

\$~1 (Appellate)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 292/2020

SUMIT GUPTA

.... Petitioner

Through: Mr. A.K.Tripathi and Mr.
P.K.Pandey, Advs.

versus

PREMA GUPTA

..... Respondent

Through: Mr. Paramjeet Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **10.11.2022**

1. CS 1359/2017 was instituted by the respondent Prema Gupta against the petitioner Sumit Gupta and others. The respondent is the mother of the petitioner.

2. According to the averments in the plaint, R.D. Gupta, the husband of the respondent and the father of the petitioner, expired on 11th May 2017, leaving behind his wife i.e. the respondent, one daughter and two sons, of whom the petitioner was one.

3. The plaint asserted that, during his lifetime, R.D. Gupta had purchased immovable properties located at (i) 500/20A, Gali No. 10, Vishwas Nagar, Shahdara, Delhi-110032, (ii) Shop no. BG-24, Ground Floor, Block-B, Plot No. C/GH-3, Vaibhav Khand, Ghaziabad, and (iii) House No. A-323, Surya Nagar, Ghaziabad (collectively referred to as “the suit properties”).

4. The plaint asserted that R.D. Gupta had executed a Will dated 16th February 2017 whereby and whereunder he had bequeathed all the aforesaid properties to his wife, i.e., the respondent. The respondent, therefore, claimed exclusive legal right, title and interest over the suit properties.

5. Alleging that the petitioner was seeking to alienate and create third party interests in respect of the suit properties, the suit sought a decree of permanent injunction against the petitioner, restraining the petitioner from creating any such third party interest.

6. The petitioner, in his written statement filed by way of response to the suit, disputed the Will dated 16th February 2017, purported to have been executed by R.D. Gupta, on the basis of which the petitioner claimed titular rights.

7. The petitioner claimed, *per contra*, that he was the lawful owner of the suit properties under Gift Deeds dated 6th February 2017 and 16th February 2017, executed in his favour by R. D. Gupta. Certain other objections regarding the maintainability and the merits of the suit instituted by the respondent were also taken by the petitioner. There is no need to make reference thereto, given the limited nature of the controversy in the present case.

8. The respondent, thereafter, moved an application under Order VI Rule 17 of the CPC, seeking permission to amend the plaint. It was pointed out, in the said application, that the petitioner had, by way of his response to the suit instituted by the respondent, relied upon the

Gift Deeds dated 6th February 2017 and 16th February 2017, allegedly executed by R. D. Gupta. The respondent contended that she had become aware of the said Gift Deeds only when photocopies thereof were provided to the respondent on 7th April 2018. The respondent, therefore, sought by her application under Order VI Rule 17, to incorporate various passages in the plaint as well as to amend the prayer clause by including, in the plaint, prayers for decrees of declaration, declaring the Gift Deeds dated 6th February 2017 and 16th February 2017, executed in his favour of the petitioner by R. D. Gupta, as null and void and, consequently, declaring the respondent to be the owner of the suit properties.

9. The plaint also pointed out that the suit was still at an initial pre-trial stage and that, therefore, no prejudice would ensue to the petitioner if the amendments sought were allowed. An amended plaint was also annexed with the amendment application.

10. The learned Civil Judge has, by the impugned order dated 25th July 2019, allowed the respondent's application Order VI Rule 17 holding thus:

“Ld. Counsel for the defendant has submitted that the plaintiff is trying to mislead the Court. Perusal of the application under Order VI Rule 17 of CPC shows that such application has been filed on the facts which the plaintiff has become aware after filing of the written statement of the defendant, the plaintiff seeks to amend the plaint only to the extent as to those facts which pertains to subsequent filing of the written statement. Moreover, the relief sought is consequential to the fact that have come to the knowledge of the plaintiff after filing of the written statement. In, view thereof, the application under Order VI Rule 17 of CPC is allowed. Amended plaint is taken on record. The plaintiff is directed to file the deficient court-fees, if any, on the next date positively.”

11. Aggrieved by the aforesaid order, the petitioner has approached this Court, under Article 227 of the Constitution of India.

