

Present: Sri Suparna Ray (JO Code: WB00711)
Judge, Commercial Court at Alipore
Title Suit 21 of 2023
(Renumbered as T.S. (Com) 58 of 2023)
CNR no. WBSP18-000100-2023

Order No. 15
11.04.2025

In the matter of:

Suit for declaration
recovery of damages valued
at Rs. 1,72,48,652/- (Rs.
500 for declaration, Rs.
1,72,48,152/- for damages).

And

In the matter of:

M/s. Rescon (India)
Private Limited.

Vs.

MacneillEngineering
Limited.

ORDER

Today is fixed for passing order of the application being I.A. No. 03 of 2024.

Both sides file their respective haziras.

Now, the instant application has been taken up for passing necessary order.

I.A. No. 03 of 2024

Plaintiff/petitioner has filed the captioned application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "said Act") praying for amendment in the plaint in accordance with the schedule as mentioned in the instant application.

By way of the instant application, the plaintiff/petitioner has brought to incorporate certain subsequent facts and to deal with certain issues raised by the defendant in its defence. Due to mistake and inadvertence such facts have not been incorporated in the said plaint, which needs to be incorporated in the said plaint in the form of amendment as stated in the schedule of the instant application.

Defendant, on the other hand, has filed its written objection to the instant application.

The defendant's contention is that the facts, which sought for incorporated by the plaintiff, were not necessary till the time it was pending for judgment. If those facts were not necessary to be incorporated at the time of adducing evidence, the same cannot be necessary at this stage, just because the defendant has filed the written statement.

Ld. Advocate appearing for the defendant has submitted that this amendment application is an afterthought. The plaintiff herein is not a rustic villager, rather a company being run by highly educated persons, holding positions, have failed to show their diligence till the time the suit was pending for judgment. The plaintiff cannot be allowed to take advantage of the situation. This application is a clear abuse of process of law. In support of his submission, he has relied on the Judgement of the Hon'ble Court reported in (2008) 5 SCC 117 [*ChanderKanta Bansal vs. Rajinder Singh Anand*].

Contrary to the aforesaid, Ld. Advocate for the plaintiff has submitted that the Court is to be quite liberal while taking into consideration of an application filed under Order VI Rule 17. Regarding his submission, he has relied on the decision of the Hon'ble High Court at Calcutta reported in 2024(4) Indian Civil Cases 127 (Cal.) [*Bijoy Kumar Pal vs. Mohan Chatterjee & Ors.*], the decision of the Hon'ble Apex Court reported in 2006 (5) Supreme 943 [*Baldev Singh & Ors. vs. Manohar Singh & Anr.*] and further the decision of the Hon'ble Supreme Court reported in (2019) 15 SCC 628 [*Varun Pahwa vs. Renu Chaudhary*].

Heard the Ld. Advocates for both sides and also perused the materials on record.

It is fact that the plaintiff filed the instant application for amending the plaint after the written statement was filed by the defendant. It is also fact that the instant matter had been running *ex parte* from the transferor Court and when the same was come before this Court, this Court issued notice upon the defendant and then only the defendant came here and filed an application for vacating the *ex parte* order against the plaintiff. This Court upon hearing the said application was pleased to vacate the *ex parte* order against the defendant. The defendant filed W.S accordingly. Thereafter, the plaintiff brought the instant application for amendment under Order VI Rule 17 of the Code.

Therefore, the issue that revolves around herein is to what extent the power of this Court is spread to allow an application under Order VI Rule 17 of the Code. The scope of Order VI Rule 17 of the Code and the manner in which the Courts ought to consider applications for amendment

is well settled by a long line of decisions by the Hon'ble Apex Court in its copious decisions.

The Order VI Rule 17 of the Code says as follows:

“The Court may at any stage of the proceeding allow either party to alter or amend his pleadings 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”.

In the case in hand, the trial was commenced *ex parte* against the defendant before the transferor Court and when the instant case suit came before this Court, the plaintiff filed the instant application, after the defendant filed W.S.

This Court has relied on the *Bijoy Kumar's* case (*supra*), as referred to by the Ld. Advocate of the plaintiff, wherein the Hon'ble High Court considered the various decisions of the Hon'ble Apex and observed that *“The proviso appended with the respective provision provides that the application for amendment shall not be allowed after commencement of trial unless the Court is satisfied that instead of due diligence party could not have raised the matter before commencement of trial, but in number of cases it is observed and held even by the Supreme Court that said proviso is not conclusive, mandatory and puts specific bar for allowing the application after commencement of trial whereas the Court has observed that it is directory and if the Court is satisfied that the amendment is necessary for proper adjudication of the case and also to resolve the dispute between the parties, the same can be allowed”.* The Hon'ble High Court, while considering an application under VI Rule 17 of the CPC, further held as *“The Hon'ble Apex Court held in that case that even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitation. The Hon'ble Apex Court virtually allowed the amendment of the pleadings and observed that the Court should avoid hyper technical approach in disposing the application praying for amendment of the pleading”.*

In the case of *Baldev Singh* (*supra*), the Hon'ble Supreme Court held as *“8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side”.* In another case of *Varun Pahwa* (*supra*), the Hon'ble Supreme Court held that the rules of procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleadings even if a party is negligence or careless as the power to grant amendment of the pleadings is

intended to serve the ends of justice and is not governed by any such narrow or technical limitations. The case of *ChanderKanta (supra)* relied on by the Ld. Advocate for the defendant is distinguishable in respect of the facts of this Court.

From the above, it is said that the proviso limits the power to allow amendment after the commencement of trial, but grants discretion to the court to allow such amendment if it feels necessary for proper adjudication of the dispute. Hence, the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment.

Upon cultivating the facts of the present case as delineated above, the facts and circumstances of the present case is propelling to allow the instant amendment and it is further true that if this amendment is allowed, the defendant will not be remediless inasmuch as the said defendant will get an opportunity to file its additional written statement to such amendment, if it desires to file so.

Therefore, in view of foregoing reasons, I am of the considered view that the instant application for amendment of the plaint filed by the plaintiff is allowed on context.

The plaintiff/petitioner is directed to make necessary amendment in the plaint in accordance with the Schedule as expounded in the instant application and to file the amended copy of the plaint before this Court by the next date as fixed hereunder after serving the copies of the same upon the defendant. Defendant shall have liberty to file amended written statement, if any.

The instant application being I.A. no. 03 of 2024 is hereby **disposed of**.

Fix the matter on **05.05.2025 at 11:00 a.m.** for taking steps by the parties.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me

Sd/-
Judge, Commercial Court at Alipore,
For South 24 Parganas, PurbaMidnapore,
PaschimMidnapore&Jhargram

Sd/-
Judge, Commercial Court at Alipore,
For South 24 Parganas, PurbaMidnapore,
PaschimMidnapore&Jhargram