

MHWS050001892024 	<u>ORDER BELOW EXH.26 IN R.C.S.NO. 32/2024</u> <u>Durga Vs Vishal and others.</u>
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1. The plaintiff has filed the present application under Order VI Rule 17 of the Code of Civil Procedure seeking permission to amend the plaint by incorporating paragraphs 3-A, 5-A and 7-A and by adding a prayer for mandatory injunction directing the defendants to remove the cement columns allegedly constructed over the suit property. The plaintiff has instituted the present suit against the defendants for perpetual injunction. According to the plaintiff, the suit relates to Property No.90 situated in Ward No.1 within the limits of the Municipal Council, Mangrulpir, District Washim.

2. It is the case of the plaintiff that, at the time of institution of the suit, the defendants had started digging pits and placing iron columns on the northern portion of the property claimed by the plaintiff. The original suit was, therefore, filed to restrain the defendants from carrying out further construction over the suit property. By way of the proposed amendment, the plaintiff seeks to plead that, during the pendency of the suit, the defendants, acting in collusion, constructed cement columns of approximately 25 to 30 feet in height over the disputed portion. According to the plaintiff, she came to know about the said construction on 13.08.2025.

3. The plaintiff, therefore, seeks to incorporate the subsequent development in the plaint and to claim the additional relief of mandatory injunction for removal of the cement columns allegedly constructed during the pendency of the suit. The defendants have

opposed the application. It is contended that the trial has already commenced, as issues have been framed and the matter has been fixed for the evidence of the plaintiff. It is further contended that the proposed amendment introduces a new and inconsistent case and that the proposed relief is barred by limitation.

4. Heard learned Advocate Shri P. P. Bansod for the plaintiff, learned Advocate Shri M. A. Khan for defendant No.1 and learned Advocate Shri H. G. Rathi for defendant No.2. The application, say filed by the defendants, pleadings of the parties and the documents placed on record have been perused. Order VI Rule 17 of the Code of Civil Procedure empowers the Court to permit amendment of pleadings at any stage of the proceedings when such amendment is necessary for determining the real questions in controversy between the parties.

5. The proviso to Order VI Rule 17, however, provides that after commencement of the trial, an amendment shall not ordinarily be allowed unless the Court concludes that, despite due diligence, the party could not have raised the matter before commencement of the trial. In the present case, issues have already been framed at Exhibit 23 and the matter has been fixed for the evidence of the plaintiff. Therefore, the trial has commenced and the plaintiff is required to satisfy the requirement contained in the proviso to Order VI Rule 17.

6. The original suit is for perpetual injunction. The plaintiff has already pleaded that the defendants had started digging pits and placing iron columns over the northern portion of the suit property and were attempting to carry out construction thereon. The proposed amendment is based upon the allegation that, after institution of the suit and during its pendency, the defendants completed further

construction by erecting cement columns of approximately 25 to 30 feet in height over the disputed portion.

7. Thus, the proposed amendment is founded upon an event which, according to the plaintiff, occurred during the pendency of the suit. The plaintiff has specifically stated that she came to know about the alleged construction on 13.08.2025. A subsequent event which had not occurred at the time of filing of the suit could not have been pleaded in the original plaint. Therefore, the plaintiff could not reasonably have incorporated the proposed facts before the alleged construction was carried out.

8. The requirement of due diligence must be examined in the context of the facts sought to be introduced. Since the proposed amendment concerns an alleged construction raised during the pendency of the suit, it cannot be said that the plaintiff, despite having knowledge of the facts, omitted to plead them before commencement of trial. The plaintiff has, therefore, sufficiently explained why the proposed facts and relief were not included in the original plaint. The bar contained in the proviso to Order VI Rule 17 would not operate against the plaintiff merely because issues have already been framed.

9. The principal object of allowing amendment of pleadings is to enable the Court to determine the real controversy between the parties and to avoid multiplicity of proceedings. An amendment which brings subsequent developments on record and enables the Court to grant an effective relief is ordinarily required to be considered liberally, provided that it does not cause an irremediable prejudice to the opposite party. In the present matter, the original controversy relates to the plaintiff's alleged right over the suit property and the defendants' alleged attempt to construct over the disputed portion. The proposed

amendment also concerns the same property, the same parties and the same alleged interference.