12. Mr. A.K. Tripathi, learned Counsel for the petitioner, has advanced three contentions by way of challenge to the impugned order dated 25th July 2019.

13. The first is that, by the amendment that is allowed by the impugned order, the entire nature of the suit originally instituted by the petitioner has changed, as was manifest by the fact that the respondent had even amended the paragraphs dealing with cause of action. Such wholesale amendment of the suit, whereby the cause of action and, the very nature of the suit are changed, and new reliefs added, which were not originally sought, submits Mr. Tripathi, could not be granted under Order VI Rule 17 of the CPC.

14. The second ground is that there are discrepancies between the amendment sought in the amendment application and the actual amendment contained in the amended plaint.

15. The third ground of challenge is that the respondent was aware of the execution of the Gift Deeds dated 6th February 2017 and 16th February 2017 even prior to filing of the suit, as there was reference to the said gift deeds in a partition suit instituted by the petitioner against the respondent prior to the institution of CS 1359/2017 by the respondent against the petitioner.

16. Mr. Tripathi has also placed reliance on the judgment of the

Supreme Court in *Asian Hotels (North) Ltd. v. Alok Kumar Lodha*¹
and *Alkapuri Cooperative Housing Society Ltd. v. Jayntibhai Naginbhai*².

17. Mr. Paramjeet Singh, learned Counsel for the respondent/plaintiff, arguing *per contra*, submits that Order VI Rule 17 of the CPC permits for all such amendments to be incorporated as are necessary to decide the real issue in controversy between the parties.

18. The issue in controversy being the entitlement of the respondent to the suit properties, and the petitioner having pleaded competing titular rights on the basis of the Gift Deeds dated 6th February 2017 and 16th February 2017, Mr. Singh submits that the challenge to the Gift Deeds was essential in order to appropriately adjudicate on the real nature of the controversy between the parties.

19. Besides, he submits, the amendment had been sought at a pre-trial stage and no serious prejudice would result to the petitioner even if the amendments were allowed.

20. In that view of the matter, and keeping in mind the fact that the impugned order was essentially discretionary in nature, Mr. Singh submits that no case for interference with the impugned order under Article 227 of the Constitution of India can be said to exist.

¹ (2022) 8 SCC 145

² (2009) 3 SCC 467

21. Having heard learned Counsel for the parties and perused the material on record, and in view of the law on the subject, as it stands today, I am of the opinion that the impugned order dated 25th July 2019 does not invite interference under Article 227 of the Constitution of India.

22. The respondent, in the suit instituted by her against the petitioner, was claiming titular rights in respect of the suit properties on the basis of the Will dated 16th February 2017 stated to have been executed by R.D. Gupta, whereunder the suit properties had been entirely bequeathed to the respondent, to the exclusion of all other legal heirs of R.D. Gupta, including the petitioner. The claim for injunction, as contained in the suit, was entirely predicated on the titular rights claimed by the respondent over the suit properties. According to the plaint, the respondent was the absolute owner of the suit properties by virtue of the Will dated 16th February 2017 *supra*, and the petitioner had no right, whatsoever, over the suit properties. It was on this basis that the respondent sought injunction against the petitioner from creating third party rights in respect of the suit properties.

23. As against this, the written statement filed by the petitioner asserted titular rights in respect of the suit properties on the basis of Gift Deeds dated 6th February 2017 and 16th February 2017, also stated to have been executed by R.D. Gupta. Once these Gift Deeds had been asserted by the petitioner, the trial court would, in examining the rival titular claim, have to necessarily examine the claim of the petitioner predicated on the Will dated 16th February 2017, vis-a-vis

the claim of the respondent predicated on the Gift Deeds dated 6th February 2017 and 16th February 2017.

24. In these circumstances, it was but necessary for the respondent to challenge the Gift Deeds on the basis of which the petitioner claimed title. Indeed, if such a challenge were not to be allowed, the entire proceedings would become skewed, as the petitioner had, in his written statement filed by way of response to the respondent's suit, disputed the Will on the basis of which the respondent claimed title. Once the petitioner had disputed the Will on the basis of which the respondent claimed title, the respondent could not be restrained from disputing the Gift Deeds on the basis of which the petitioner claimed title.

