

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6643 OF 2021**

Raju Danchand Bardia	.. Petitioner
Versus	
Siddharth Raju Bardia and ors	.. Respondents

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Mr. Mayur Khandeparkar for the petitioner.
Mr.S.S. Kanetkar for the respondents.

**CORAM: BHARATI DANGRE, J.
RESERVED ON: 13th OCTOBER, 2021
PRONOUNCED : 17th DECEMBER, 2021.**

JUDGMENT :-

1 Rule. Rule returnable forthwith. Heard by consent of the parties.

2 The petitioner is aggrieved by an order passed by the 5th Addl. Judge, Small Causes Court and Civil Judge, Sr. Division, Pune below Exhibit-163, in Special Civil Suit No.564 of 2013, wherein the application filed by the plaintiff who had sought leave to amend the pleadings in the Plaint by invoking Order VI Rule 17 of the Code of Civil Procedure is partly rejected and partly allowed to the extent of permitting amendment proposed under para (B) and paragraph (8) of the Application.

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3 Before adjudicating the correctness of the impugned order, it would be necessary to refer to certain facts which gave rise to the impugned order.

Special Civil Suit No.564 of 2013 came to be instituted by the original plaintiffs M/s.Ratna Bardia, seeking partition of the suit property by means of metes and bounds and for separate possession with consequential relief of injunction and for mesne profits. The Suit covered the properties mentioned in paragraph no.1 of the plaint and was accompanied by the family tree. The claim of partition was staked on the premise that the plaintiff is the daughter of Late Shri Mohanlal Deepchand Chordia and Smt.Badambai M. Chordia and in which capacity, she is entitled for her share. The plaintiff claim that her father late Mohanlal Chordia was a businessman and the business was carried by him in the name and style of Chordia & Co. and Uttamchand Deep and Co, and as a part of his business, he acquired various properties in and around Pune region. Since he died intestate, the plaintiff sought her share in the property which was looked after by her brother in a fiduciary capacity, with an intention to protect her interest. The claim staked by her is based on her character as a legal heir of late Mohanlal Deepchand Chordia and the plaintiff claimed that she is entitled for proportionate share in the properties owned and possessed by her father. It was also pleaded that her mother also died intestate and

the entire ancestral properties are undivided, and the defendants do not have exclusive right, title and interest in the property. She, therefore, claimed one half share in the suit property.

4 On an attempt being made by the defendant no.15, and his wife – defendant no.28, to dispose of the joint property the Suit came to be filed, in which, apart from the aforesaid relief, an order of injunction was sought against the defendants by restraining them from creating any third party rights or interest in the suit property.

5 In the Suit, so instituted, Mr.Raju Bardia, the son of the original plaintiff was impleaded as defendant no.1 along with her own daughter being impleaded as defendant no.4. On the demise of the original plaintiff, Mrs. Ratna, being expired, the defendant no.1 came to be transposed as the plaintiff in the said Suit as her legatee with reference to the suit properties by her last Will dated 8th July 2011.

The original plaintiff moved an application under Order VI Rule 17 r/w Section 151 of the Code of Civil Procedure for amendment of the plaint, in light of the stand taken by the defendants in the written statement, to the effect that late Shri Mohanlal Deepchand and Badambai Chordia had executed a Will and since the Wills were brought on record through defendants, who took a specific stand that the plaintiff had given her consent

to record the name of beneficiary of Will in the share of late Shri Mohanlal Chordia as far as properties described in para 1(c) and para 1(g) are concerned.

She specifically pleaded that the Wills are either forged or are executed under undue influence, she specifically pleaded that the Wills on the basis of which the relief sought by her is opposed, are void ab initio and the consent letter alleged to be signed by the plaintiff are forged as she never signed any such document. It was specifically pleaded by her that she is 75 years old and is staying in New Zealand along with her son and she was not aware of the properties acquired by inheritance, self funded or purchased from the family funds and in the wake of the limited knowledge, the description of some of the properties was mistaken and the amendment was sought to rectify the same. Further by the said application, the plaintiff also prayed for insertion of Mrs.Madhubala R. Chordia as a defendant as she had received part of the properties from the deceased in terms of the Will executed by him.

