

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 11425/2025

1. Khushkumar Soni S/o Murlidhar Soni, Aged About 44 Years, R/o Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
2. Gaurav Soni S/o Murlidhar Soni, Aged About 38 Years, R/o Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
3. Lrs Of Bhanwarlal Soni S/o Narayanlal, Through -
4. Jitendra Kumar S/o Late Bhanwarlal, Aged About 46 Years, Village Aauwa, At Present- Purusharthi Nagar, 1St Floor City Height Complex, Pali, District Pali Rajasthan.
5. Smt. Saroj D/o Late Bhanwarlal, W/o Prakash Soni, Aged About 54 Years, R/o Village Aauwa, At Present- 438 Bhopal Chauk, Camp Pune Maharashtra.
6. Smt. Meena D/o Late Bhanwarlal, W/o Mahesh, Aged About 52 Years, R/o Village Aauwa, At Present- Hariniwas Building, Gwalior Tank, Mumbai Maharashtra.
7. Smt. Indubala D/o Late Bhanwarlal, W/o Pawan Kumar, Aged About 50 Years, Shanti Devi Market, Meena Marg, Merta City, Nagaur Rajasthan.
8. Gaytri Devi D/o Late Bhanwarlal, W/o Devraj Soni, Aged About 48 Years, R/o M/s Variety Jewellers, Pipri Nilakh, Pune Maharashtra.
9. Smt. Pushpa Devi D/o Late Bhanwarlal, Aged About 70 Years, R/o Village Aauwa, At Present- Purusharthi Nagar, 1St Floor City Height Complex, Pali, District Pali Rajasthan.

----Petitioners

Versus

1. Kapoorchand Soni S/o Mishrilal Soni, R/o Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
2. Lrs Of Smt. Laxmi Devi Soni, W/o Mishrilal Soni, Through -
3. Smt. Shanti Devi W/o Pannalal D/o Mishrilal Soni, R/o Flat No. 208, Om City Vinayak, S R A Cooperative Society, T P S Nariman Road, Mumbai (Maharashtra).

4. Smt. Sushila W/o Dilip, D/o Mishrimal, R/o Village Musalia, Tehsil- Sojat, District Pali (Rajasthan).
5. Smt. Bhagwati W/o Mohanlal D/o Mishrimal Soni, R/o Main Bazaar, Khivada, Tehsil Raji And District Pali (Rajasthan).
6. Smt.ajodhya Devi W/o Kamal Soni, Bohron Ki Dhal, Pali, Tehsil And District Pali (Raj.).
7. Smt. Ramiya W/o Ramesh D/o Mishrimal, R/o Village-Guda Aindla, Tehsil And District Pali (Rajasthan).
8. Smt. Ratan Devi D/o Mishrimal, R/o Chalig, Shivam Apartment, 2Nd Floor, Akbar Nagar, Opposite Mahadev Temple, Nava Vadaj, Ahmedabad (Gujarat).
9. Champalal S/o Mishrimal, R/o Aauwa, Khathiko Ka Bas, Tehsil Marwar Juntion, District Pali (Rajasthan).
10. Lalit Kumar S/o Kapoorchand Soni, R/o Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.
11. Hemant Kumar S/o Kapoorchand Soni, R/o Village Aauwa, Sonaro Ka Bass, Tehsil Marwar Junction, District Pali Rajasthan.

-----Respondents

For Petitioner(s)	:	Mr. Narendra Singh A. Rajpurohit
For Respondent(s)	:	Mr. J.K. Bhaiya

HON'BLE MR. JUSTICE MUKESH RAJPUROHIT

Order

25/03/2026

1. The petitioners-plaintiffs have filed the present writ petition under Article 227 of the Constitution of India challenging the order dated 05.04.2025 (Annx.7) passed by the Civil Judge, Marwar Junction, District Pali, whereby the petitioners' application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'C.P.C.' hereinafter) has been rejected.

2. The application sought permission to amend the plaint to include a prayer for reconstruction of ventilators (sunshades) allegedly demolished by the respondents, which the petitioners claim affects their easementary rights to light and air.

