

ORDER BELOW EXHIBIT 133 IN R.C.S. No.26/2010**Pralhad Kele Vs. Ravi Wankhede & Ors.**

Defendant No.1 has filed this application under Order 6 Rule 17 r/w. section 151 of Code of Civil Procedure for carry out the amendment in the written statement. As per the defendant No.1 he has filed reply to the T.I. application and thereafter it was adopted to the written statement of the plaint. At the time of filing of the reply, the property shown in the name of Avtarsingh was not fixed the boundaries and the boundaries of the plaintiff's land was fixed by iron wire fencing. There was open land at time of filing of the reply therefore it was the defendant who was misunderstanding the property where the defendant No.1 as installed a Tea Shop was in ownership of Avatarsingh, but after filing of the reply and Avatarsingh was getting fix the boundary of land on his name by preparing road leading to inner side. Then there was open space remains which is not either in possession of ownership of plaintiff or in possession and ownership of defendant Avatarsingh. It is therefore necessary to amend the written statement as mentioned in the application. It is submitted that the proposed amendment in the written statement does not change the nature of the written statement or the suit. If the application is rejected then it will be irreparable loss to the defendant and real fact will not come on record for adjudication. Hence, prays to allow the application.

2] The plaintiff has filed say at Exh.134. The defendant No.1 has filed the present application only to prolong the matter. The evidence of plaintiff and defendants is completed and the matter is fixed for argument and the part of argument of plaintiff is also completed. The said amendment will change the nature of entire suit

therefore, the application is not tenable. Prior to this application the defendant No.1 filed application for amendment under Order 6 Rule 17 vide Exh.127 which came to be rejected wherein the defendant No.1 preferred writ petition which came to be dismissed and again the defendant No.1 has filed the similar application with a mere intention of prolonging the matter. The story put forth by the defendant No.1 is after thought and created story and he is trying to bring new contrary story by bringing alleged Sudha Mukhe on record. Hence, the application is liable to be rejected with heavy costs.

3] Following points are arise for my determination, same are reproduced below along with my findings thereon-

Sr. No.	Points	Findings
1]	Whether permission can be given to defendant No.1 to amend the pleading as prayed ?	In the Negative.
2]	What Order ?	As per the final Order.

REASONS

AS TO POINTS NOS.1 AND 2-

4] Heard both the sides. The defendant No.1 has filed present application for permission to amend his written statement filed at Exh.15. As per the defendant No.1 he has filed the reply of temporary injunction application Exh.15 and later on by filing pursis he adopted the said reply as his written statement. It is also submitted that at the time of filing reply the land in question was open and the boundaries were not fixed. Due to this fact the defendant No.1 was having misunderstanding that the land on which he installed the tea shop was owned by the defendant No.2 Avtarsingh. But later on the Avtarsingh

has fixed the boundaries. He has prepared the road leading to his property. Thereafter, the land i.e. open space remains which is not either in possession of the plaintiff nor the defendant No.2 Avatarsingh. Therefore, it is necessary to plead this fact by amending the written statement.

5] On perusal of above contention of defendant No.1 it appears that the defendant came with plea that he wants to plea the subsequent fact which came to his knowledge after filing the written statement. No doubt the party may amend his pleading and may bring subsequent facts. However, while doing so the party can not be permitted to change entire nature of his pleading. In the present case if the written statement of defendant No.1 is perused then it can be gathered that in his written statement Exh.15 in para No.11 the defendant No.1 has pleaded as follows.

“This defendant submits that, this defendant is consented and permitted by Avatarsing Kohali, who is owner of the land where teen shade is erected. Avatarsing Kohali has given oral consent and permission to use his land out of F.S.No.514/2. This defendant has erected teen shade in presence of Avatarsing Kohali within the ambit of Avatarsing Kohali's land. This defendant had erected teen shade in the month of Nov. 2009 with the consent and permission of original owner Avatarsing Kohali. This defendant has started tea stall and Juice center in the teen shade.”

6] Now the defendant No.1 wants to plead that with permission of possessor Smt. Sudha Mukhe the defendant No.1 has installed tea stall. The defendant No.1 also wants to amend his pleading and wants to add pleading as mentioned in the application. Certainly if the

proposed amendment is allowed then there will be change in entire defendant of the defendant No.1. Not only this it also appears that by amending his written statement the defendant No.1 is raising all together different plea because earlier it was pleaded that the defendant No.2 Avatarsingh has granted him permission to install the tea stall and now he wants to plead that the plaintiff has granted him the said permission. Therefore, certainly there is change in the nature of defence. Moreover, admittedly the evidence of all parties are already completed and the case is fixed for arguments. Not only this the plaintiff has already completed his argument so also the defendant No.2 has also argued his side. The defendant No.1 has sought adjournments to argue his side and later on he filed the present application. Therefore, certainly there is delay in filing present application. Apart from this fact it appears that by virtue of proposed amendment. It appears that the proposed pleading is contrary to the earlier pleading of defendant No.1.

