

Order no. 27 dated 09.01.2018

Both parties file hazira. Today is fixed for order.

An application u/o 6 R 17 CPC has been filed on behalf of the defendant stating inter alia that the defendant not being satisfied by his earlier Advocate consulted another advocate on or about 31.10.2017 and engaged its present Advocate. That the present Advocate after going through the papers advised the defendant that the defence available has not been brought to the notice of the Id. Court in the w.s. and the defence points have not been properly set up or incorporated in the w.s. That the present advocate then advised the defendant that the W.S. dated 15.12.2015 needs to be corrected so as to enable the Id. Court to determine the real question in controversy. That the defendant by way of instant amendment intends to bring the facts concerning the controversy in the instant suit before the Id. Court. Hence, the defendant prays for amendment of the w.s. as per schedule A of the petition.

W.O. has been filed on behalf of the plaintiff stating inter alia that the ground assigned by the defendant in para 1 to 4 of the application do not justify to ask for amendment of w.s. suppressing the fact that the application is filed after disposal of the application u/o 7 R 11 CPC on the basis of the original written statement. That the application for amendment, if allowed, will change the nature and character of the pleadings and progress of the suit. Several paragraphs of the written statement have been sought to be deleted at the sweetwill of the defendant and by the proposed amendment an altogether new case is being sought to be incorporated by the defendant by deleting the existing defence. In such circumstances, the plaintiff prays for rejection of the petition for amendment of the written statement.

After hearing both sides and on perusal of the materials on record I find that by way of amendment the defendant intends to replace almost the entire written statement keeping only page no. 1 of the written statement intact. L. advocate for the defendant cited a decision of the Hon'ble Supreme Court as reported in (2001) 10 S.C. Cases 84 wherein the Hon'ble Supreme Court observed that the first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for determination of the real questions in controversy. If that condition is not satisfied the amendment cannot be allowed and the other important condition which should govern the discretion of the Court is the potentiality of pre-judice or injustice which is likely to be caused to the other side.

Heard. In the present case I find that in the written statement dated 5.12.2015 there are some specific averment in para 30, 31 and 34. Moreover, the contents of para 15 of the written statement regarding para 5 of the plaint is quite different from the statement in para 17 of the proposed amendment regarding para 5 of the plaint. In para 13 of the written statement it has been mentioned that the defendant deposited rent much in excess in ignorance of the legal position and is of excess rent paid by it.

But this averment finds no place in para 15 of the proposed schedule of amendment regarding para 3 of the plaint. The contents made in para 12 of the written statement regarding para 2 of the plaint wherein I has been mentioned that at any rate the contents of the alleged unregistered lease cannot be referred o except for co-lateral purpose does not find place in para 14 of the schedule of the proposed amendment. This type of deletion, in my opinion, may cause prejudice to the other side i.e. the plaintiff which cannot be compensated adequately in terms of money as stated by the Hon'ble Supreme Court in the above decision.

Accordingly, it is,

ordered

the application for amendment filed by the defendant is rejected on contest.

Fix 21.2.2018 for p. hearing.

Dictated and corrected by me :

Judge

Judge