

ORDER BELOW EXH. 22 IN RCS NO. 36/2019
(Passed on 13.07.2023)

1. This application has been filed under Order VI Rule XVII of the Code of Civil Procedure (for brevity “CPC”) by the defendants seeking amendment of written statement. More particularly, in para No.6 as para No.6-A, which is read as under,

६.अ. “मयत नारायणसा अजमिरे यांचे वय मृत्युपत्र करतेवेळी दिनांक ०७/०५/२००५ रोजी ७५ वर्षांचे होते व ते वयोवृद्ध होते व आजारी होते, त्यांना लखवा (अर्धांगवायु) मधुमेह व उच्च रक्तदाब तसेच विसरभोळेपणा हा आजार होता. याचा गैरफायदा घेऊन वादीने मयत नारायणसा अजमिरे यांना दवाखान्यात जायचे आहे व शासकीय योजनेचा लाभ घ्यायचा आहे असे कारण सांगून मयत नारायणसा अजमिरे यांना कारंजामध्ये आणून नमूद साक्षदारांना सदर मृत्युपत्राची कुठलीही माहिती नसतांना शिताफिने दिशाभुल करून सदरचे दिनांक ०७/०५/२००५ रोजीचे खोटे मृत्युपत्र नोंदणीकृत केले. त्यानंतर दिनांक २२/०६/२००५ रोजी अवघ्या एका महिन्यात नारायण शंकर अजमिरे यांचा मृत्यु झाला. यावरून हे स्पष्ट आहे की, मृत्युपत्र करून देतेवेळी नारायण अजमिरे हे भानावर नव्हते. सदर मृत्युपत्र खोटे व बनावट असल्याने ते या प्रतिवादींवर बंधनकारक नाही. तसेच सदरचे मृत्युपत्र हे खोटे असल्याने ते उद्धोषित करून मिळणेबाबतचा प्रतिदावा दाखल करण्याचे अधिकार राखून ठेवत आहे.”

2. Learned advocate for the defendants has submitted that the proposed amendment in the written statement is necessary for the adjudication of real dispute between the parties. It is further submitted that, if the proposed amendment is allowed, then it will not change the nature of suit. It is further submitted that in order to bring the certain facts to the notice of court which remained to be cited in the written statement of the defendant at Exh.10, the proposed amendment is essential. Hence, prayed to grant leave to

amend the written statement by incorporating the para No.6-A in it as mentioned above. The application is supported by an affidavit.

3. On the other hand, this application came to be strongly resisted on behalf of the plaintiff by filing say on the backside of the application. At the threshold, it is submitted that the contents of the present application are false and concocted and same has been filed with a motive to fill up the lacunas remained in the written statement Exh.10. As such, the present application has been filed after framing of Issues and filing of affidavit of evidence by the plaintiff on record. Therefore, the application cannot be allowed.

4. Learned advocate for the plaintiff has further contended that the plaintiff has filed a simpliciter suit of injunction against defendants, wherein on 04/07/2019 defendants have filed their joint written statement, and on 28/01/2020 Issues were framed accordingly. However, the defendants have not moved an application for the amendment of written statement till filing of an affidavit of evidence by the plaintiff. It is further contended that the proposed amendment has no nexus with the present matter. Because the plaintiff has filed a plain suit for perpetual injunction. It is further contended that the defendants have already covered certain facts in para No.6 of their written statement at Exh.10 of the proposed para No.6-A. Therefore, on this count also the present application is liable to be rejected. Thus, prayed to reject the application with costs.

5. Heard both sides. I have perused the application, say and gone through the respective pleadings of the parties.

6. The following points arise for my determination, and I have given my finding thereon.

<u>Sr.No.</u>	<u>Points</u>	<u>Findings</u>
1.	Whether the proposed amendment is necessary for the purpose of determining the real questions in the controversy between the parties?	No
2.	What order?	Application is rejected

REASONS**AS TO POINT No.1 :-**

7. Record shows that the plaintiff has filed a suit for perpetual injunction against the defendants restraining them from causing an obstruction in his peaceful possession and enjoyment of the suit property which is an agricultural land bearing Gat No.49, admeasuring 94R situated at Mouze Dhanaj Bk., Tq. Karanja, Dist. Washim. Record further shows that defendants have appeared in the matter and filed their joint written statement vide Exh.10. Thereafter, issues were framed by my learned predecessor below Exh.13 on 28/01/2020. It is further seen that, thereafter plaintiff filed his affidavit in lieu of examination-in-chief below Exh.18 on 15/09/2021. Thus, in view of the judgment of Hon'ble Bombay High Court in **Mahadev Vs. Balaji in W.P. No. 9659/2010**, the trial in this case has commenced. As such, the Hon'ble Bombay High Court in the said judgment has held that, "in our considered view, the trial in a civil suit commence from the date of filing of affidavits in lieu of the examination-in-chief of the witnesses and the proviso to Order VI Rule XVII of the CPC will come into play only after the stage of filing of affidavits in lieu of examination-in-chief of witnesses."

8. Now, I deem it apposite to go through the Order VI Rule 17 of the CPC. It provides that the Court may at any stage of proceeding allow either party to alter or amend his pleadings in such manner and on such terms as may be just and necessary for the purpose of determining the real questions in controversy between the parties. Thus, Rule 17 confers vide powers upon the Court to allow the amendment of pleadings at any stage, which is just.

However, only rider is provided in the proviso attached to Rule 17 which provides that no application for amendment shall be allowed after the trial has commenced, unless the court come to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of trial. Thus, it becomes clear that no amendment after the commencement of trial can be allowed unless the party seeking amendment persuade the Court as to why the same could not have sought to bring on record before commencement of trial.

9. In this way, Order VI Rule XVII of the CPC provides for the amendment of pleadings before commencement of trial without any hurdle. However, after the commencement of trial, the same is subject to the condition that the party should convince the court that the proposed amendment could not have sought despite due diligence of the party.

10. Now coming to the case in hand, it is manifest upon the perusal of the instant application that defendants are totally silent in the application regarding due diligence taken by them. As such, there is no single word in the instant application as to what due diligence was taken by defendants and despite of the said diligence, they could not have raised the matter/filed the application for amendment of written statement before commencement of trial. Learned advocate for defendants merely submitted that the proposed amendment is necessary. However, he failed to demonstrate to the court as to why the proposed amendment was not sought before the commencement of trial or why there is delay in filing of the instant application. Moreover, as stated above nothing as placed on record to show the due diligence of the party.

11. In view of the above discussion, in my considered view the proposed amendment cannot be allowed since the trial has been commenced and the defendants have failed to show that in spite of due diligence, they

could not have raised the matter before the commencement of the trial. So also, I further hold that proposed amendment is not necessary for the purpose of determining the real questions in the controversy between the parties. Thus, the application devoid of merits and liable to be rejected with costs. Hence, I have recorded my finding on point No.1 in the Negative and to answer point No.2, I proceed to pass following order-

ORDER

1. Application (Exh.22) stands rejected.
2. Costs in main cause.

Date: 13/07/2023.

(M.H. Haque)
Jt. Civil Judge (Jr. Dn.),
Karanja (Lad).

CERTIFICATE

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 Steno. :- D.V. Daware (Stenographer-III)

Court Name :- Civil Judge (Jr.Dn.) and J.M.F.C.,
Karanja. Dist. Washim.

Date :- 13/07/2023

Order signed by the :- 13/07/2023
presiding officer on

Order uploaded on :- 14/07/2023