

**CM No.22262-CII of 2017 with
RA-CR No.179-CII of 2017 in
CR No.6659 of 2016**

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**CM No.22262-CII of 2017 with
RA-CR No.179-CII of 2017 in
CR No.6659 of 2016**

Aadish Aggarwal and another

.....Petitioners

Vs

Brijeshwar Swaroop and another

.....Respondents

Present:Mr. Raj Kumar Gupta, Advocate
for applicant/respondent No.1.

Mr. Rajiv Kataria, Advocate
for the non-applicant/petitioners.

[1]. Main case i.e. Civil Revision No.6659 of 2016 was decided by this Court vide order dated 12.09.2017. Thereafter review application was filed by respondent No.1 on the ground that at the relevant time, two more cases were decided vide order of even date. The case law cited in the present revision petition could not be appreciated as the facts of other cases were also overlapping in nature.

[2]. Notice of the application was issued and thereafter,

both the parties were heard.

[3]. An application under Order 6 Rule 17 read with Section 151 CPC was filed by the defendants for amendment of the written statement. The plea taken in the application for amendment was to the effect that in para No.4 of the preliminary objections of the written statement words “being joint Hindu family property” were inadvertently left. These words were also left out from para No.1 on merits. The aforesaid words were sought to be incorporated in the pleadings of the written statement. In para No.1 of the reply of the written statement, words “The para No.1 of the plaint is totally wrong and hence denied” were sought to be pleaded with replacement of para No.1 by the proposed amendment.

[4]. The application was contested on the ground that proposed amendment was very much in the knowledge of the defendants as defendant No.2 is an Advocate for himself as well as on behalf of defendants No.1 and 3. The proposed amendment was not related to the facts and no new facts can be allowed to be inserted by way of proposed amendment as it would change the nature of the suit.

[5]. The application was filed by defendants No.2 and 3 only, whereas defendant No.1 was kept aloof. The piecemeal

application for amendment was termed to be illegal and the same was filed after about three and half years of filing of the original written statement. The bare facts were noticed in the order dated 12.09.2017 passed by this Court while allowing the amendment in the written statement.

[6]. Learned counsel for review applicant/respondent No.1 relied upon **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others, 2007(1) Civil Court Cases 500(SC), Vidyabai and others Vs. Padmalatha and another, 2009(1) RCR (Civil) 763 (SC), Salem Advocate Bar Association, Tamil Nadu Vs. Union of India, 2005(3) Civil Court Cases 420 (SC), Ashok Kumar Laroia Vs. Vijay Kumar and another, 2011(5) RCR (Civil) 268, Ram Babu and others Vs. District Judge, Unnao and others, 2012(1) LJR 205 (Allahabad), R.P.S Associates Vs. Om Parkash @ Hari Singh and others, 2012(5) RCR (Civil) 109, Piari Bai Vs. Smt. Jamna Bai, 1998(3) Civil Court Cases 604 (P&H), Rakesh Kumar and another Vs. Satnam Singh and others 2010(4) Civil Court Cases 128 (P&H), Smt. Singhshari Devi and another Vs. Deena Nath Pandey and others, 1998(1) Civil Court Cases 481 (Patna), Rajbir Singh and others Vs. Tejinder Singh and others, 2015(3) LJR 651 (Punjab and**

Haryana), Bahadur Singh and another Vs. Avtar Singh, 2007(3) Civil Court Cases 417 (P&H), Gurmukh Singh Vs. Gursharan Kaur, 2013(1) PLR 460 (Punjab and Haryana), Chhabubai Haribhau Badakh Vs. S.H. Khatod and Sons and another, 2010(1) Civil Court Cases 218 (Bombay), Anil Vs. Pankaj, 2010(4) Civil Court Cases 185 (Bombay), Shree Ram Gupta Vs. Shafiquer Rahman and others, 2010(3) Civil Court Cases 274 (Allahabad), Ramesh Ramanujam and others Vs. Varadammal and others, 2005(2) RCR (Civil) 761 (Madras), Narendra Kumar and another Vs. Prem Narain Parihar, 2010(3) Civil Court Cases 145 (Allahabad) and Ramji Rai and another Vs. Jagdish Mallah (Dead) through LRs and another, 2007(3) RCR (Civil) 680 (SC) and contended that amendment in the pleadings cannot be allowed after trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. Under the proviso, no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. No application of pleading shall be allowed unless the above requirement is satisfied. The amended Order 6 Rule 17 CPC was inserted due to the recommendation of the Law