6 In order to prove the real issue before the Court and to avoid multiplicity of litigation and in the interest of justice, the amendment was prayed for by inserting certain clauses on one hand and deleting certain pleadings in the plaint. The gist of the amendment sought to be brought on record, being to the effect that the defendants who have claimed that Mohanlal Chordia had

executed a Will dated 11th February 1998 was alleged to be forged or executed under the influence of defendant nos.15, 16 and 28 and *void ab initio* and not enforceable on various grounds sought to be pleaded in para 7. Para 7A was sought to be inserted in the plaint which claimed that the Will executed by late Badambai Chordia dated 23rd July 2006 as claimed by the defendants is either forged or executed under the influence of defendant nos.15, 16 and 28 and therefore, void *ab initio* and hence not enforceable in law. Further, by the proposed para 7b to be inserted in the plaint, the plaintiff intended to plead that the defendant had produced on record certain documents along with his written statement, asserting that the plaintiff had given her consent to transfer the properties mentioned in para 1(c) and 1(g) based on the alleged Will, however, the plaintiff deny that the letters are signed by her and she claim that they are forged one since the signature on the letters was at variance and the signature is in Marathi, but the plaintiff since 1995, had started scribing her signature in English and therefore, it was alleged that the signature of the plaintiff has been forged. It was also sought to be pleaded that the defendants had never produced these letters before the Revenue Officer with respect of the property described in para 1(g) and with a malafide intention, they are produced before the Court along with the written statement. By para 7(c), the plaintiff sought to amend the plaint by asserting that for the sake of argument without admitting that vide the said Will, late

Shri Mohanlal Chordia bequeathed the suit properties, the said Will is not enforceable in law as the properties were owned jointly by the family as declared before the ULC authorities and since the suit properties were purchased by the funds belonging to the family and the partnership firm, where the plaintiff was one of the partner and therefore, late Mohanlal was not entitled to dispose of the suit property by Will.

Amendment was also sought to be effected in the prayer clause, cause of action and prayer a1 and a2 were sought to be added, which read as under :-

“a1 The Hon’ble Court may kindly declare that Will dated 11/02/1998 of Late Shree.Mohanlal Deepchand Chordia is void and not enforceable in law.

a2 The Hon’ble Court may kindly declare that Will dated 23/07/2006 of late Badambai Mohanlal Chordia and not enforceable in law”.

7 The aforesaid application was considered and came to be decided in the light of the decision of the Apex Court in case of M/s.Revajeetu Builders and ors Vs. Narayanswamy & Sons (2009) 10 SCC page 84, and by recording that the application for amendment is malafide and will prejudice the other side which cannot be compensated in terms of money, the application came to be partly allowed only with regard to the amendment proposed in para (b) and para (8), by which the description of the

property in para 1(g) was sought to be corrected while the other amendments proposed and numbered as A, C, D to F were rejected with costs of Rs.6,000/- being imposed. It is this order which is assailed in the present Writ Petition.

8 The learned counsel Shri Mayur Khandeparkar, appearing for the petitioner would submit that the rejection of the proposed amendment is premised on a wrong reasoning recorded by the learned Judge being that the proposed amendment fundamentally alter the character of the Suit and if the amendment is allowed, it would cause injustice and irreparable loss to the respondents. The conclusion derived by the learned Judge that the amendment application is not *bonafide*, is also seriously criticized by the learned counsel coupled with the observation, that the plaintiff is in an attempt to change the structure of the suit itself. The learned counsel Mr.Khandeparkar would submit that the impugned order proceeds on the basis that the plaintiff had constructive knowledge of the alleged Wills and the plaintiff has been non-suited on the said ground, by recording that if the Suit had to be filed seeking a relief of declaring Wills executed on 11th February 1998 and 23rd July 2006 by late Mohanlal Chordia and Badambai Chordia, the Suit would be barred by limitation and since the constructive knowledge of the execution of the Will is inferred on the basis of documents placed on record which are in form of the notices, the application for

amendment is turned down with an observation that the plaintiff is trying to cover up the lacunae in the Suit. The submission advanced is to the effect that the proposed amendment (c) and (d) do not alter the nature of the Suit and what is sought to be incorporated, is a challenge to the Will which has been brought on record by the defendant and the plaintiff is merely pleading that it is inconceivable that the Wills were executed and is trying to bring on record as to how the said documents are forged and fabricated. This, according to Mr.Khandeparkar, is in support of the averments in the Suit made by the plaintiff that there was no Will left behind, by either of her parents and the averments in no manner change the nature or subject matter of the Suit, which seek a partition of the property of her parents.

