

## **Title Suit 1333 of 2016**

**Present: Subhrajit Basu [J.O. Code: WB01238]  
Judge, Bench-IV, City Civil Court, Calcutta**

**Order No. 67  
14.06.2024**

The matter is fixed today for passing order in respect of the application of the plaintiff for amendment of plaint dated 10.08.2022 under Order VI Rule 17 CPC.

The learned advocates for the parties are present by filing hazira.

This Court has perused the materials on record including the application for amendment of plaint and heard the learned advocates.

Now the application for amendment of plaint dated 10.08.2022 is taken up for passing order.

The plaintiff had filed the instant suit in the year 2016, *inter alia*, praying for (a) declaration that termination of the plaintiff's service by the defendant by letter dated 17.06.2016 is illegal, invalid and inoperative, (b) reinstatement of the plaintiff with full backwages, (c) permanent injunction restraining the defendants from giving effect or further effect to the order or termination of the plaintiff's service and (d) damages as available to the plaintiff *in alternative*.

The defendants are jointly contesting the suit by filing written statement.

The issues in the suit were framed on 15.05.2017 and thereafter, the trial of the suit had commenced.

The plaintiff (PW-1) was initially examined in-chief on 12.03.2018 and his initial cross-examination by the defendants was concluded on 02.08.2018.

In the meantime, the plaintiff had filed an application for amendment of plaint under Order VI Rule 17 CPC on 28.08.2018 ('hereinafter referred to as "first amendment application"). By the first amendment application, the plaintiff had sought for incorporation of certain facts regarding his employment at different organisations subsequent to the filing of the suit.

After contested hearing, the first amendment application of the plaintiff was allowed by this Court by Order dated 04.04.2019 with cost.

The defendants, however, challenged the said Order of this Court dated 04.04.2019 before the Hon'ble High Court at Calcutta by way of a civil revision being registered as C.O. No. 1926 of 2019. However, the said civil revision was dismissed on contest by the Hon'ble Court *vide* judgement and order dated 03.07.2019 upon

confirming the impugned order allowing the first amendment application.

Subsequent to the said order of the Hon'ble Court, the plaintiff filed the amended copy of plaint and the defendants filed their additional written statement against the same.

After the first amendment of plaint, the plaintiff was examined on recall on 10.02.2022 and he was thereafter fully cross-examined by the defendants. Subsequently, another witness (PW-2) was examined in-chief on behalf of the plaintiff on 10.08.2022 and he was partly cross-examined by the defendants on that day.

At this stage, on 10.08.2022 the plaintiff filed the instant application for amendment of plaint under Order VI Rule 17 CPC (hereinafter referred to as the "second amendment application").

By the second amendment application, the plaintiff prays for incorporation of a paragraph being no. 16A in the plaint whereby the plaintiff seeks to quantify the damages and also seeks amendment of prayer by incorporating the prayer "*(d) damages of Rs. 67,01,807/- as available to the plaintiff in alternative*" in place of the original prayer (d) of the plaint.

According to the plaintiff, after the first amendment application, the plaintiff has now assessed the amount of damages to the tune of Rs.67,01,807/- which he seeks to incorporate in the plaint by way of his second amendment application. It is submitted on behalf of the plaintiff that the amendment sought for in the second amendment application relate to subsequent events and circumstances which took place after institution of the suit and it is the case of the plaintiff that such amendment is necessary in order to avoid the multiplicity of proceedings and for determination of real question in controversy between the parties. It is further case of the plaintiff that if the proposed amendment is allowed, the foundation of the suit will remain unchanged and it will not alter the case of the plaintiff materially.

It is argued by the learned advocate for the plaintiff that the Court can take notice of subsequent events including the amount of damages which are connected with the main and/or consequential relief and such amendment would neither be a departure from the pleadings and nor introduction of a new case. It is further argued on behalf of the plaintiff that the amendment sought to be incorporated by the second amendment application will neither substitute the cause of action nor will it change the nature and character of the suit and no prejudice will be caused to the defendant if such amendment is allowed.

It is further submitted on behalf of the plaintiff that since the proposed amendment relate to subsequent events and changed circumstances, the plaintiff could not make the prayer for the proposed amendment before commencement of the trial in spite of due diligence on his part and according to the plaintiff, there are no latches, negligence or lacuna on his part in this regard.

The defendants in their written objection has opposed the prayer for amendment and submitted that the proposed amendment ought to have been raised by the plaintiff before the commencement of trial and despite having his knowledge about it, the plaintiff did not incorporate the same within time.