10. The plaintiff does not seek to introduce a dispute concerning any different property or an independent transaction. The allegation that cement columns were subsequently constructed is a continuation of the original allegation that the defendants had commenced construction by digging pits and placing iron columns. Therefore, the proposed amendment does not substitute a completely new cause of action for the original cause of action. It merely seeks to place on record the alleged subsequent development and to modify the relief in view of the change in circumstances.

11. In the absence of the proposed amendment, even if the plaintiff ultimately proves that the defendants had no right to construct over the disputed portion, the Court may not be in a position to grant complete and effective relief regarding the construction allegedly completed during the pendency of the suit. Refusal of the amendment may compel the plaintiff to institute a separate suit seeking removal of the alleged construction. Such a course would result in multiplicity of litigation between the same parties concerning the same property and substantially the same controversy.

12. The defendants have contended that the proposed amendment introduces inconsistent pleadings. However, the original claim is that the defendants were attempting to raise construction over the property claimed by the plaintiff. The proposed case is that the defendants completed the construction during pendency of the suit. These pleadings are not mutually destructive or fundamentally inconsistent. The proposed relief of mandatory injunction is consequential to the allegation that the defendants completed

construction during the pendency of the suit. Hence, it cannot be said that the proposed amendment completely alters the fundamental nature and character of the suit.

13. The defendants have also raised an objection regarding limitation. Ordinarily, an amendment introducing a relief which is clearly barred by limitation may be refused. However, in the present case, the plaintiff alleges that the cause for seeking mandatory injunction arose on 13.08.2025, when she came to know about the construction. Whether the construction was actually raised on the date alleged by the plaintiff, whether the plaintiff acquired knowledge thereof on 13.08.2025 and whether the proposed relief is within limitation are mixed questions of fact and law.

14. Allowing the amendment does not amount to acceptance of the truth of the proposed pleadings. The plaintiff will be required to prove the amended facts by adducing legally admissible evidence. The defendants will have a complete opportunity to deny the amended pleadings, raise all available legal objections and lead evidence in support of their defence. Therefore, no irreparable prejudice is likely to be caused to the defendants by allowing the amendment. Any inconvenience caused to them can be adequately compensated by imposing reasonable costs and by granting them an opportunity to file an additional written statement.

15. The decisions governing Order VI Rule 17 recognise that amendments necessary for deciding the actual controversy should ordinarily be allowed when they do not fundamentally change the nature of the suit or deprive the opposite party of a valuable accrued right. The Court must also take subsequent developments into consideration when doing so is necessary to shorten litigation and

grant effective relief. In the present case, the amendment is necessary for determining the complete controversy between the parties. The amendment concerns a subsequent event, is connected with the existing subject matter and would avoid a separate proceeding regarding the alleged construction. Consequently, the plaintiff has made out a case for allowing the application. Hence, I proceed to pass following order.

ORDER

1. The application at Exhibit 26 filed by the plaintiff under Order VI Rule 17 of the Code of Civil Procedure is hereby allowed, subject to payment of costs of Rs.1,000/- to the defendants each.
2. The plaintiff is permitted to amend the plaint in terms of the proposed amendment set out in the application at Exhibit 26.
3. The plaintiff shall carry out the amendment in the plaint within 14 days from the date of this order.
4. The plaintiff shall supply a copy of the amended plaint to the defendants immediately after carrying out the amendment.
5. The defendants are at liberty to file their additional written statements confined to the amended pleadings within 30 days from the date of receipt of the amended plaint.

Pronounced in open Court

(Khwaja.C. Kalal)

Date : 20/07/2026

Jt. Civil Judge Jr.Division, Mangrulpir,
Tal. Mangrulpir, Dist. Washim.

<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	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Mangrulpir, Dist. Washim.
Presiding Officer	:-	Khwaja C. Kalal
Judgment/Order uploaded by	:-	Shri. S. S. Rathod (Jr. Clerk)
Date of Judgment/Order	:-	20/07/2026
Judgment/Order signed by the presiding officer on	:-	20/07/2026
Judgment/Order uploaded on	:-	20/07/2026