

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9882 OF 2018
(Dagu s/o Gangadhar Dongre Versus Gopinath s/o Mahadu Thore
(died), through LR's and others)

Mr.A.S.Shelke, Advocate for the petitioner.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 28/08/2018

PER COURT :

1. In this case, I am deciding the issue as to whether, in every case of grant of amendment, the concerned party has to necessarily file a fresh typed copy of the amended plaint/written statement/darkhast/counter claim, etc.

2. The petitioner / judgment debtor is aggrieved by the impugned order dated 05/07/2018 by which, the application Exh.84 filed by the Decree Holder in RD No.38/2009, seeking permission to file the typed amended copy of the Darkhast, has been allowed.

3. Learned Advocate for the petitioner has strenuously criticized the impugned order contending that, though the amendment was permitted under Order VI Rule 17 by the Executing Court by which

the LR's of the deceased decree holder were permitted to be brought on record by order dated 22/12/2011, the necessary amendment was not carried out. It is strenuously submitted that as the amendment was not carried out and since the time of 14 days has lapsed, the Executing Court could not have allowed the amendment after 6 years and more so when there was no application filed by the LR's of the decree holder seeking enlargement of time u/s 148 of the CPC.

4. I have perused the petition paper book with the assistance of the learned Advocate and have gone through Order VI Rules 17 and 18 of the CPC. The record reveals that the LR's of the decree holder had approached the Executing Court by an application Exh.40 on 05/12/2011 seeking permission to bring the LR's on record. The said application was allowed on 22/12/2011. The amendment was in fact carried out on 04/01/2012 within 14 days and the LR's were brought on record. It is only that the amended copy by way of a freshly typed Darkhast post amendment was not filed, inadvertently.

5. Order VI Rules 17 and 18 read as under :-

“17. Amendment of pleadings : The Court may at any stage of the proceedings 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.

18. *Failure to amend after order – If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”*

6. I do not find any provision under the Code of Civil Procedure which would indicate that an act of carrying out the amendment is not complete until the freshly typed amended copy of the plaint or the W.S. or the Darkhast or any document which has undergone an amendment, is filed. In short, the petitioner cannot point out any provision or judicial pronouncement which would indicate that though an amendment is carried out, unless the freshly typed copy, post amendment of the said amended document is not filed, it would

therefore amount to failure to carry out the amendment under Order VI Rule 18.

7. Section 153 of the CPC prescribes the general power of the Court to amend any defect or error in any proceeding in a suit, on such conditions as it may deem fit and proper. Section 153 reads as under:-

"153. General power to amend -

The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

(Emphasis supplied)

8. The Civil Manual published by the High Court of Judicature (Appellate Side), Bombay, and known as the 'Civil Manual of 1986' provides for Chapter V, pertaining to the Rules applicable to all pleadings. It would be apposite to reproduce the relevant Rules 78 and 79 hereunder :-

"78. Rules as to pleadings are set out in Order VI: Attention is invited to Rules 2,6,10,11,12,13 and 14-A of Order VI. The Courts should take particular care to see that they are strictly

complied with. The provisions have been summarized as follows:-

(1) The whole case must be stated in the pleadings. That is to say, all material facts must be stated. (Order VI, Rule 2).

(2) No matter of law is to be stated.

(3) Only material facts are to be stated. The evidence by which they are to be proved is not to be stated. (Order VI, Rules 2,10,11,12).

(4) Immaterial and unnecessary facts are not to be stated.

(5) The facts are to be stated concisely.

(6) It is not necessary to allege the performance of any condition precedent; and averment of performance is now implied in every pleading (Order VI, Rule 6).

(7) It is not necessary to set out the whole or any part of a document, unless the precise words thereof are necessary. It is sufficient to state the effect of the document as briefly as possible. Order VI, Rule 9.

(8) It is not necessary to allege a matter of fact which the law presumes, or as to which the burden of proof lies on the other side. (Order VI, Rule 13).

(9) Every pleading, when filed in the Court, shall be accompanied by a statement in the prescribed form, regarding the address of the party, which is to be called as "Registered address" of the party (Please refer to Bombay amendment to Rule 5 of Order VI of Code of Civil Procedure, 1908 under Rule 122), (Rule 14-A, Order VI).

(10) It is necessary that the plaint, written statement or pleading as the case may be, should be signed and verified in suits by or against the Central Government, by the persons who are acquainted with the facts of the case and appointed by the Central Government as Officers specified in the Schedule (reproduced at the end of Chapter II) annexed to Government Notification No.SRO 351, dated the 25th January, 1958, as amended upto 20th September, 1969.

