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NADIM MOHLE

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 401 of 2025

MOHAMMAD SALIM ROKADIYA **versus** MOHAMMAD AARIF ROKADIYA &
ORS.

Order Sheet

18.06.2025	Mr. Manoj Paranjpe, counsel for the petitioner. Mr. Dashrath Prajapti, Panel Lawyer for the State. None for respondents No.1 to 3 though served. Heard. Admit. Also heard on I.A. No.1, application for grant of stay. Mr. Paranjpe would submit that the suit was filed by the plaintiff for declaration of title and permanent injunction. He would further submit that the plaintiff moved an application under

Order 6 Rule 17 of the CPC on 10.01.2025 challenging therein the relinquish deed dated 21.09.2016 & 01.06.2015. He would also submit that the learned Court below allowed the time barred claim of the plaintiff. He has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Dinesh Goyal @ Pappu v. Suman Agarwal (Bindal) and others (2024 SCC OnLine SC 2615)***, wherein it has been held that while allowing the amendment application, the Court should not allow the time barred claim.

On the other hand, learned State counsel would oppose the submission made by Mr. Paranjpe.

Heard.

In the matter of ***Dinesh Goya @ Pappu*** (supra), the Hon'ble Supreme Court in para-11 held as under:-

"11. At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.

11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In North Eastern Railway

Administration, ***Gorakhpur v. Bhagwan Das (2008)***
8 SCC 511 it was held as under:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar* (1990) 1 SCC 166.]”

11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17.

Recently, this Court in *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Anr.* (2022 SCC OnLine SC 1128), after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:-

(i) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does

not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

iii) Amendments, while generally should be allowed, the same should be disallowed if –

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are –

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.

Nadim	(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach. (III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint. ” Taking into consideration the submission made by Mr. Paranjpe and facts of the present case in the light of the judgment passed by the Hon’ble Supreme Court in <i>Dinesh Goyal @ Pappu</i> (supra), a strong case is made out for grant of stay, therefore, there shall be stay of further proceedings of the Civil Suit No.A/3/2019 (<i>Mohammad Aarif Rokadiya v. Mohammad Salim Rokadiya & ors.</i>) pending before the learned 1st District Judge, Balod, District Balod, till the next date of hearing. Accordingly, I.A. No.1 is allowed. Call this matter for final hearing after four weeks. Sd/- (Rakesh Mohan Pandey) Judge
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