25. It cannot, therefore, be said that, by amending the plaint to raise such a dispute, the nature of the claim and the nature of the controversy was changed. The claim was, and continues to be, a claim of rival titular rights over the suit properties. The issue to be determined by the Court is the party in whose favour such titular rights enure.

26. By, therefore, amending the plaint to incorporate a challenge to the Gift Deeds asserted by the petitioner, it cannot be said that the respondent was seeking to alter the cause of action in the plaint or the nature of the suit.

27. Even otherwise, it has been held by the Supreme Court in *Abdul*

Rehman v. Mohd. Ruldu³ that it is permissible for a plaintiff to, after the filing of a written statement by the defendant, amend the plaint to incorporate a challenge to any claims that the defendants may have raised in the written statement. One may refer to the paras 12,13,18 and 19 of the said report in this regard:

“12. It is true that originally the appellants have approached the trial court with a prayer for permanent prohibitory injunction restraining Respondents 1-3 herein from forcible and illegal dispossession of the appellants herein from the land in dispute. Respondents 1-3 herein (Defendants 1-3 therein) filed a written statement wherein they specifically alleged that they have stepped into the shoes of Ramzanan and Smt Bashiran and Rashidan on the basis of the sale deeds dated 25-8-2003. It is the claim of the appellants that the abovesaid Ramzanan and Smt Bashiran and Rashidan have no concern with the ownership of the land in dispute and no right to alienate the suit land to the defendants or anybody else. In view of the stand taken by the defendants in their written statement, in the application filed under Order 6 Rule 17 of the Code, the appellants have specifically raised that the alleged Sale Deeds Nos. 1810 and 1811 dated 25-8-2003 in favour of Defendants 1-3 executed by Ramzanan and Bashiran and Rashidan are liable to be set aside and have no effect on the rights of the plaintiffs and Saifur Rehman qua the suit land and Mutations Nos. 781 and 782 sanctioned on the basis of abovenoted sale deeds dated 25-8-2003 are also liable to be set aside. In view of the claim of the appellants, we verified the necessary averments in the written statement of Defendants 1 and 3 and we agree with the stand of the appellants.

13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the unamended plaint. As rightly pointed out by Ms Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the unamended plaint and, therefore, the relief of cancellation of sale deeds as sought by the amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed

³ (2012) 11 SCC 341

by the trial court and the High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should (*sic* would) have been caused to Respondents 1-3 (Defendants 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

19. In the light of various principles which we have discussed and the factual matrix as demonstrated by the learned counsel for the appellants, we are satisfied that the appellants have made out a case for amendment and by allowing the same, the respondents herein (Defendants 1-3) are in no way prejudiced and they are also entitled to file additional written statement if they so desire.....”

28. Insofar as the scope of Order VI Rule 17 of the CPC is concerned, there is wealth of authority on the point. The judgment of the Supreme Court in ***Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd***⁴ (“LIC” hereinafter) digests almost all the earlier decisions on the point, whereafter the law has been enunciated, in the said decision, in paras 19 to 32 of the report, thus:

“19. *It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further*

⁴ (2022) SCC OnLine SC 1128

litigation. In **L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.**⁵, this Court at paragraph 16 of the said decision observed as follows:

“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 interest of justice.....*”

20. Again in **T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board**⁶, this Court observed as follows:

“2.The law as regards permitting amendment to the plaint, is well settled. In **L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.**⁵ it was held that the Court 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.

3. It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law.”

21. So far as the answer to the specific plea that the claim of damages is barred by limitation and cannot be permitted at this stage is concerned, it becomes necessary to examine the various judicial pronouncements of this Court. *The principles governing an amendment which may be permitted even after the expiry of the statutory period of limitation were laid down by the Privy Council in its judgment in Charan Das v. Amir Khan*⁷. In this case, the Privy Council laid down the principles thus:

“.....That there was full power to make the amendment cannot be disputed, and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases : see for example *Mohummud Zahoor Ali v. Rutta Koer*, where such considerations are outweighed by the special circumstances of the case, and

⁵ AIR 1957 SC 357

⁶ (2004) 3 SCC 392

⁷ AIR 1921 PC 50

their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one.”