3. Heard learned counsel for the parties.

4. Learned counsel for the petitioners submits that the petitioners are co-owners of an ancestral house at Village Auwa, Tehsil Marwar Junction, District Pali, constructed approximately 61 years ago, with three ventilators (sunshades) adjoining the respondents' house. Through these, the petitioners have enjoyed uninterrupted air and light, thereby acquiring an easementary right. It is alleged that during construction of the adjoining property, the respondents demolished the sunshades, interfering with this right.

5. It is submitted that the petitioners instituted a suit for permanent and mandatory injunction on 16.05.2016 seeking protection of their easementary rights. The respondents filed a written statement denying the allegations. Issues were framed on 24.05.2018, and the trial court granted a temporary injunction restraining the respondents from causing obstruction. Subsequently, the petitioners filed an application under Order VI Rule 17 read with Section 151 of C.P.C., which was dismissed by the trial court on 05.04.2025.

6. Learned counsel for the petitioners contends that amendments necessary to determine the real controversy must be allowed. It is submitted that the relief sought was already reflected in paragraph 8 of the plaint, and the application was

merely clarificatory. It is further contended that the proposed amendment does not alter the nature of the suit and seeks additional or alternative relief based on already pleaded facts, and thus, causes no prejudice to the respondents.

7. In support of his contention, learned counsel for the petitioners has relied upon the following decisions :-

- i. **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited & Anr.** reported in **(2022) 0 AIR (SC) 4256**
- ii. **Dinesh Goyal @ Pappu vs. Suman Agarwal (Bindal) & Ors. (2024 INSC 726).**
- iii. **Pankaja and Ors. vs. Yellappa (D) by LR's and Ors.** reported in **AIR 2004 SC 4102**

8. In contrast, Mr. J.K. Bhaiya, learned counsel appearing on behalf of the respondents, while supporting the order impugned has opposed the writ petition. It is submitted that the issues were framed on 24.05.2018 and the statement of P.W. 1 – Khush Kumar was recorded on 04.11.2024, whereas, application for amendment has been filed only on 25.11.2024. It is contended that the application for amendment was, thus, filed only after the commencement of the trial, which reflects an undue delay on the part of the petitioners. Further, it is emphasized that the issues relating to the claim for a mandatory injunction have already been duly framed and are presently under consideration by the court. It is argued that allowing the proposed amendment at this stage, would not only disrupt the orderly progress of the proceedings but would also effectively alter the very nature of the suit. Such an alteration, according to the respondents, would cause serious prejudice to them, as it would necessitate reopening issues

already settled and compel additional evidence, thereby impeding the fair and expeditious adjudication of the matter.

9. Lastly, it is argued that provisions of Order II Rule 2 of C.P.C. cannot apply to an amendment which is sought on an existing suit.

10. Reliance has been placed by learned counsel for the respondents on the following decisions :-

- i. **Noor Kabirdin Meghani & Ors. vs. Sanjeev Manuel D'Souza** reported in **2022(1) Civil Court Cases 204 (Bombay)**
- ii. **Parvez Ahmad vs. District Judge Balrampur & Ors.** reported in 2021(3) Civil Court Cases 198 (Allahabad)

11. I have considered the submissions made by learned counsel for the parties, perused the material available on record and gone through the judgments cited at Bar.

12. Upon consideration of the pleadings, evidence, and submissions, it is observed that paragraph 8 of the plaint already referred to obstruction of the petitioners' easementary rights. However, the specific relief of reconstruction of the sunshades was not expressly claimed in the original plaint. The amendment, filed after the commencement of trial, seeks to introduce a distinct and specific relief, which goes beyond mere clarification. In such circumstances, the trial court rightly applied Order II Rule 2 of C.P.C., holding that a part of a claim omitted at the outset cannot be revived without sufficient justification. The belated filing of the amendment, after the trial had commenced, further underscores the absence of adequate justification for disturbing the procedural framework and the orderly conduct of the suit.

