

ORDER BELOW EXH. 52 IN RCS NO. 84/2015
(CNR NO.MHWS040008002015)

1. This is an application whereby the plaintiff is seeking amendment of plaint. But defendants strongly opposed the application by filing say.

2. By the present application plaintiff is proposed to add prayer clause 2-A and 2-B i.e. prayer for mesne profit and mandatory injunction for demolition of tower erected over the suit property. It is contended in the application that, in the suit inadvertently the avernments regarding demolition of mobile tower illegally erected on the suit property are not mentioned, therefore the relief in respect of the same is not claimed. In the para No. 08 of the plaint there are avernments regarding mesne profit. But, inadvertently in the title clause and prayer clause mesne profit is not mentioned. According to plaintiff, if the application is allowed, the nature of the suit will not be changed. If the application is not allowed, the plaintiff will suffer irreparable loss.

3. Application is opposed on the ground that, the proposed amendment if allowed, it will change the nature of the suit. The amendments sought is not bonafide. It is barred by limitation. It is filed at belated stage. Thus, it is contended by the defendants that the application is liable to be rejected with costs.

4. Plaintiff and his advocate are repeatedly absent before the court. Therefore, I could not get opportunity to hear the argument of plaintiff. Heard learned counsel Shri. Rathi for the defendants. Perused the record.

5. On perusal of record and hearing learned counsel for defendants, following points arise for determination, findings thereon are recorded for reasons to follow:

Sr. No.	Points	Findings
1	Whether the amendment, as prayed for, can be allowed ?	Yes.
2	What order ?	As per final order.

REASONS

6. Here it is apposite to note the provision of rule 17 of Order VI of the Code, it reads as:

Rule 17. Amendment of pleadings: *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties.*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

7. Thus, reading of the provision make it clear that the Code has conferred discretion on the Court to allow a party to alter or amend his pleadings in such manner and on such terms as may be just. It also says that all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties. Proviso appended thereto, however, puts a restriction on the discretion conferred on Court and mandates that, application for amendment shall not be allowed

after commencement of trial unless the Court comes to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. The trial of the suit commences after filing of the affidavit of examination-in-chief. In the present suit issues are framed, but affidavit of examination-in-chief of the plaintiff's witness is yet to be filed. Thus, the trial of the suit is not commenced. Therefore, the application is well covered by the proviso of Order VI Rule 17 of the Code.

9. In the para No. 08 of the plaint it is specifically contended that, plaintiff is entitled for the relief of mesne profit. However, such prayer is not made in the prayer clause. So far as the proposed amendment in respect of mandatory injunction is concerned, in para No. 07 of the plaint it is specifically pleaded that, the plaintiff is entitled and filed suit for declaration, possession, demolition of tower and for perpetual injunction. Thus, pleading in respect of demolition of tower is also appear in the plaint, but relief is not claimed in the prayer clause.

10. The proposed amendment is appears to be explanatory to the earlier pleading and for insert the prayer clause in respect of the relief which have already claimed in the plaint. If the amendment is allowed, it will not change the nature of the suit. On the contrary, the proposed amendment is necessary to arrive at proper conclusion. If the application is allowed, the defendants have every right to file their additional written statement.

11. No doubt, the present application is filed after 04 years

from the framing of issues. Thus, there is huge delay for filing the application. Mere delay is not a ground to reject the application. The delay caused can be compensated by way of costs. Hence order :

ORDER

1. Application is hereby allowed subject to costs of Rs. 2000/- (Two Thousand Rupees) payable to defendants.
2. Costs be paid / deposited on or before next date.
3. After Payment/deposit of costs plaintiff shall carry the amendment as permitted and shall file the amended plaint along with copies thereof.
4. If amount of cost not paid / deposited on or before next date, the application stands rejected.

Sd-

Date : 18/11/2025

(Subhash D.Tare)
2nd Jt. Civil Judge J.D. Mangrulpir.

<u>CERTIFICATE</u>		
I affirm that the contents of this P.D.F file Judgment/ Order are same word to word as per the original order.		
Name of Court	:-	2 nd Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.
Presiding Officer	:-	Subhash D. Tare.
Judgment uploaded by	:-	R.T. Sharma (Junior Clerk)
Date of Order	:-	18.11.2025
Judgment/Order signed by the presiding officer on	:-	18.11.2025
Judgment/Order uploaded on	:-	18.11.2025