Amendments

79(1) Though it is not part of the duty of the Courts to make pleadings for the parties, they should bear in mind that the Scheme of the Code is that the pleadings of the parties must contain full and accurate statements of the claims and assertions of each party. Therefore, where a Court, after perusing the pleadings, the statements of the parties or their lawyers, the documents, admissions as to facts and documents, answers to interrogatories, and information obtained from examination of the parties under Order X, finds that the

pleadings do not represent the real assertions and contentions of the parties, it should give an opportunity to the parties concerned to apply for amendment of pleadings.

(2) All applications for amendments of pleadings under Rule 17, Order VI of the Code of Civil Procedure, 1908, shall be signed and verified, as required under Rules 14 and 15 of Order VI of the Code of Civil Procedure, 1908.

(3) The law as to such amendments is contained in Section 153 and Order VI, Rules 16 and 17. Attention is specially drawn to the provision that "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties." It should be noted that under the provisions of Order VI, Rules 17 and 18, pleading should be altered or amended by the party or his lawyer. Any amendment made in a plaint, at any time after it is registered, should be signed or initialled by the Judge.

(4) If a plaint is amended, a corresponding amendment should be made in the Register of Suits and initialled by the responsible Officer of the Court." (Emphasis supplied).

9. It is, therefore, apparent from Rule 79(1) that though there is no duty cast on the Court to make the pleadings for the parties, the scheme of the Code is such that the pleadings of the parties must contain full and accurate statements of the claims and assertions of

each party. After the Court peruses the pleadings, the statement of the parties or their lawyers, the documents, admissions as to facts and documents etc., it can give an opportunity to the party concerned to apply for amendment of pleadings, if it finds that the pleadings do not represent the real assertions and contentions of the parties. Under Rule 79(3), any amendment made in a plaint, at any time after it is registered, should be signed or initialed by the Judge.

10. It is, therefore, clear that once an amendment is carried out pursuant to the order of the Court, within the time frame so prescribed in such order, a litigant is obliged to carry out the amendment within the time frame following which, the said amendment would be signed or initialed by the Judge. Hence, it is expected that the moment an amendment is carried out by a litigant, the office of the Court has to place the matter before the learned Judge to enable him / her to sign or initial the amendment. The action of granting an amendment and carrying out the amendment by the litigant would be complete after the Judge signs or initials at the place where the amendment is made.

11. In the case of Bishnu Prasad Upadhyaya Vs. Amar Sing [AIR 1959 Manipur 9], it was held by the Manipur High Court that when

an amendment of the pleadings is allowed, it should be embodied in the plaint or written statement as the case may be. In case, the amendment cannot be conveniently embodied in the plaint or the written statement, then an amended plaint or written statement embodying the additional pleadings allowed, should be filed and insisted upon by the Courts. The Courts have the powers to visit failure to comply, under Order VI Rule 18 of the CPC.

12. Paragraph No.4 of the judgment in Bishnu Prasad (*supra*) reads as under :-

"4. During the pendency of the suit before the Additional Munsiff, the plaintiff applied for amendment whereby he claimed on account of mesne profits (correctly speaking they ought to be damages for use and occupation) Rs. 100/- p.m. and though, as already seen, the period for which these damages were claimed in the plaint was of 25 months in the application for permission to amend this period was shown to be 18 months, and deducting Rs. 200/- already claimed, by the amendment the plaintiff sought to increase his claim by another Rs. 1,600/-, thus raising the value of the claim for purposes of jurisdiction to Rs. 2,925/-.

The Additional Munsiff granted leave to amend, and returned the plaint for presentation to the proper court, as his jurisdiction does not go beyond Rs. 2,000/-. But the mistake committed was

that consequential amendments necessary to be made as a result of the grant of this application for amendment were not embodied in the plaint, and it appears that the application for leave to amend was treated as a part of the plaint and was returned along with the plaint.

This was obviously wrong and the practice must, cease. When amendments of pleadings are allowed they should be embodied in the plaint or written statement as the case may be. In case they cannot lie conveniently embodied in the plaint or written statement then an amended plaint or written statement embodying the additional pleadings allowed should be filed and insisted upon by the courts. Courts have power to visit failure to comply under Or. 6 R. 18 C. P. C." (Emphasis supplied.)

