

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14865 OF 2021

- 1) Mukundwadi Co-op. Housing Society Ltd.
Kesarsingpura, Aurangabad,
Through its Chairman; Shri.Sopan Pawar,
Age: 65 Years, Occ. : Retired,
R/o. 'Deochhaya', A-62, New Shantiniketan
Colony, Aurangabad .

...Petitioner
(Org. Def No. 1)

Versus

Devi Mahadeo Mandir Trust,
Kesarsingpura, Aurangabad,
(A Public Religious Trust bearing
Registration No.PTR A-1226/1963,
Through its Trustees;

- 1) Milind Manikrao Dolare,
Age: 45 years, Occu: Service,
- 2) Mukund Madhavrao Dolare,
Age: 43 years, Occu: Business,
- 3) Umesh Madhavrao Dolare,
Age: 47 years, Occu: Business,
- 4) Uday Madhavrao Dolare,
Age: 44 years, Occu: Service,
- 5) Mahesh Manikrao Dolare,
Age: 46 years, Occu: Service,

All R/o. Kesarsingpura,
Aurangabad.

(Org. Plaintiffs)

- 6) The Charity Commissioner,
Through Joint Charity Commissioner
Office, Kranti Chowk, Aurangabad

(Org. Def. No.2)

- 7) The Municipal Corporation,
Through its Commissioner.

(Org. Def. No.3)

- 8) The Maharashtra State Electricity
Distribution Company Ltd.,
Jubilee Park, Aurangabad.

(Org. Def. No. 4)

Mr. Anil S. Bajaj, Advocate for Petitioner
Mr S.V. Adwant a/w Ku. Neha Kamble and
Mr Harish Adwant, Advocate for Respondent Nos. 1 to 5

CORAM : SANDEEP V. MARNE, J.

DATE : 6th DECEMBER, 2022

ORAL JUDGMENT :

1. By this petition, petitioner challenges the order dated 27.08.2021 passed by the District Judge-6, Aurangabad allowing the application for amendment of plaint.

2. The suit is for declaration of lease-deed dated 28.03.1973 as cancelled and for handing over vacant possession of the suit property. It appears that the suit was earlier dismissed on 05.11.2016 holding that the Court did not have jurisdiction. In First Appeal, the order of dismissal of suit was reversed on 16.08.2017 and the suit came to be restored.

3. Plaintiff filed application dated 09.10.2020 for amendment of the plaint for insertion of para Nos. 3(a) to 3(x) in the plaint. No doubt, the proposed amendment was lengthy. However, the plaintiff did not propose to amend the prayer clauses. The amendment was opposed by the defendant by filing reply. The District Court has proceeded to allow the amendment application by order dated 27.08.2021, which is the subject matter of challenge in the present petition.

4. Appearing for petitioner, Mr Bajaj, the learned counsel would submit that most of the averments sought to be added by way of amendment have no relation with the issue involved in the suit. He would further submit that most of the incidents sought to be brought on record by way of amendment was already in the knowledge of the plaintiff and that no explanation is given as to why the said averments were not incorporated in the plaint. He would submit that the amendment application was filed with *mala fide* intention to fill up latches and lacuna in the plaint. He would further submit that the averments sought to be added by way of amendment are lengthy in comparison with the original plaint. Mr Bajaj would rely upon the Judgment of this Court in case of ***Pandurang Krishna Gaudo (D) thr. L.R.s. Vs. Madachem Bat Mines Pvt. Ltd.*** reported in 2018(4) Mh.L.J. 147.

5. Per contra, Mr Adwant, the learned counsel appearing for the respondents would oppose the petition and support the order passed by the District Judge. He would submit that since the prayer clauses in the plaint are not amended, the nature of the suit is not sought to be changed in any manner. He would submit that by amending the petition, the plaintiff is seeking to bring each and every event relating to the suit property on record. This would assist the Court in adjudicating the controversy between the parties. He would further submit that since the trial is not yet commenced, the plaintiff was within his right to amend the plaint in such a manner that the same does not change the nature of the suit. In support of his submissions, Mr Adwant would rely upon the Judgment of the Supreme Court in case of ***Life Insurance Corporation of India Vs.***

Sanjeev Builders Private Limited and Another reported in 2022 SCC Online SC 1128 and another Judgment in case of **Revajeetu Builders and Developers Vs. Narayanswamy and Sons and others** reported in (2009) 10 SCC 84.

6. After hearing learned counsel for the parties, it is apparent that the trial in the suit is yet to commence. Though suit pertains to the year 2010, on account of its dismissal in the year 2016 and restoration in appeal in the year 2017, it appears that the trial in the suit has not yet commenced. Under the provisions of Order VI Rule 17 of the Code of Civil Procedure, the plaintiff is entitled to amend the plaint any time before commencement of the trial and all such amendments which are necessary for the purpose of determining the real question of controversy between the parties are required to be allowed.