22. It would be useful to also notice the observations of this Court in, **Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil**⁸, wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. *In this case, this Court laid down the principles which would govern the exercise of discretion as to whether the court ought to permit an amendment of the pleadings or not. This Court approved the observations of Batchelor, J., in the case of Kisandas Rupchand v. Rachappa Vithoba Shilwant*⁹, when he laid down the principles thus:

“10.“All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not?”

23. This Court has repeatedly held that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In this behalf, in **Ganga Bai v. Vijay Kumar**¹⁰, this Court held thus:

“22.The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding.

⁸ 1957 SCR 595

⁹ ILR (1909) 33 Bom 644

¹⁰ (1974) 2 SCC 393

But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court.....”

24. Again in **Ganesh Trading Co. v. Moji Ram**¹¹, this Court laid down the principles thus:

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

25. The principles applicable to the amendments of the pleadings are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting

¹¹ (1978) 2 SCC 91

the application for amendment of plaint or written statement.
(See ***South Konkan Distilleries v. Prabhakar Gajanan Naik***¹²)

26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. *As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.*

27. In this behalf, in ***A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation***¹³, this Court held thus:

*“7.a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: **Weldon v. Neale**¹⁴. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:.....”*

28. In case entitled, ***G. Nagamma v. Siromanamma***¹⁵, this Court considered the proposed amendment of the plaint and noticing that neither the cause of action would change nor the relief would be materially affected, allowed the same. *This Court in this case noticed that in the plaintiff's suit for specific performance, the plaintiff was entitled to plead even inconsistent pleas and that in the present case, the plaintiffs were seeking only the alternative reliefs.* It appears that the plaintiffs had filed a suit for specific performance of an agreement of re-conveyance. By the application under Order VI Rule 17 of the CPC for amendment of the plaint, the appellants were pleading that the transactions of execution of the sale deed and obtaining a document for re-conveyance were single transactions viz. mortgage by conditional sale. They also wanted to incorporate an alternative relief to redeem the mortgage. At the end of the prayer, the plaintiff sought alternatively to grant of a decree for redemption of the mortgage. This amendment was permitted by this Court.

29. In ***Pankaja v. Yellappa (dead) by lrs.***¹⁶, this Court held that *it was in the discretion of the court to allow an application under*

¹² (2008) 14 SCC 632

¹³ AIR 1967 SC 96 : (1966) 1 SCR 796

¹⁴ [L.R.] 19 Q.B. 394

¹⁵ (1996) 2 SCC 25

¹⁶ (2004) 6 SCC 415

Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso. The principles were laid down by this Court thus:

“12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.

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.

*16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of **T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board**⁶. Therefore, an 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, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

18. We think that the course adopted by this Court in **Ragu Thilak D. John case**¹⁷ applies appropriately to the facts of this case. *The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief."*

30. *From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.*

31. In **Ragu Thilak D. John v. S. Rayappan**¹⁷, this Court also observed that *where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand.*

32. In a decision in **Vishwambhar v. Laxminarayan (Dead) through Lrs**¹⁸, this Court held that *the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application."*

¹⁷ (2001) 2 SCC 472

¹⁸ (2001) 6 SCC 163

29. I have, in my judgment in *Amit Bansal v. CSH Power Himoinsa Pvt. Ltd*¹⁹, had an occasion to examine the earlier decisions on the point on Order VI Rule 17 of the CPC and to cull out what appear to me, to be the propositions emanating therefrom.

