advocate defendant has relied upon following authorities:

1. Madhavrao Nagorao Mirase V Shankar Kishan Mirase, Writ petition no. 13936 of 2019.
2. Usha Swami V Kiran Swami, (2007) 5 S.C.R.307.
3. LIC of India V Sanjeev Builders, 2022 0 Supreme (SC) 864.
4. Kamal Agarwal V Navnirman Developers, 2020 0 Supreme (Bom) 642.
5. Baldev Singh V/s Manohar Singh
2006(Supp)SCR259

9. I have gone through these authorities. In all these authorities Hon'ble Court observed that in case of amendment of a written statement the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed. As regards the amendment in written statement the Court should be more liberal in comparison to the amendment to the plaint. But with due respect the facts of these cases are not applicabel to present case.

10. Ld. Advocate of plaintiff argued that issues are framed at Exh.26. Hence, trial is commenced. According to proviso of Order VI Rule 17 of Code of Civil Procedure 1908, due diligence must be there. It is not mentioned in the pleading of defendant about due diligence. Hence, application is not maintainable.

11. He further argued that defendant is appeared vide Exh. 8 and 9 on 27.06.2018. He had filed an application under Order VII Rule 11 of Code of Civil Procedure 1908 at Exh.13 on 12.09.2018. Similarly, at Exh.21, defendant had again filed an application under order VII Rule 11 of Code of Civil Procedure 1908. The order below Exh. 13 and 21 is passed on 05.02.2021. It is argued by him that after passing six years, defendant has filed this application. Amendment application cannot be decided if already decided. Hence, application be rejected.

12. Ld. Advocate of plaintiff has relied upon following authority:

Vijay Shah V Gitaben Mukhi, 2019(6) Mh.L.J. 816.

I have gone through the authority. In this case the trial of the suit is almost over. The case is fixed for final argument. In this situation, plaintiff filed the application of amendment. It is seen that in this case the amendment application filed by plaintiff and not by defendant. Hence, with due respect facts of this case are not applicable to present case.

13. On perusal of record of the case, it seems that this is the suit for mandatory injunction.

14. According to order 6 rule 17 of the Code of Civil Procedure 1908, the Court can amend the pleadings at any stage of the suit if that amendment is necessary to decide the real question in controversy between the parties. The proviso to the said rule provides that where the hearing of the suit has been started, in that situation the amendment of the pleadings shall not be granted unless exceptional circumstances are shown or it was shown that in spite of due diligences the party could not have filed the application for the amendment. In this case, the issues are framed at Exh.26.

15. It seems that this is the suit for mandatory injunction. In this case, the defendant did not mention about due diligence. According to proviso of Order VI Rule 17 of Code of Civil Procedure 1908, in spite of due diligence, party could not come to the Court. The defendant should mentioned about his delay as why he could not come to the Court within 6 years from the date of his appearance.

16. Similarly, the defendant claimed relief that amendment about jurisdiction. This issue is decided by this Court at Exh. 13 and 21. The suit is at the stage of evidence of

defendant. Therefore, it would not proper to consider issue which is already decided. Therefore, I answer point no. 1 is in negative.

Point No.2:

17. Considering above discussion, it would not proper to give permission to the plaintiff to amend the written statement under order 6 rule 17 of Code of Civil Procedure 1908. Therefore, in order to give answer of point no.2, I pass following order:

ORDER

1. The application is rejected.
2. Cost in cause.

Date: 23.04.2024

(Smruti S. Kulkarni)

Place: Wai

4th Jt. Civil Judge Jr. Dn.Wai.