13. The aforesaid view is corroborated by the ratio *decidendi* in Noor Kabirdin Meghani & Ors. (supra), where the Bombay High Court observed as under :-

"10. Proviso, to Order 6 Rule 17 mandates that no application for amendment shall be allowed after commencement of trial, unless Court comes to conclusion that in spite of due diligence, the parties would not have raised the matter before the commencement of the trial. Trial in the civil suit commences from the date of fling of affidavits in lieu of examination-in-chief of the witnesses and, therefore, proviso to Order 6 Rule 17 of the Code comes into play only after fling of such of the affidavit in lieu of examination-in-chief of the witnesses. In the back-drop of the facts of the case, it cannot be said that plaintiff was unaware of the fact that the suit premises were sub-let by the defendants. In fact, defendants in their Written Statement categorically stated that they were sub-letting suit premises to different parties with the consent and knowledge of the plaintiff's constituted attorney. Written statement was fled on 29th November, 2004; whereas the application seeking leave to amend the plaint was fled in January, 2019. As such, the averments of the plaintiff in the application, to amend the plaint, that after his cross-examination when he enquired with the mother about leave and licence agreements with which he was confronted to, his mother informed him that she did not remember as and when she had signed aforesaid documents, was clearly after thought. Averments in paragraph 5 of the application seeking leave to amend the plaint are to be rejected on the face of it because in the Written Statement, defendants had disclosed that they had sub-let the premises to different parties under the leave and licence agreements with consent of constituted attorney of the plaintiff. Under these circumstances, the plaintiff's assertion that he was unaware of the fact of sub-letting and he perceived it, during his cross-examination and, therefore, it constitutes subsequent events, is obviously incorrect and to be rejected on the face of it. No doubt, that where suit for ejectment of tenancy is fled on certain grounds, subsequent addition of fresh ground in the plaint does not change the nature of the suit and, therefore, amendment to add such new grounds is permissible. In the case of **Smt. Abnash Kaur v. Dr. Avinash Nayyar**, AIR 1975 Delhi 46, Full Bench of the Delhi High Court has held that if a new ground for recovery of possession under Rent Control Legislation arises after the fling of the petition then that can also be combined with previously existing grounds. Landlord can either fle new suit on these grounds or he may apply for amendment in existing eviction petitions and urged this ground also. It is said that in practice, it is undesirable for the landlord to pursue two different petitions for eviction on different grounds and that he should be allowed to amend his suit to cover new ground also. In

the case in hand, the plaintiff had fled suit also on the ground of sub-letting under Section 16(1)(e) of the Maharashtra Rent Control Act. What is now sought to be added is a ground under Section 16(1)(m). The averments in the application seeking amendment to the plaint is lacking the details of the rent allegedly charged by the defendant was in excess of standard rent and permitted increases for the premises sub-let by him. In fact, the ground for eviction contemplated under Clause (m) of Section 16(1) could be said to be available to the plaintiff when the suit was instituted and, therefore, it is neither subsequent event nor a new ground for recovery of possession that arose after filing of the suit."

14. So far as contention in that Order II Rule 2 of C.P.C. does not apply to amendments in an existing suit, is without merit. The proposed amendment, filed after trial commenced, seeks a new and specific relief of reconstruction of the sunshades which is omitted in the original plaint. No sufficient justification has been offered for the delay, and allowing it would disrupt the trial and prejudice the respondents. The trial court therefore correctly rejected the amendment under Order VI Rule 17 read with Section 151 of C.P.C.

15. The judgments in **Life Insurance Corporation of India** (supra), **Dinesh Goyal** (supra) and **Pankaja** (supra) relied upon by the petitioners, concern amendments allowed to clarify existing claims or correct clerical errors without introducing new relief. In contrast, the present amendment seeks to add a distinct relief that was not originally claimed.

16. In these circumstances, the trial court's order rejecting the amendment under Order VI Rule 17 read with Section 151 of C.P.C. cannot be said to be illegal, arbitrary or liable to interference.

17. The scope of interference under Article 227 of the Constitution of India against an interlocutory order, is limited. Unless the order suffers from patent illegality, perversity or jurisdictional error, interference is not warranted.

18. The writ petition is accordingly dismissed.

19. The petitioners are at liberty to pursue their suit within the framework of the pleadings already admitted, without prejudice to any further evidence regarding the easementary rights already claimed.

20. Stay petition as well as all pending application(s), if any, shall also stand disposed of.

(MUKESH RAJPUROHIT),J