It is argued on behalf of the defendants that the proposed amendment regarding quantifying the alleged damages at this belated stage is not a *bona fide* one inasmuch as the same amounts to a desperate attempt by the plaintiff after conclusion of his (PW-1's) deposition to fill up the lacuna in his case to the utter prejudice of the defendants particularly when the lacuna in the plaintiff's case regarding non-quantifying the alleged damages has already been brought to light by the plaintiff's clear admissions in this regard during his cross-examination by the defendants.

It is the case of the defendants that in spite of incorporating an alternative prayer for damages in the plaint, the plaintiff miserably failed or chose not to quantify the same in his pleadings neither at the stage of filing of the suit nor at any subsequent stage before commencement of trial and not even at the stage of making his first amendment application though nothing prevented the plaintiff from doing so.

In this regard, it is further argued on behalf of the defendants that the second amendment application of the plaintiff is liable to be rejected in view of the *proviso* to Order VI Rule 17 CPC which puts a bar against allowing an application for amendment after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party seeking amendment could not have raised the matter before the commencement of trial.

It is urged by the defendants that in this case there is clear lack of due diligence on the part of the plaintiff in seeking the proposed amendment regarding quantification of alleged damages as he ought to have raised the matter before the commencement of trial as he had knowledge about the same since inception of the suit and no explanation has been offered by the plaintiff in his second amendment application as to why he did not do so earlier.

Keeping in mind these rival contentions, at this stage it would be appropriate to consider the provision regarding amendment of pleadings as contained in Order VI Rule 17 CPC and the same is quoted hereunder:

***"17. Amendment of pleadings.—*** *The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose 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."*

As noted earlier, in this suit for declaration and permanent injunction, the plaintiff had made an alternative prayer for damages without quantifying the same in his pleadings. The fact of non-quantification of the damage in the pleadings would be further evident from the admissions made by the plaintiff (PW-1) *firstly* during his cross-examination *before* the first amendment of plaint and *secondly* during his cross-examination *after* the first amendment and on both these occasions, the plaintiff specifically admitted that he had not quantified the damage in his plaint.

It is argued by the learned advocate for the defendants that in order to nullify the effect of such admissions and to fill up the lacuna in the plaint case, the plaintiff has come at this belated stage with this second amendment application seeking to quantify the damage which the plaintiff failed to do or did not choose to do before commencement of trial and not even at the stage of his first amendment application. According to the learned advocate, this is not permissible in law in view of the *proviso* to Order VI Rule 17 CPC and allowing such amendment at this stage would cause serious prejudice to the defendants. The learned advocate further argued that the plaintiff has miserably failed to substantiate that in spite of due diligence, he could not have made the prayer for such amendment before the commencement of trial.

Law is settled in this regard that the *proviso* to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party seeking amendment could not have raised the matter before the commencement of the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden in this case is on the plaintiff who seeks the amendment after commencement of the trial to show that in spite of due diligence, such amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the Court needs to take into consideration whether the application for amendment is *bona fide* one and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.

After due consideration of the matter, this Court is inclined to accept the arguments of the learned advocate of the defendants in this regard.

The proposed amendment by way of the second amendment application of the plaintiff, if allowed, would lead to a travesty of justice inasmuch it would result in nullifying the effect of the admissions of the plaintiff (PW-1) in his cross-examination thereby

allowing him to fill up the lacuna in the plaint case and needless to say that this will cause serious prejudice to the defendants which cannot be compensated by awarding cost. The plaintiff is duty bound to justify his prayers made in the plaint by making appropriate pleadings and if he fails to do so, he is sure to face the consequences for such lack of due diligence. If the argument of the plaintiff that he was unable to quantify the damages at the stage of filing of the suit is accepted then it will lead to the obvious conclusion that his alternative prayer for damages made in the original plaint, without having any basis to substantiate the same at that stage, was frivolous, speculative and without any basis. Either way, it goes against the plaintiff.

Considering these facts and circumstances and relevant law in this regard, this Court has no hesitation to hold that the plaintiff has failed substantiate any ground to satisfy this Court to conclude that in spite of due diligence, he could not have quantified the damages before the commencement of trial.

Accordingly, the prayer of the plaintiff for amendment of plaint by his application dated 10.08.2022 under Order VI Rule 17 CPC stands rejected.

The instant suit be fixed on **16.07.2024** for rest cross-examination of PW-2 by the defendants.

At my dictation

Judge, Bench-IV  
City Civil Court, Calcutta

Judge, Bench-IV  
City Civil Court, Calcutta