

1. Mr. Kulkarni, the learned counsel for the petitioner submits that the plaintiff has filed the application for amendment after the trial has commenced. The same is not permissible. No due diligence is shown. According to the learned counsel the facts contrary to the evidence are being sought to be pleaded by way of amendment. Such amendment could not have been allowed by the learned Trial Court.
2. Mr. Gaware, the learned counsel supports the order.
3. I have considered the submissions.

4. While considering the application for amendment merits of the amendment application are not required to be considered. They are required to be adjudicated at the time of final trial. It has been stated in the amendment application that the construction has been made during the pendency of the suit.

5. Considering the above the amendment has been allowed. The present petitioner will have every right to file written statement to the amended part and raise all available defences.

6. Mr. Kulkarni, the learned counsel submits that, though in the application for amendment the area is mentioned as 85 x 6 feet in para 4 (a) while carrying out the amendment in the plaint it has been mentioned as 8 Ft. 6 Inch.

7. The plaintiff will have to carry out the amendment in the plaint in consonance with the amended application i. e. allowed. The petitioner shall bring this fact to the notice of the Trial Court. Considering the above writ petition is disposed of. No costs.

**[ S. V. GANGAPURWALA, J. ]**