Commission, since Order 17 as it existed prior to the amendment was being invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of the suits, amendment was made by the Amending Act, 1999, deleting Rule 17 from the Code. Therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the Court to grant amendment, however, with certain limitation which is contained in the new proviso added to the Rule. In pith and substance, the aforesaid precedents can be relied to say that the amendment cannot be allowed after commencement of trial, unless it is proved that in spite of due diligence, the issue could not be raised before the commencement of trial. *Mala fide* amendment cannot be allowed to be incorporated. Learned counsel also relied upon **M/s Modi Spinning and Weaving Mills Co. Ltd. and another Vs. M/s Ladha Ram and Co., 1977 AIR (SC) 680, S. Malla Reddy Vs. M/s Future Builders Co-operative Housing Society and others, 2013(2) RCR (Civil) 957 and Revajeetu Builder & Developers Vs. Narayanswamy & Sons and others, 2010(1) RCR (Civil) 27.**

[7]. Learned counsel further contended that the Court has jurisdiction to allow amendment of the pleadings after

commencement of trial provided the requirement under the Rule is satisfied, otherwise, the Court has no jurisdiction to allow amendment after commencement of the trial. Proviso to Order 6 Rule 17 CPC is couched in a mandatory form. It has to be shown that in spite of due diligence, such amendment could not have been sought earlier. Object is to prevent frivolous applications which are filed to delay the disposal of the trial. Casual filing of application for amendment of written statement without disclosing any reason has to be discarded on its face value. The knowledge and due diligence are the relevant factors to be considered while allowing the amendment in the written statement. The test for granting amendment in the written statement in view of aforesaid precedents is only that no amendment should be allowed after commencement of the trial, unless in spite of due diligence, the matter could not be raised before the commencement of trial. No application of pleading can be allowed, unless the above said requirement is satisfied.

[8]. Learned counsel for the non-applicant/petitioners contended that applicant/respondent No.1 has not satisfied the ingredients of Order 47 Rule 1 CPC as the same cannot be equated with an appeal. There was no error apparent on the face of the record of the order under review. Under the garb of

review, the review applicant cannot be permitted to re-argue the case. Learned counsel referred to **Sasi (D) through LRs Vs. Aravindakshan Nari and others, 2017(2) RCR (Civil) 363, Kamlesh Verma Vs. Mayawati and others, 2013(4) RCR (Civil) 4, Jain Studios Limited through its president Vs. Shin Satellite Public Co. Ltd, AIR 2006 SC 2686, Kerala State Electricity Board Vs. Hitech Electrothermics & Hydropower Ltd. and others, (2005) 6 Supreme Court Cases 651** and other judgments to the effect that mere possibility of two views on the subject is not the ground to review the earlier judgment. Review applicant cannot re-argue the revision petition under the garb of review application.

[9]. This Court while deciding the issue took notice of the fact that the present application was filed on the ground of further elaboration of facts and stand taken by the defendants in the original written statement. The Court took notice of the ratio laid down in **Mahila Ramkali Devi and others Vs. Nadram (D) through LRs and others, 2015(4) Law Herald (P&H) 2839 (SC)** in the context that there is no impediment against an Appellate Court to permit amendment of the pleadings so as to enable a party to raise a new plea. The Court also took notice of the precedents including **Surender Kumar Sharma Vs.**

Makhan Singh, 2009(4) RCR (Civil) 597, Usha Balashaheb Swami and others Vs. Kiran Appaso Swamia and others, 2007(2) RCR (Civil) 830, Baldev Singh and others Vs. Manohar Singh and another, 2006(3) RCR (Civil) 844 and Andhra Bank Vs. ABN Amro Bank N.V and others, Air 2007 SC 2511 on the subject that all *bona fide* and necessary amendments should be allowed. Even amendment of pleadings can be allowed at a belated stage, for that opposite party can be compensated with adequate cost. Belated amendment cannot be refused as a general rule, if the same is found to be necessary for just decision of the case. Amendment of the written statement is to be liberally construed as the same is placed at a different pedestal than the one for amendment of the plaint. Defendant is entitled to take new and inconsistent stand and even admissions made in the earlier written statement can be explained by way of amended written statement. The delay in filing the application for amendment in the written statement is not a ground to reject the same as no serious prejudice is going to be caused to the plaintiff. In the instant case, evidence of the defendant is in progress. At the stage of amendment of the pleadings, ultimate merits of the case are not to be seen. All necessary amendments are to be allowed.