30. I have, in the said decision, adverted to the judgment in *LIC*³ and, thereafter, have proceeded to observe thus, in paras 46 and 47 of the report:

“46. Prior thereto, the scope of Order VI Rule 17 of the CPC has been underscored by the Supreme Court in the following passages from *B.K. Narayana Pillai v. Parameshwaran Pillai*²⁰ and *Rajesh Kumar Aggarwal v. K.K. Modi*²¹,

*B.K. Narayana Pillai*²⁰

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

4. This Court in *A.K. Gupta & Sons Ltd. v. Damodar Valley Corpn.*¹³ held:

“ The general rule, no doubt, is that a party is not allowed by amendment to setup a new case or a new

¹⁹ 2022 SCC OnLine Del 2950

²⁰ (2000) 1 SCC 712

²¹ (2006) 4 SCC 385

*cause of action particularly when a suit on new case or cause of action is barred : **Weldon v. Neal**¹⁴. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : See **Charan Das v. Amir Khan**⁷ and **L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.**⁵*

*The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (**Cropper v. Smith**²²) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (**Kisandas Rupchand v. Rachappa Vithoba Shilwant**⁹ approved in **Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil**⁸).*

*The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in **Cooke v. Gill**²³ in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in **Robinson v. Unicos Property Corpn. Ltd.**²⁴ and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas' : **Dornan v. J.W. Ellis and Co. Ltd.**²⁵. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."*

Again in **Ganga Bai v. Vijay Kumar**¹⁰ this Court held : (SCC p. 399, para 22)

²² 53 LJ Ch 891 : (1884) 26 ChD 700

²³ (1873) 8 CP 107 : 42 LJCP 98

²⁴ (1962) 2 All ER 24 (CA)

²⁵ (1962) 1 All ER 303 (CA)

“ The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court.”

In *Ganesh Trading Co. v. Moji Ram*¹¹ it was held:

“4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. *Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions.* The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.”

(Emphasis supplied)

Rajesh Kumar Aggarwal²¹

“15. *The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.*

16. Order 6 Rule 17 consists of two parts. Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. *The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.*

17. *In our view, since the cause of action arose during the pendency of the suit proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.*

18. *As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.*

19. *While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”*

47. It would be appropriate, as the issue arises in case after case, to distil, from the above decisions, the defining principles governing exercise of jurisdiction under Order VI Rule 17 of the CPC (where the prayer for amendment is made prior to commencement of trial):

(i) Ordinarily, the Court is required to be liberal while dealing with a prayer for amendment. Prayers for amendment of written statements are required to be treated even more liberally than prayers for amendment of plaints.

(ii) Where the Court finds that declining the prayer for amendment would result in the applicant suffering irreparable loss or injury, the amendment should be allowed. Qua the opposite party who opposes the amendment, the Court is required to examine whether the amendment would result in irreversible injustice; else, it should be allowed.

(iii) There is no absolute bar to allowing an amendment which introduces a cause of action which is, by then, barred

by time. While, ordinarily, such an amendment would be refused, the matter ultimately rests with the discretion of the Court and, if the amendment is found necessary in the interests of justice, it would be allowed. The fact that the amendment introduces a relief which, by then, is barred by time is, therefore, merely a consideration to be borne in mind by the Court.

(iv) The ultimate consideration has to be subserving of the cause of justice and avoiding multiplicity of litigation.

(v) All amendments are mandatorily required to be allowed which

(a) do not work injustice to the other side, and

(b) are necessary for determining the real questions in controversy between the parties.

It must be remembered, in this context, that Courts are ultimately required to adjudicate on the merits of the cases that come before them.

(vi) If an amendment is sought to correct an inefficiency in originally stating the case, it should be allowed. Such an error should be permitted to be rectified by amendment, so long it is not fraudulent, and the remedial steps taken in that regard do not unjustifiably injure accrued rights.

(vii) All amendments which are necessary to determine the real issue in controversy in the suit, should be allowed.

(viii) Amendments which alter or substitute the cause of action originally pleaded should not be allowed.

(ix) Amendments which seek to negate admissions of fact, or which are mutually destructive therewith, should not be allowed. On the other hand, inconsistent pleas and alternative reliefs can be permitted to be introduced by amendment.

(x) An amendment which does not set up a new case, or introduce a new cause of action, but merely amounts to incorporating a different or additional approach to the same facts, should be allowed, even after expiry of limitation.

(xi) The expression “cause of action”, in this context, does not mean “every fact which it is material to prove to entitle the plaintiff to succeed”, which is its normally understood connotation. It only means a new claim made on a new basis constituting new facts. The word “new case” has to be understood as meaning “new set of ideas”.

(xii) An amendment which seeks to introduce an additional relief, the factual basis for which already exists in the plaint as originally filed, should be allowed.

