

APPLICATION NO.1960 OF 2015
IN C.S.NO.472 OF 2003

PUSHPA SATHYANARAYANA, J.

This application is filed by the applicant / second defendant for amending the written statement.

2. The Civil Suit is filed for recovery of money by the plaintiff, which is the Food Corporation of India, based on differential costs.

3. The case of the applicant / second defendant is that the respondent / plaintiff had called for tender of damaged food grains fixing the minimum price per Quintal. The second defendant was one of the participants. It is the case of the second defendant that after the opening of the tender, the plaintiff had reduced the minimum reserve price, which was not communicated to the participants. It is stated that any change in the tender terms and conditions should have been communicated to the participants, before the opening of the tender or earlier tender should be recalled and fresh tender should be called for. As the minimum reserve price was not quoted by the plaintiff, which was not within the knowledge of the second defendant, the tender transaction failed. Though the second defendant had raised several

defenses in the suit, it is his case now that only on obtaining the minimum reserve price that was reduced by the plaintiff under the Right to Information Act, he had the knowledge about the price variation. Hence, the amendment is sought for the supplement of the facts with respect to the same. As the very suit itself is filed for recovery of differential costs, the rates are relevant according to the second defendant. Hence, the amendment.

4. The application is contested by the respondent / plaintiff primarily on the ground that it is barred by limitation as the same is after the commencement of the trial in the suit. It is also the case of the plaintiff that the amendment now sought for is based on an internal administrative instruction from the Headquarters of the plaintiff. The date of opening of tender was also prior to the said communication. It is alleged further that the amendment in no way could create any beneficial right in favour of the applicant / second defendant. As the second defendant also has not explained any reason for the inordinate delay in seeking amendment, the plaintiff sought for dismissal of the same.

5. Heard the submissions made on either side and perused the materials available on record.

6. As stated earlier, it is the amendment of written statement that is sought for after the commencement of the trial. Admittedly, P.W.1 is examined. At this stage, the amendment is sought for, based on certain information obtained by the second defendant under the Right to Information Act. Amendment to the pleadings are never a bar, but whether the same can be directed to be amended after the trial had commenced. In the present case, originally written statement was filed on 17.09.2008 and the trial had commenced in the year 2014 and P.W.1 is in the witness box. The present application seeking amendment of the written statement is filed when the evidence of P.W.1 is in progress. Now, the only question that has to be seen is whether the Court can allow the amendment that would be necessary to determine the real question of controversy between the parties. Secondly, whether allowing of the application would cause any prejudice to the other side.

7. In view of the above principle, it is the duty of the Court to decide as to whether the amendment is necessary to resolve the dispute between the parties. Only if the Court comes to the conclusion that unless the amendment is necessary in deciding the dispute, the same cannot be allowed.

As the very suit is based on the differential costs, the amendment sought for by the second defendant is also with respect to the same, the amendment is necessary though sought to be added at a very belated stage. It is averred by the applicant / second defendant that he could get those information only through Right to Information Act and the plaintiff did not make those information available to the second defendant prior to the opening of the tender. Therefore, applying the test whether the second defendant in spite of due diligence could have raised the matter before the commencement of the trial, the answer would be in the negative. However, the exercise of applying for the information under Right to Information Act, would have been done by the second defendant at the earliest. Nevertheless, the amendment would enable the Court also to resolve the dispute in question.

8. The learned counsel for the applicant relied on a judgment of the Honourable Supreme Court in **USHA DEVI VS. RIJWAN AHMAD AND OTHERS [AIR 2008 SC 1147]**.

9. In turn, the learned counsel for the respondent placed his reliance on a judgment of the Honourable Supreme Court in **VIDYABAI AND OTHERS VS. PADMALATHA AND ANOTHER [AIR 2009 SC 1433]**.

10. The Honourable Supreme Court in the above matter has specifically held that it is the primary duty of the Court to decide whether the amendment is necessary to decide the real dispute between the parties and on such condition being fulfilled, the amendment can be allowed.

11. Admittedly, it is only the revision of rates, which is now sought to be added in the written statement, which would be necessary to decide the question in dispute. However, considering the length of time, after which the said amendment is sought for, the respondent / plaintiff has to be compensated for the prejudice that may be caused.

12. In the facts and circumstances of the case, this Court is of the view that the application seeking to amend the written statement can be allowed, with liberty to the plaintiff, to file a written statement, however, on condition that the second defendant / applicant pays a sum of Rs.5,000/- (Rupees Five Thousand Only) as costs to the plaintiff, within a period of two weeks from the date of receipt of a copy of this order.

13. In view of the above, the application is allowed and the applicant/ second defendant is directed to file the amended written statement within a period of two weeks from the date of receipt of a copy of this order, after which, reply statement, if any, by the plaintiff may be filed, within a period of two weeks thereafter. Having regard to the fact that the suit is of the 2003, the same may be posted before the learned Additional Master - I, on 01.08.2016, and the learned Additional Master - I is directed to complete the trial, within a period of two months thereafter.

28.06.2016

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