[10]. It is mandatory on the Court to allow all amendments which are necessary for the purpose of determining the real controversy between the parties. At the same time, the Court is not obligated to go into the correctness or falsity of the case of either side in the amendment. The merits of the case are not to be adjudged at the stage of allowing or rejecting the prayer for amendment.

[11]. The rule of amendment is essentially a rule of justice, equity and good conscience and it has to be exercised in larger interest in doing complete justice between the parties. All *bona fide* amendments are to be allowed. The first part of Rule 17 CPC gives discretion to the Court, but second part is imperative and enjoins the Court to allow all necessary amendments. Procedural hurdles ought not to impede the cause of justice in dispensation mechanism.

[12]. In pith and substance, one thing can be culled out that amendment of the written statement to be considered at a different pedestal than the amendment of the plaint. In the amendment of written statement, the party can take inconsistent plea and even amendment of the written statement can be allowed at a belated stage. The only requirement is that Court must be satisfied that the proposed amendment is a *bona fide*

amendment and would enable the Court in pronouncing the judgment in an effective manner. All the rules of procedure are handmaid of justice. In *M/s Estralla Rubber Vs. Dass Estate (Pvt.) Ltd., 2001(4) RCR (Civil) 362*, the Court has considered the ground of elaboration of defence in support of earlier plea taken in the written statement and for such an elaboration, amendment in the written statement can be allowed even after commencement of the trial. The merits of the case are not be seen at this stage. If the amendment is *bona fide*, then the procedural law cannot be an impediment in allowing such an amendment which would ultimately facilitate the Court in deciding the controversy in an appropriate manner.

[13]. It is true that before the amendment can be allowed, the Court should satisfy itself whether such an amendment is necessary for determining real controversy between the parties. In the absence of such satisfaction, amendment cannot be allowed. Other consideration which governs the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to other side. Ordinarily, if other side is compensated with cost, then there is no prejudice, but if irreparable loss is caused to the opposite side, then such amendment cannot be granted. Amendment of written statement is to be more liberally

construed than the amendment in the plaint. The purpose for imposing cost is to discourage *mala fide* amendments which are designed to delay the legal proceedings. Secondly, the cost is to compensate the opposite party for the delay and inconvenience caused to it. In a way, it is intended to send a message to the parties to be careful while drafting the original pleadings. While granting or rejecting the amendment, following principles are required to be taken into consideration:-

- a. Whether the amendment sought to be made is imperative for effective adjudication of the matter?
- b. Whether the amendment is *bona fide* or *mala fide*?
- c. The amendment should not cause such prejudice to the opposite party which cannot be compensated in terms of adequate cost.
- d. Whether the proposed amendment changes the nature and character of the suit?

As a Rule the Court should reject such amendments if fresh suit on intended cause of action is barred by limitation on the date of filing of application of such amendment. The provisions are only illustrative and not exhaustive. It is a very serious judicial exercise and should not be undertaken in a casual manner. The Court should not refuse *bona fide* and

legitimate amendment and at the same time should not allow *mala fide* or dishonest amendment. The stage of the litigation is also a relevant factor for allowing or rejecting the amendment in the pleadings. This is one of the most misused provision in the civil code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily burdened with pending cases. That is why the exercise in terms of Order 6 Rule 17 CPC should be done with a great caution and should be exercised sparingly. In **Revajeetu Builders and Developers vs. Narayanaswami and sons and others case (supra)** the Hon'ble Apex Court highlighted the aforesaid principles to be followed meticulously.