(xiii) An amendment which merely adds to the facts already pleaded should be allowed.

(xiv) Courts should not adopt a hypertechnical approach while dealing with prayers for amendment of pleadings. Technicalities of law should not be allowed to hamper administration of justice.

(xv) In this context, the Court should bear in mind the fact that its objective should be adjudicating and deciding on the competing and conflicting rights of parties, and not punishing parties for their mistakes.

(xvi) If a new cause of action arises during the pendency of a suit, and the plaintiff would be entitled to file a fresh suit based thereon, the plaintiff should be allowed to amend the existing suit and introduce the claim by amendment. Events subsequent to the filing of the suit have, therefore, also to be borne in mind by the Court.

(xvii) The Court examining a plea of amendment is not concerned with the correctness, falsity, or merits of the case that the amendment seeks to set up. The Court should not, therefore, record any findings on the merits of the amendment, or the stand that is sought to be canvassed thereby.”

(Emphasis Supplied)

31. Viewed thus, it is clear that no exception can be taken to the decision of the learned Civil Judge to allow the respondent's application under Order VI Rule 17 of the CPC.

32. Adverting to the judgments cited by Mr. Tripathi, it is clear that they are distinguishable on facts.

33. *Asian Hotels¹* was a case in which Asian Hotels had been granted licences for individual shops in the Hyatt Residency Hotel (hereinafter referred to as the “Hotel”) at Delhi to various shopkeepers including the Alok Kumar Lodha, the respondent before the Supreme

Court.

34. Alok Kumar Lodha sought to revoke the licences *vide* notice dated 29th May 2020. The licensees (the respondent before the Supreme Court) instituted a suit against Asian Hotels before this Court, seeking a declaration that the licences were irrevocable and perpetual and that their proposed revocation was illegal and void. A decree of declaration was also sought, to the effect that the respondents had unfettered right to occupy and use the shop in their possession.

35. During the pendency of the suit, Asian Hotels moved an application under Order VI Rule 17 of the CPC, seeking to amend the plaint. The amendment dealt with certain mortgages created by the licensees in respect to the Hotel with various banks. Asian Hotels sought to contend, by the amendment, that the mortgages created in favour of certain banks by the respondent licensees were illegal and void *ab initio*. Consequential amendments challenging the said mortgages, and seeking a declaration that the mortgages were illegal and void were, therefore, sought to be incorporated in the plaint. A parallel amendment to the prayer clause was also proposed.

36. The Supreme Court noted that, by the amendment, an entirely new controversy was being sought to be introduced. The controversy in the suit as originally filed, it was noted, dealt with the right of the respondent licensees to continue in the shops in their occupation, whereas the claim that was sought to be introduced by amendment was with respect to the validity of the mortgages created by the

respondents in the Hotel in favour of various banks. The mortgages did not form any part of the cause of action originally pleaded in the suit. Neither did the suit contemplate or envisage any challenge to the said mortgages. It was in these circumstances that the Supreme Court held that such a wholesale incorporation of an entirely new cause of action, foreign to the cause of action on the basis of which the suit was originally instituted, could not be permitted under Order VI Rule 17 of the CPC. One may reproduce, to advantage, paras 33, 34 and 36 of the report, thus:

“33. According to the appellant, first mortgage was created in the year 1982. At that time, none of the original plaintiffs were license holders. They have been granted license for individual shops at the premises from 1983 onwards to various shopkeepers including respondents original plaintiffs. The appellant, being owner – licensor, has terminated the respective licenses granted in favour of respective license holders – original plaintiffs. The revocation of the license is subject matter of respective suits. Therefore, the only controversy/issue in the respective suits is with respect to revocation of the respective licenses.

34. By way of an amendment of the plaint the plaintiffs now want to challenge the mortgages/charges on the entire premises created by the appellant. As such, the original plaintiffs are not at all concerned with the mortgages created by the appellant which is required for the continuous development of the hotel. By the purported amendment, the original plaintiffs have now prayed to declare that all the mortgages / charges created on the premises as void ab initio. Even such a prayer can be said to be too vague. How the original plaintiffs can now can be permitted to challenge various mortgages / charges created from time to time.

