

ORDER BELOW EXH. 62 IN RCS NO. 67/2015
(Passed on 23.09.2022)

1. This is an application filed under Order 6 Rule 17 of the CPC by the defendant nos.1 to 4 seeking amendment of W.S.

2. It is submitted that, the present suit has been filed for mandatory and perpetual injunction. Wherein, plaintiff has filed an application for temporary injunction. To which, defendants filed their reply and later on adopted the same as their written statement. It is further submitted that, the plaintiff in para 4 of his plaint has pleaded that, defendant nos.1 to 4 are running the newly constructed shop on plot no.175 under the named and styled as “Chandradeep Enterprises”. And, on 01-09-2015 defendants kept goods of their shop in front of the eastern side door of suit property upon encroached Otta and thereby closed the way of plaintiff and his customers.

3. It is further submitted that in the same para no.4 it is further pleaded that, “Chandradeep Enterprises” has been shifted to another place, and now, there is shop named and styled as “Suman Daily Needs” run by defendant no.1. Therefore, as mentioned in para no.4 of plaint the circumstances are changed and no cause of action has remain in force to the plaintiff for relief of injunction as prayed. Therefore, defendant no.1 to 4 are seeking the following amendment in para no.10 of their WS/reply as below-

“During the proceeding of the suit, the shop of defendants style as “Chandradeep Enterprises” is shifted to another place and now there is a shop style as “Suman Daily Needs” run by defendant no.1

Therefore, no question arise to keep the goods on Otta and closed the way of plaintiff as alleged by plaintiff, so no any cause remains to the plaintiff for to ask the injunction as prayed.”

4. Lastly, it is submitted that no prejudice would be caused to the plaintiff if proposed amendment is allowed. Similarly, it will not change the nature of suit. Therefore, prayed to allow the present application.

5. This application has been opposed by plaintiff by filing his Say below the application. Learned advocate for the plaintiff would submit that the defendants have not furnished the details of proposed amendment. Similarly, it is not supported by any document. Therefore, prayed to reject present application. Similarly, defendant no.5 also took an objection to the present application by filing Say below the application itself and prayed to reject the instant application.

6. Heard both sides. Perused the application, Say and gone through the record.

7. Record shows that, the plaintiff has filed the instant suit in the year 2015 seeking relief of mandatory and perpetual injunction against the defendant nos.1 to 5. Wherein, the plaintiff has even led his evidence by examining himself vide Exh.31. Thus, it appears that, the present suit is at the stage of plaintiff evidence, wherein, evidence of plaintiff has been recorded as part heard.

8. Now, I advert to Order 6 Rule 17 of CPC which provides for amendment of pleadings. The said provision empowers the Court to grant either party to alter or amend his pleading at any stage of proceeding which would be just and necessary for the purpose of determining the real question in the controversy between the parties. However, the only rider is given in the proviso attached to Rule 17 of Order 6 which provides that no such application of amendment shall be allowed by the Court after the trial has

commenced unless the Court comes to the conclusion that despite of due diligence the parties could not have raised the matter before the commencement of trial.

9. In the case on hand, apparently, the trial has been commenced. Therefore, as per above mentioned proviso of Rule 17 the amendment in pleading can not be allowed except the Court considered that in spite of due diligence the party could not have raised the matter before the commencement of trial. Therefore, now, I move towards the contents of present application. In this application, it is specifically pleaded that, the shop namely “Chandradeep Enterprises” has been shifted to another place and now there is a shop named and styled as “Suman Daily Needs” run by defendant no.4. And, this development has been taken place during the pendency of the suit and not at the time of filing of suit. Therefore, it can be safely inferred that in spite of duly diligence defendant no.1 to 4 could not have raised the matter pleaded in the proposed amendment before the commenced of trial. That apart, I am also considered view that, the proposed amendment if allowed will not change the nature of suit nor it is going to prejudice in any way to the plaintiff. Hence, in view of the foregoing discussion, I deem it appropriate to allow the instant application. Therefore, I proceed to pass following order-

ORDER

1. Application (Ex.62) is allowed.
2. defendant nos.1 to 4 are directed to carry out the proposed amendment within 14 days from the date of order.
3. No order as to costs.

CNR No.MHWS700-1722-2015

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**Order below Exh.62 in
RCS No. 67/2015**

Date: 23/09/2022

(M.H. Haque)
Jt. Civil Judge, Jr. Division,
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. :- R. A. Charthal (Steno-3)

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

Date :- 23/09/2022

Order signed by the :- 23/09/2022
presiding officer on

Order uploaded on :- 24/09/2022