

ORDER PASSED BELOW EXH.127 IN R.C.S. No.26/2010.
Pralhad Kondaji Kele & Another Vs. Ravi Kundlik Wankhade & Others
(CNR No.MHWS020007282010)

This is an application filed by defendant under Order 6 Rule 17 of the Code of Civil Procedure for amendment in the written statement.

2. I have read the application and say. Perused the record. Heard the parties.

3. According to the defendant, in the present suit he had filed reply to application for temporary injunction and thereafter, he adopted the said reply as his written statement. However, at that time the circumstances was different and thereafter, the circumstances has been changed. Therefore, in the changing circumstances defendant needs to amend the written-statement by adding Para No.18 as mentioned in the present application. According to the defendant proposed amendment is necessary for due decision and it would not change the nature of the suit. Thus, defendant has prayed for grant of application.

4. The plaintiff on the other hand filed his say at Exh.128. He has strongly opposed the application. He has denied the contents of the application and submitted that, defendant had filed his reply /written statement at Exh.15 on dated 15/02/2010 wherein he alleged to have been in permissive possession through defendant No.2 and now through proposed amendment he is trying to change the entire pleading by bringing new facts. Therefore, application is not maintainable. It is also submitted that when the matter was for his evidence defendant adjourned the matter time to time and lastly

on dated 10/07/2025 filed present application. Therefore, looking to the conduct of defendant also the application is liable to be rejected. Hence, he has submitted for rejection of application.

5. Considering the rival submission of both the parties, following points arise for my determination. Those points along with my findings thereon are as under -

<u>POINT</u>	<u>FINDING</u>
1 Whether the amendment as sought by the plaintiff, be allowed ?	In the Negative.
2 What order ?	As per final order.

REASONS

AS TO POINT NO.1 :-

6. The learned counsel for defendant argued that, the proposed amendment is necessary to decide the real controversy between the parties and it would not change the nature of the suit.

In support of his argument he relied upon the judgment cited in the case of **Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd., 2006 (6)BOMCR 510**. In this case Hon'ble High Court has held that, “ *The expression “sufficient cause” should be considered with pragmatism and in justice-oriented approach rather than technical detection of sufficient cause for expressing every days delay. Despite due diligence the defendants could not have raised the matter before commencement of trial and that no prejudice whatsoever will be caused to the plaintiffs if the amendment is allowed.*”

The learned counsel for plaintiff on the other hand submitted that, at the later stage of the evidence of defendant,

application is not maintainable.

7. I have perused the record, it is seen that, present suit is filed for mandatory and perpetual injunction. The matter is at the stage of evidence of defendant. Thus, trial can be said to be commenced. Therefore, in such circumstances, it is for the defendant to show that the proposed amendment is related to the happening of subsequent event and despite due diligence he could not make the amendment before commencement of trial.

8. However, on perusal of record, it is seen that, so far as contention of defendant about alleged changing circumstances is concerned, considering the contents of present application and that of the proposed amendment i.e. Para No.18 mentioned in the present application, it appears that alleged changing circumstances have not been specifically mentioned along with the dates. Per contra, the pleading appears to be regarding the alleged position of suit property prior to the commencement of the trial. Therefore, in absence of any specific incident and the documents to that regard it is very difficult to conclude that the proposed amendment is in respect of the happening of any subsequent incident. On the contrary, proposed amendment appears to be contrary to the earlier pleading made in written-statement.

9. Therefore, looking to the nature of proposed amendment it is seen that the facts which defendant wants to bring on record can not be said to be the result of any subsequent event. However, defendant has not given any justifiable reason for not filing application for amendment at earlier stage.

10. It is pertinent to note that in the case of **Smt. Jaishree Subhash Kalbande and another -Vs.- Shri.Bhaurao Nagorao Derkar, 2014 (3) ALL MR 605**, Hon'ble our High Court has observed that, *amendment application filed after commencement of trial is not permissible in absence of due diligence. The due diligence determines the scope of party's constructing knowledge of the claim and it is distinct from ignorance. In spite of knowledge, ignorance by party or an advocate can not be matter of due diligence.*

Thus, in view of above discussion it can be said that, no due diligence was shown by the defendant to file present application. Therefore, in view of the observation made in the ruling *supra* this application can not be said to be tenable.

11. Thus, light of above discussion and the reasons mentioned above in my view the application deserves to be rejected. Therefore, point No. 1 is answered in the Negative and in answer to point No. 2 the following order is passed.

ORDER

1] The application is rejected.

2] No order as to costs.

Washim.
Date:- 26/08/2025.

(**Smt. P V. Rane**)
Civil Judge (Sr. Div.), Washim.

CERTIFICATE

I affirm that the contents of this PDF file judgment/order are same word to word, as per original judgment/order.

- 1) Name of Stenographer :- S. P. Kale (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 26/08/2025
- 4) Order signed by the :- 26/08/2025
 presiding officer on
- 5) Order uploaded on :- 28/08/2025