13. In the case of Bharathan Vs. Kochappi and others [1959 KLJ 362], the learned Division Bench of the Kerala High Court dealt with an issue, wherein, the amended plaint was not signed by all the plaintiffs. Only one of the plaintiffs, out of the three, had signed the plaint after carrying out the amendment. A freshly typed copy of the plaint, post amendment, was filed on record with one plaintiff signing it. The suit was dismissed merely on this count. It was held by the High Court that, even if there was a difficulty of this nature, the suit should have been proceeded with and the original plaint could have been considered while adjudicating the suit. It was, further held that,

when the amendments were incorporated in the copy of the plaint, what the Court had to do was to get the amendment incorporated in the original plaint.

14. Paragraph No.1 of the said judgment, reads as under :-

"1. The suit has been dismissed on a very flimsy ground that the amended plaint has not been signed by all the plaintiffs, but by plaintiff 3 alone. Even if that were a defect the suit should have been proceeded with the original plaint as the plaint in the suit - see Order 6 Rule 18, C.P C. But what happened here is not that the amendments were not carried out, but the method of carrying it out was irregular. We regret even that is a thorough misconception. When the amendments were incorporated in the copy of the plaint produced by the plaintiff, 3, what the court had to do was to get the amendments incorporated in the original plaint, call upon the defendants to file additional written statements, if any and then proceed with the suit in the usual way. In the circumstances we feel constrained to allow the appeal and remit the case back to the lower court to be proceeded within the light of the observations herein contained. The respondent's learned counsel however pointed out that another ground is also mentioned in the judgment for dismissing the suit, namely, the failure to implead the legal heirs of the plaintiff 1 who died. The appellant's counsel contends that his heirs were sought to be impleaded and that that petition was also dismissed along with the suit. We leave the question as to

what result follows as the result of the alleged failure to implead the legal heirs of the plaintiff 1 open. The order dismissing the petition for impleading is set aside. The lower court will hear the parties afresh on that matter and decide what course should be followed. "

The Kerala High Court, therefore, held that the amendments were indeed carried out in view of the order granting the amendment, but the method of carrying it out was irregular.

15. I have considered the facts of the case in hand in the light of the law as above. It is obvious that the decree holder has amended the darkhast by bringing the L.Rs. of the erstwhile decree holder on record on 4.1.2012 within the fourteen days' period granted by the Court. Due to inadvertence, the said L.Rs. of the decree holder did not submit a freshly typed copy of the darkhast. By the impugned order, the trial Court permitted the decree holders to place such a freshly typed darkhast on record after more than six years. Considering the law laid down in the Bharathan case (supra), obviously the trial Court could not have dismissed the darkhast on account of this irregularity.

16. In the above backdrop, I find from the scheme of law and the

reported judgments that if an amendment can be conveniently embodied in the darkhast, there was no requirement of submitting a freshly typed darkhast since neither the CPC nor the Civil Manual nor any view taken in any judicial pronouncement would mandate the filing of a freshly typed darkhast or plaint or any document, post amendment.

17. Considering this situation and the law laid down in Bishnu Prasad (supra), I am of the view that when any document undergoes an amendment, if the amendment can be conveniently embodied in the basic document like the plaint / written statement / counter claim / darkhast etc., the same could be permitted even without filing a freshly typed document for the said purpose. For example, if the L.Rs. are brought on record or a minor correction is made in any paragraph, it would not be necessary to insist upon a litigant to submit a fresh typed document after carrying out the amendment. However, if a plaint undergoes an amendment where a few paragraphs, few prayers etc. are introduced, the trial Court or any concerned Court can insist upon the litigant to file a freshly typed document post amendment.

18. In order to facilitate the filing of such a freshly typed

document, the trial Court can direct the party to file such a typed document by mentioning in the order granting amendment and a time frame can also be granted in the order of amendment. In short, if a Court permits an amendment to be carried out in 14 days, it could very well observe in the order itself that the concerned litigant would carry out the amendment in the said document and shall also file a freshly typed document embodying the amendment, within the same period. This approach would be in tune with Rule 79 of the Civil Manual which casts a duty on the Court to ensure that the amendment is carried out.

19. I am of the view that all the Courts, to which, the CPC and the Civil Manual are applicable, should follow this procedure. This would eliminate unnecessary expenditure to a litigant who has to carry out a minor amendment, which can be conveniently embodied in the document while carrying out the order of amendment. Where certain paragraphs and prayers are permitted to be added by way of an amendment, the trial Court would insist on filing of a freshly typed document, post amendment, by specifically mentioning in the order allowing the amendment.

20. In view of the above, I do not find that the impugned order

permitting the LR's of the decree holder to place the freshly typed amended copy of the darkhast on the record, could be termed as being perverse.

21. This petition, being devoid of merit is, therefore, dismissed.

(Ravindra V.Ghuge, J.)

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