Mr.Khandeparkar would submit that if the defence set out in the written statement is permitted to be retained as such, then the Suit of the plaintiff would be infructuous because the claim on which the partition is sought by the plaintiff is that her parents died intestate. The proposed amendment merely seek to expand the plea set out in the plaint to the aforesaid effect and since the two Wills are projected to be executed by her parents, the same are sought to be challenged and there is no inconsistency in the pleadings as the learned Judge has perceived. The submission is that the impugned order proceeds on entirely erroneous assumption in law regarding the scope and ambit of Order 6 Rule 17 of CPC and fails to take into account the

substantive provision to the effect that any amendment to the pleadings shall be permitted, which is necessary for effective determination of the dispute, unless it is hit by the proviso appended. Reliance is placed by Mr.Khandeparkar on the decision of the Apex Court in case of Sampath Kumar vs. Ayakannu & Anr, (2002) 7 SCC 559, to buttress his submission that at pre-trial, the amendment of pleadings should be liberally allowed, then amendment sought after commencement of trial and even if amendment is sought at a belated stage that itself cannot be a ground for rejection of the plaint and since the amendment sought by the plaintiff is at pre-trial stage, the rejection is erroneous. Another decision on which reliance is placed is in case of Pankaja and Anr Vs. Yellappa & ors, (2004) 6 SCC 415. Reliance is also placed on the decision of the Apex Court in case of Surender Kumar Sharma Vs.Makhan Singh, 2009 (10) SCC 626.

9 Per contra, learned counsel Mr.Shailendra Kanetkar for the respondent would rely upon the decision of the Apex Court in case of Revajeetu Builders & Developers (supra) where the Apex Court has culled out the principles to be taken into consideration while dealing with the said application for amendment and reliance is sought to be placed on the aforesaid principles which consists of a direction to the effect that as a general rule, the Court should decline amendments, if a fresh Suit

on the amended claims would be barred by limitation on the date of the application. Mr.Kanetkar would urge that the factors laid down by the Hon'ble Apex Court continue to govern the Application of Order VI Rule 17 and the said factors are illustrative and not exhaustive.

10 Mr.Kanetkar has placed on record a compilation of documents on the basis of which he submit that the plaintiff had the knowledge about the Wills which are sought to be challenged by amending the plaint and though it was within the knowledge of the plaintiff, at the time when the Suit was instituted, the challenge was never raised to the said Wills. It is also argued by Mr.Kanetkar that the Suit of the plaintiff is based on a premise that her parents died intestate, whereas by the proposed amendment, the plaintiff attempt to pose a challenge to the Wills executed by their late parents and this would alter the nature of the Suit, particularly when the plaintiff had accepted and acknowledged the Will in the past and has also accorded a No objection in form of the letters, which are placed on record. He would therefore, submit that the amendment has been rightly turned down by the impugned order by relying upon a principle laid down by the Apex Court in case of Revajeetu Builders (supra).

11 Order VI Rule 17 of the CPC, which permits

amendment of pleadings at any stage of the proceedings read as under:

“Order VI; Rule 17 CPC: 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.

12 It is manifest from the above, that the pleadings can be amended at any stage of proceedings and amendments, which are necessary for the purpose of determining the real questions in controversy between the parties shall be granted. The proviso appended to the Rules however carves an exception by stipulating that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial.

The essence of the said provision being allowing the amendment if it is necessary for effective adjudication of the proceedings pending before the court of law and where such amendment is imperative for proper and effective adjudication of

the case. The amendment is liable to be declined if it is sought to be introduced after the commencement of the trial but even at that stage, the pleadings can be permitted to be amended if the court is satisfied that despite due diligence, the parties could not have raised the matter before the commencement of the trial.