7] It appears from the record that the defendant No.2 and 3 have filed their written statement at Exh.44 wherein in para No.11 and 12 the defendants pleaded as follows-

“11] It is submitted that the defendant No.1 approached to the answering defendants in the month of November 2009 and expressed that he is poor and unemployed and facing starvation. He requested to give him same land in the layout for running tea stall, cane sugar juice centre on license. He was supported by his mother. The answering defendant is very kind hearted person and felt sympathy with the defendant No.1 looking to his poorness and needs for food. The defendant No.1 agreed that the land which will be given on license to him for running tea stall will be vacated and when these answering defendants will asked for. Therefore, the answering

defendants agreed to give land from road area of the lay out under term of oral license to the defendant No.1 to make temporary shed on it to run his business of tea stall. It is submitted that at the relevant time, there was no any construction in both lay out of the answering defendants. Therefore, he did not hesitate to give land under terms of the license in the road area itself. This was in the month of November-2009 and the answering defendants have given the land explained in para 1 of R.C.S. No.53/2016 of raising temporary shed of tea stall to the defendant No.1. Accordingly, he raised the said temporary shed construction, and started running his business.

“12] Thereafter, the plaintiff filed the aforesaid R.C.S. No.26/2010 and claimed temporary injunction making allegation that the Temporary Hotel structure of defendant No.1 is encroachment of their land. The defendant No.1 approached to defendant No.2 and requested to swerd affidavit stating the true facts for opposing the application for temporary injunction in this suit. In good faith the answering defendant No.2 swerd an affidavit, wherein he has stated the relation as licensor and licensee in between him and defendant No.1. However, later on the defendant No.2 had sold one plot from his lay out to Dr. Maske who has constructed Hospital over it and one plot to Dr. Sabale who has also constructed his hospital over it. Thereafter, for developing the carrier of relative Dr. Oberoy who is dentist, the defendant No.2 has given by registered gift deed to him one plot. That when Dr. Oberao was about to start the construction of his house, the defendant No.1 obstructed to him and he also attempted to assault on him. He has threaten for more encroachment. Looking to the indecent and criminal behavior of the defendant No.1, plaintiff issued notice on 16/02/2016 and terminated license of the defendant No.1. The

defendant gave false reply to the said notice and false claimed ownership of Sudhatai Muke. Therefore, plaintiff urgently filed suit on 29/02/2016 for mandatory injunction which is R.C.S. No.53/2016 before Jt. Civil Judge Senior Division, Washim for removing temporary structure of defendant No.1. The defendant No.1 did not file any written statement and case is for evidence. The defendant No.2 has also adduced his evidence by way of affidavit and case is now fixed on 27/02/2018 for further evidence.”

8] It appears that after filing the W.S. by defendant No.2 and 3 the plaintiff amended his suit by order dated 01/01/2018 by virtue of said amending the plaintiff has pleaded that the defendant No.2 and 3 having no right or concern with the suit property and therefore they were not in authority to grant any permission to the defendant No.1 to erect tin shed. Certainly the defendant No.1 is aware about written statement of defendant No.2 and 3. So also he is well aware about the amendment of plaintiff's pleading. Still in spite of knowledge of these facts the defendant No.1 has not immediately filed the present application and he has filed the same after lapse of considerable period that to at the fag end of the litigation. Moreover, admittedly previously the defendant No.1 has filed amendment application below Exh.127. Same was rejected by my learned predecessor after hearing both sides. Later on defendant No.1 has challenged the order by filing the petition No.7055/2025. The said writ petition was withdrawn by defendant No.1. He has sought liberty before Hon'ble Bombay High Court for filing fresh application for amendment. Hon'ble Bombay High Court has granted the liberty to the defendant No.1. Accordingly, the defendant has filed this application. However, considering all the above record aspects I came to the conclusion that present application filed by

defendant No.1 can not be considered at all and the permission to amend the pleading can not be granted to him. Therefore, I answer point No.1 in negative and in answer to point No.2 proceed to pass following order

ORDER

Application is rejected.

Washim.
Date:- 14/01/2026.

(S. S. Sahasrabudhe)
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. V. Dere (Stenographer G-III)
- 2) Name of Court :- Civil Judge (S.D.), Washim.
- 3) Date :- 14/01/2026
- 4) Order signed by the
presiding officer on :- 14/01/2026
- 5) Order uploaded on :- 14/01/2026