



CNR No. MHSCA 20029082019

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT- 53
IN
R.A.D. SUIT NO. 1476 OF 2019

Vijaya Dattatraya Bhojane ... Plaintiff
V/s
1. Mr. Rajan Thomas & Ors. ... Defendants

Coram : S.K. Mule, Judge
C. R. No.16
Date : 07/08/2026

ORDER :-

1. Read application and reply filed by defendant No.1 at Exh. 55 and reply at Exh. 54 filed by defendants Nos.2 and 3.
2. Perused the record.
3. Heard both sides.
4. This application is taken-out by the plaintiff for amendment of plaint under Order 6 Rule 17 of the Civil Procedure Code, 1908 (for short "CPC").
5. Ld. Advocate Shri. A. S. Tungare for plaintiff submits that plaintiff has closed her evidence. Proposed amendment is a subsequent events which have happened after closing evidence by the plaintiff. Suit building has gone under development. A landlord of suit building has paid amount of Rs.1,95,000/- to the

plaintiff towards alternate premises rent. For this reason, a bar of proviso to Order VI Rule 17 of CPC is not applicable. Defendant Nos. 2 and 3 are the close relatives of plaintiff. Defendants will get opportunities to cross examine plaintiff on the proposed amendment and so no prejudice would be caused to them.

6. In support of his submission, he has relied on the legal principle from following cases :

1. **Wrangle Investment Limited V/s. Mahendra Builders and Others, 2023 DGLS (Bom) 4779.**
2. **Mabel Reeves (Smt.) V/s. Confraria de Igreja de Cortalim and others, 2015 BCI 609.**
3. **Surajpal Singh Shankarpal Singh and another V/s. Dnyaneshwar Satw Mendke & Others, 2006 (1) Bom.C. 800.**
4. **Ragu Thilak D. John V/s. S. Rayappan, 2001 DGLS (SC) 118.**
5. **Gorakh Hilal Patil and anr., V/s. Parit Samaj Seva Mandal & anr, 2012(1) All. M.R. 812.**

7. On the contrary, Ld. Advocate Mr. S. B. Sabnis for defendant No.1 submits that according to plaintiff, proposed amendment is a subsequent pleading. However, same is interim arrangement arrived between the parties which is without prejudice to the rights and contentions and subject to the result of present suit. Plaintiff is try to fill up the lacuna and fill up her case. As original cause of action is barred by law of limitation. Plaintiff is trying to introduce new cause of action. Accordingly, he has prayed for rejection of application.

8. In support of his submission, he has relied on the legal principle from the case of **Ashwani Kumar Singh V/s. U. P. Public Service Commission and others**, AIR 2003 Supreme Court 2661.
9. Ld. Advocate Mr. P .S. Pawar for defendant Nos.2 and 3 submits that proposed amendment is not relevant and necessary. These defendants are occupants of the suit premises. Plaintiff has not filed separate application in respect of proposed amendment. Accordingly, prayed for rejection of application.
10. Considering the nature of the application, following points arise for my determination and I have recorded my findings thereon for the reasons given under:

Sr. No.	POINTS	FINDINGS
1.	Whether proposed amendment is necessary for adjudication of the dispute between the parties?	In the Affirmative.
2.	What order?	As per final order.

: REASONS :

AS TO POINT NO. 1:

11. Admittedly record of the suit shows that cross examination of plaintiff has completed and plaintiff has also closed here evidence. Thereafter, defendant No.1 has filed his affidavit of evidence on the record. These facts are itself sufficient to show that trial in the suit has already commenced. If any party

is seeking amendment to the pleading after commencement of trial then it is necessary on said party to make out due diligence as mentioned in proviso to Order VI Rule 17 of CPC.

12. Nature of proposed amendment appears to be in respect of facts happened in the year 2025, i.e. after the closure of evidence by plaintiff. From proposed amendment it made out that in the year 2025, landlord of the suit building has executed the alternate accommodation agreement with the plaintiff and also transferred amount in the bank account of the plaintiff. Thus, the proposed amendment appears to be in respect of facts, which have occurred after the commencement of trial, and that too after closure of evidence by the plaintiff. For this reason, proposed amendment is not barred by proviso to Order VI Rule 17 of CPC.
13. In my view, considering the nature of proposed amendment, the question of filling up the lacuna will not arise. The objection taken by defendant Nos. 2 and 3 appears to be in respect of right of plaintiff in the suit premises. In my view, to claim her right, plaintiff has filed present suit. It is not just and proper to decide on merit the legality of proposed amendment.
14. I have gone through cited authorities relied by both sides. Proposed amendment being a subsequent event and relevant to decide controversy between the parties, in my view, it is not necessary to reproduce the legal principles from cited authorities, which are not on the point of maintainability of amendment after commencement of trial in respect of subsequent event.

15. Defendants have taken objection about frame of application. Plaintiff has filed this application with heading “Affidavit in support of application for amendment to the Plaint”. But, in the fact, what reflects is separate application for amendment to the plaint. Plaintiff has also attached schedule with the application. Thus, if any defect on this aspect is not going root of the matter.

16. From overall discussion, proposed amendment is necessary and maintainable. Accordingly, this point is answered in the affirmative and in answer to point No.2 following order is passed :

ORDER

1. Application [Exh.53] is allowed.
2. Plaintiff to carry out proposed amendment to the plaint as per schedule and to file amended copy of the plaint on record.
3. Plaintiff to comply this order within 14 days from today.
4. Defendants will be at liberty to carry out consequential amendment.

Date: 07/08/2026

[S.K. Mule]
Judge, C. R. No.16