.. The parameters of grant of amendment or its refusal are by this time well settled and in case of *M/s. Revajeetu Builders (supra)* certain basic principles have been reiterated on critically analyzing the position of English and Indian cases and these principles have been culled out as the relevant factors which ought to be taken into consideration while allowing and rejecting applications for amendment and they are broadly categorized by the Apex Court as; (a) whether the amendment sought is imperative for proper and effective adjudication of the case; (b) whether the application for amendment is *bona fide* or *mala fide*; (c) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (d) refusing amendment would in fact lead to injustice or lead to multiple litigation; (e) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (f) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors, which are

expected to be kept in mind while dealing with an application under Order VI Rule 17 of the CPC but the Hon'ble Apex Court has expressly stated that the aforesaid factors are only illustrative and not exhaustive.

Admittedly, the decision on an application made under Order VI Rule 17 of the CPC is serious judicial exercise and the exercise should never be taken in a casual manner.

Their Lordships of the Apex Court while concluding the factors to be taken into account have recorded that while deciding the applications for amendment, the court must not refuse *bona fide*, legitimate, honest and necessary amendments on one hand and should not permit the *mala fide* and worthless or dishonest amendments on the other hand.

14 When the impugned order is perused which rejects the amendment by recording that the application made is *mala fide* and it will cause prejudice to the other side and also that it fundamentally changes the nature and character of the case, the observations have to be construed in the light of Order VI Rule 17 of the CPC. The crux of the entire issue is whether the amendment changes the nature of the suit? On marshalling the necessary facts, it is apparent that in the original suit, the original plaintiff had pleaded a case that her parents Shri Mohanlal Chordia and Smt.Badambai Chordia had died intestate. By the proposed amendment, the plaintiff sought a declaration in respect

of two Wills alleged to have been executed by her parents on 11/02/1998 and 23/07/2006 as void and not enforceable in law. The said Wills projected as the basis for denial of the claim of the plaintiff when the written statement filed by defendant No.19, where it was specifically pleaded that the father of the plaintiff and the defendants, during his life time has executed his last Will and testament dated 18/04/1995 duly registered and thereafter his last Will dated 11/02/1998 by which the properties mentioned in paragraphs 1(a), (c), (d), (f), (g), (i), (j), (k) and (l) are dealt with and bequeathed. It is further pleaded that subsequent to the demise of the father of the plaintiff on 15/12/1999, the execution of the Will has been admitted by the plaintiff and in pursuance of the said Will, the plaintiff had voluntarily given her consent for transfer of properties described in property 1(c) and 1(g) in favour of the defendants. It was, therefore, pleaded that the plaintiff is estopped from denying the last Will and Testament executed by her father as she had accepted and acted upon the same vide her consent letter signed in the year 2000 and hence, the said property amongst other properties cannot be included in the present suits. It was also pleaded that during her life time, the plaintiff herself has executed her Will and Testament and she had sold the properties described in 1(e) and 1(n) and, therefore, these properties cannot be included as suit properties. In paragraph 13 of the written statement, it is pleaded by the defendants that the plaintiff is aware of the last Will and

Testament executed by her father and mother during their life time, number of times, hence, the challenge to the Will at this stage, is hit by limitation. The pleadings effected in the written statement, so as to defeat the claim of the plaintiff is that the plaintiff had constructive knowledge of the Will, which had persuaded the trial Judge to accept the same. But the said conclusion in the impugned order, appear to be *prima facie* incorrect as the original of the Wills were not produced at the time when the written statement came to be filed in the year 2015, either by defendant No.19 or by defendant Nos.20 and 21 also in the year 2015. Further, defendant No.25 also filed a written statement raising a similar defence and defendant Nos.26 and 27 filed written statements in the year 2017. It is only in the year 2017 when the compilation of documents was filed in the special civil suit and, to be precise on 23/10/2017, the copies of the Wills of Late Mohanlal Chordia and Smt.Badambai were produced. Along with the said list of documents, copies of the 7/12 extract of various properties included as suit properties are also brought on record, which in any case, are not sufficient to establish the title flowing from the execution of the Wills by Shri Mohanlal Chordia and Smt.Badambai Chordia, the parents of the plaintiff. Proceedings for mutation of revenue records are not title proceedings and, therefore, in any event, it could not have been adjudicated before the City Survey Officer. Even assuming without admitting that the plaintiff had any constructive

knowledge of such a Will merely because the original plaintiff denied execution of any such document, that by itself, does not lead to any conclusion that the plaintiff had constructive knowledge of the circumstances surrounding such Will which could have been agitated in appropriate proceedings. The interpretation of the cause of action by learned Judge by recording that the plaintiff herself sought probate of Will allegedly executed by her mother Badambai Chordia, the proposed amendment is self contradictory and even barred by limitation and, therefore, cannot be allowed to stand.