[14]. In **Abdul Rehman and another vs. Mohd. Ruldu and others, 2012(4) RCR (Civil) 481**, the Hon'ble Apex Court held that the power to allow amendment is wide enough to be exercised at any stage of the proceedings in the interest of justice. The basic purpose of allowing the amendment is to minimise the litigation. However, the relief which has become time barred cannot be inserted by way of amendment. The power of amendment should be exercised in the larger interest for doing full and complete justice to the parties and it should be allowed if the same subserves the cause of justice and avoids

further litigation. The original provision was deleted by the Amendment Act 46 of 1999, however it was again restored by the Amendment Act 22 of 2002, wherein a proviso was added to prevent application for amendment after the trial has commenced, unless the Court is satisfied that inspite of due diligence, the parties could not have raised the matter before the commencement of trial. The proviso to some extent curtails absolute discretion of the Court to allow the amendment at any stage. If the application is filed after commencement of the trial, it has to be shown that inspite of due diligence, it could not have been filed earlier. The object of the Rule is that the Court should try the merits of the case for determining the real issue between the parties provided it does not cause prejudice to the opposite party. The power to allow the amendment is wide and can be exercised at any stage of litigation. The principles were reiterated by the Hon'ble Apex Court in **J. Samuel and others vs. Gattu Mahesh and others, 2012(1) RCR (Civil) 903.**

[15]. The amendment sought by the party should not be based on falsehood. If the basis for seeking amendment is proved to be false, such an amendment cannot be allowed. If *prima facie*, the statement made in the application for amendment is not proved to be correct, then such disputed

pleadings cannot be allowed to be inserted in the pleadings by way of amendment. The Hon'ble Apex Court in **Mashyak Grihnirman Sahakari Sanstha Maryadit vs. Usman Habib Dhuka, 2013(2) RCR (Civil) 965**, held that if *prima facie* the statement made in the application for amendment is proved to be incorrect the amendment should be rejected.

[16]. However, it is equally important to see that the amendment can be allowed before the commencement of trial and not after that in routine manner. It is the primary duty of the Court to decide as to whether the amendment sought after commencement of the trial goes to the roots of the case or are *mala fide* in nature? The proviso inserted by way of amendment has to be meticulously followed and the Court should allow the amendment before the commencement of the trial. The proviso of Order 6 Rule 17 CPC has been couched in a mandatory form. In **Vidyabhai and others vs. Padmalatha and another, 2009 (1) RCR (Civil) 763**, the Hon'ble Apex Court while relying upon **Baldev Singh vs. Manohar Singh, 2006(3) RCR (Civil) 844**, **Kailash vs. Nanhku and ors., (2005) 4 SCC 480**, and **Rajesh Kumar Aggarwal vs. K.K. Modi, 2006(2) RCR (Civil) 577 and AIR 2006 SC 1647** reiterated the aforesaid facts. However, the jurisdiction of the Court to allow amendment has to be based on

the condition precedents that it must come to the conclusion that inspite of due diligence, the parties could not have raised the matter before commencement of the trial. In a way conditional reservoir exists in the form of due diligence, if the party is sufficiently prevented from raising the matter before commencement of the trial. The restriction provided by the proviso is an embargo on the exercise of jurisdiction by the Court. Thus, unjust jurisdictional fact, as envisaged therein is found to be existing, the Court will have no jurisdiction to allow amendment in the plaint. The proviso has already been upheld in **Salem Advocate Bar Association vs. Union of India, 2005(3) RCR (Civil) 530**. The amendment at a belated stage cannot be declined merely because it is sought at a belated stage. The amendment can be allowed, if it satisfies the aforesaid ingredients and is found to be necessary for deciding the real controversy between the parties. The Hon'ble Apex Court in **Surinder Kumar vs. Makhan Singh's case supra** held that the discretion under Order 6 Rule 17 CPC is an unfettered discretion conferred upon the Courts to allow amendment in the pleadings on such terms and conditions as it appears to the Court to be just and proper. The delay in making the application for amendment cannot be a ground to refuse amendment. The

Court must do full and complete justice to the parties subject to payment of adequate cost to the party opposite, if no prejudice beyond repair is caused to the opposite party. The Hon'ble Apex Court held in the aforesaid manner while relying upon **B.K.N. Pillay vs. P. Pillay, (2013) CCC 165, Supreme Court.**

[17]. The object of the Rule is that the Court must try the merit of the case and allow all amendments which may be necessary for determination of real controversy between the parties. In this regard reference can be made to **Ramchandra Sakharam Mahajan vs. Damodar Trimbak Tanksale (Dead) and ors. (2007) 6 SCC 737** and **Rajesh Kumar Aggarwal vs. K.K. Modi, AIR 2006 SC 1647.**

[18]. Having considered the controversy in its right spirit, I am of the view that no indulgence can be granted to review applicant/respondent No.1 in the review application and the same is accordingly dismissed.

May 29, 2018

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No