7. Mr Adwant has relied upon the recent Judgment of the Supreme Court in **Life Insurance Corporation of India** (supra), in which the Supreme Court has summarized the principles governing amendment of pleadings in para No. 17 of the Judgment, which reads as under :-

70. Our final conclusions may be summed up thus:

“(i) Order II, Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in

the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi & Ors.*, 2022 SCC OnLine Del 1897)"*

8. Thus, the Supreme Court has held that where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach. The only instances where such amendments can be refused is whether the amendment changes the nature of the suit or that the proposed amendment is time-barred or the same takes away a valid defence of the defendants.

9. In ***Revajeetu Builders and Developers*** (supra) relied upon by Mr Adwant, the Supreme Court has laid down the basic principles which

ought to be taken into consideration while allowing or rejecting the application for amendment. In para No. 63 of the Judgment, the Supreme Court has held as under :-

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally fundamentally changes the nature and character of the case; and

(6) 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 may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.

10. Applying the above principles laid down in ***Life Insurance Corporation of India*** and ***Revajeetu Builders and Developers*** (supra), I proceed to examine whether the application for amendment filed by the plaintiff before commencement of the trial could have been allowed by the District Judge or not. I have gone through the amendment application and it is seen that the plaintiff wanted to incorporate each and every incident that had taken place with regard to the suit property since the year 1971. All the averments sought to be added relate to various decisions taken by the revenue and planning authorities with regard to the suit property. The plaintiff also sought to add averments relating to entire history of litigation

that has taken place with regard to the suit property. The proposed amendment, in my view, did not seek to introduce any irrelevant or foreign factors to the case. The scope of the proposed amendment was confined to the suit property and the same, in my view, far from changing the nature of the suit, would actually assist the Court in determining the real question of controversy between the parties.

11. After having gone through the reply of petitioner opposing application for amendment, it is clear that there is no averment in the same that the amendment would change the nature of the suit. Even otherwise, after going through the averments sought to be added in the plaint, in my view, the amendment does not change the nature of the suit in any manner. Thus, there was absolutely no impediment for the District Judge in allowing the amendment application filed by the plaintiff.

12. Mr Bajaj, relied upon the Judgment of this Court in **Pandurang Krishna Gaudo** (supra), in which it is held in para Nos. 10 and 11 as under :-

10. At the outset, it is necessary to note that the subject matter of dispute in the suit is only land Survey No. 96/1, which is distinct than land Survey No.76/3. It is the specific case of the petitioners that they have no concern with the land Survey No. 76/3 and the petitioners and their predecessor, Pandurang Gaudo were not claiming any tenancy rights in respect of the land Survey No. 76/3. If that be so, the proposed amendment, which seeks to bring on record the fact that the name of Pandurang Gaudo was deleted, from the name of the tenants, from land Survey No. 76/3, cannot be said to be necessary for the just decision of the case. The learned trial court is also not correct in observing that the amendment is based on the subsequent event. This is because the order of deletion of name of Pandurang Gaudo is passed in

1992, while the suit is filed in the year 1993. **There cannot be any manner of dispute with the proposition that the amendment can be allowed at any stage of the proceedings, provided that the amendment is necessary for deciding the real controversy in the suit. The test for allowing any amendment is whether, the proposed amendment is necessary for deciding the real controversy in the suit.** As noticed earlier, the land Survey No. 76/3, is not the subject-matter of dispute in the suit. That apart, the respondent has filed an independent application for negative declaration against the petitioners in respect of land survey No. 96/1, which is pending before the Mamlatdar. In such circumstances, it cannot be said that the proposed amendment is necessary for deciding the real controversy in the suit.

11. It is true that a Writ Court would normally be slow in interfering with the order of the learned trial Court, allowing the amendment. However, when the amendment is found to be absolutely not relevant for deciding the real controversy in the suit, the Writ Court would be justified in interfering with the same. The decision in the case of Prem Bakshi (*supra*) and in the case of Haridas Aildas Thadani (*supra*) turned on their own facts and are clearly distinguishable.

(emphasis supplied)

13. In my view, the Judgment in **Pandurang Krishna Gaudo** (*supra*) relied upon by Mr Bajaj, far from assisting the case of petitioner, actually militates against him. This Court has held that the Writ Court would normally be slow in interfering with the order of trial court, allowing the amendment. It is further held that it is only when the amendment is sought to be absolutely not relevant for deciding real controversy in the suit, the Writ Court would interfere. In the present case, I have already held that the averments sought to be added by way of amendment are fully relevant to the subject matter of controversy in the suit. The Judgment cited by Mr Bajaj, therefore would be of little assistance to him.

14. In the result, I find that no error is committed by the District Judge in allowing the application for amendment filed by the plaintiff. Petition is devoid of merits and is dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]

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