15 By the impugned order, learned Judge has refused to exercise the power to grant amendment by construing it liberally by referring to the conduct of the plaintiff. On perusal of the impugned order, it is very apparent that the learned Judge has gone on the merits of the amendment which is sought to be included though it is trite position of law that the merits of the amendment shall not be gone into while deciding the amendment application. The cause of action is bundle of facts and cannot be permitted to telescopically examine every fact as independent and to the exclusion of others. Since the defendants in defence pleaded about the existence of the Will to oppose the cause of the plaintiff that her parents died intestate, I fail to understand how the amendment constitutionally or fundamentally change the nature of the suit.

One of the object of Order VI Rule 17 being to avoid multiplicity of litigation, the mere aspect that the amendment was delayed one, has impressed the learned Judge in rejecting the application for amendment. The merits of the matter may not entitle the plaintiff to claim the relief sought by the proposed amendment but at the same time, it should be borne in mind that it will avoid distinct proceedings being instituted particularly when the amendment is in the form of pretrial amendment.

16 In Sampat Kumar v. Ayyakannu & Anr. reported in (2002) 7 SCC 559, the Hon'ble Apex Court has made the following observations which are very relevant.

“9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and g such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be

answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.”

17 In another decision from the Apex Court in case

of Pankaja & Anr. v. Yellappa (Dead) by LRs & Ors. reported in (2004) 6 SCC 415, while dealing with the amendments, which are barred by limitation, the Hon'ble Apex Court by making reference to an earlier decision in the case of L.J. Leach & Co. v. Jardine Skinner & Co. reported in AIR 1957 SC 357 has made the following observations:

“13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

15. This Court in the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.⁴ has held: (AIR p. 362, para 16)

"16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it. if that is required in the interests of justice."

18 Their Lordships reiterated the earlier view of a Three Judges Bench in the case of *T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board* reported in *(2004) 3 SCC 392* by holding that the application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation. On the contrary, the application will have to be considered bearing in mind the discretion that is vested with the court in allowing and disallowing such amendments in the interest of justice.

19 Necessarily, the purpose of allowing an amendment being to minimize the multiplicity of litigation, wherever there is a dispute as to the bar of limitation, the course adopted by the Apex Court in the case of *Ragu Thilak D. John v. S. Rayappan* reported in *(2001) 2 SCC 472* where the Apex Court has stressfully laid down the proposition of law to the following effect.

"The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

20 In the wake of the aforesaid authoritative pronouncements, learned Judge has clearly erred in rejecting the amendment sought by the plaintiff on the ground that it is barred by law of limitation and amounts to changing the nature of the relief sought.

On perusal of the facts involved, the amendment which has been declined by the impugned order cannot be said to be a *mala fide* one and in my considered opinion, the learned Judge has grossly erred in considering the merits of the matter in holding that the amendment is barred by limitation. On an amendment being allowed, the relief sought can always be opposed on the ground that it is barred by limitation. However, at the threshold, by looking to the merits of the matter and by construing when the cause of action actually accrued to the plaintiff, the amendment cannot be rejected. Merely, on the ground that if the plaintiff proposed to bring fresh suit on the same set of facts pleaded in the application, Ex-163 or cause of action pleaded, it would be barred by limitation, amendment has

been declined by loosing sight of an important aspect that it is only when in defence the defendants pleaded about the existence of an execution of Will by their parents, the amendment was necessitated. Learned Judge also appears to be perturbed on account of various applications taken out by the plaintiff, but that itself cannot be a ground to reject the application for amendment. The impugned order passed by the learned Judge on 29/04/2021 to that extent, where he refused the amendment proposed and numbered as 'A', 'C', 'D' to 'F' cannot be sustained and the said proposed amendment sought by the plaintiff filed vide application, Ex-163, is permitted to be carried out. As far as the proposed amendment numbered as 'B' of paragraph 8, which is already allowed, subject to costs, shall remain untouched by the present order.

21 The writ petition is allowed to the aforesaid terms. Rule is made absolute.

SMT. BHARATI DANGRE, J