36. The High Court while allowing the amendment application in exercise of powers under Order 6 Rule 17 of the Code of Civil Procedure has not properly appreciated the fact and / or considered the fact that as such, by granting such an amendment and permitting plaintiffs to amend the plaints incorporating the prayer clause to declare the respective charges / mortgages void ab initio, the nature of the suits will be changed. As per the settled proposition of law, if, by permitting plaintiffs to amend the plaint including a prayer clause nature of the suit is likely to be changed,

in that case, the Court would not be justified in allowing the amendment. It would also result in misjoinder of causes of action.”

37. *Alkapuri*², similarly, disallowed the amendment that was sought in that case, on the ground that it was predicated on an entirely different cause of action, distinct from the cause of action forming subject matter of the suit originally instituted, which had arisen prior to the institution of the suit. Para 18 of the report reads thus:

“18. There cannot be any doubt or dispute that an application for amendment of the plaint seeking to introduce a cause of action which had arisen during the pendency of the suit stands on a different footing than the one which had arisen prior to the date of institution of the suit. We have noticed hereinbefore that the plaintiff-respondents in their application for amendment of the plaint themselves accepted the fact that the appellant herein not only had filed a suit prior in point of time to the suit filed by the deceased respondent but had also obtained an injunction as a result whereof they did not obtain effective possession of the suit land. If that be so, in our opinion, the plaintiff-respondents in effect and substance are seeking to alter the basic structure of the suit which in the case of Sampath Kumar itself has been held to be impermissible.”

38. In the present case, there is no alteration of the cause of action in the suit as originally instituted by the respondent against the petitioner, by the amendment that the respondent seeks to incorporate. The respondent was, at all times and continues to be, asserting her titular rights in respect of the suit properties.

39. The suit, as originally instituted merely referred to the Will on the basis of which such rights were pleaded. The petitioner, in his written statement filed by way of reply to the suit, asserted, *per contra*, two Gift Deeds on the basis of which the petitioner claimed parallel titular rights.

40. It was necessary, therefore, for the respondent, to succeed in the suit to contest the claim of the petitioner on the basis of the Gift Deeds asserted by him. It was for this reason that a challenge to the said effect, with a parallel declaration that the Gift Deeds were null and void, was sought to be incorporated by way of amendment. It cannot, therefore, be said that the amendment either altered the original cause of action or changed the nature of the suit. The nature of the suit continues to remain a suit by which titular rights in respect of the suit properties are being asserted.

41. Besides, the amendment was sought at a pre-trial stage. There is a vital and fundamental difference between the amendment sought after, vis-a-vis an amendment which is sought before, trial has commenced. An amendment sought after the trial has commenced is subject to the rigours of the proviso to Order VI Rule 17 of the CPC, in which case the party seeking amendment has to satisfy the court as to why the facts which were sought to be incorporated by way of amendment were not originally pleaded. No such responsibility attaches to a party who seeks to amend the pleadings prior to commencement of trial.

42. As such, the issue of whether the respondent was, or was not, aware of the facts which were now being sought to be incorporated by the amendment, when the suit was filed, as also the reason as to why, if the respondent was so aware, the said facts were originally not pleaded, are of no relevance as the amendment was sought prior to commencement of trial.

43. Where the amendment is sought prior to commencement of

trial, the proviso to Order VI Rule 17 does not apply. The case is then governed by the main part of Order VI Rule 17, which mandates – as is apparent by the use of the word “shall” – on the court to allow all such amendments as are necessary for the court to adjudicate on the real nature of the controversy between the parties.

44. It cannot be said the amendments that the respondent sought to incorporate in the plaint were not necessary for the court to adjudicate on the real nature of the controversy between the parties.

45. The learned Civil Judge was, therefore, bound by law to allow the said amendments. In doing so, she has merely conformed to the discipline of Order VI Rule 17 of the CPC. The impugned order is, therefore, completely in accordance with the provisions of the CPC and does not call for any interference by this Court.

46. The petition is, therefore, dismissed, with no order as to costs.

C. HARI SHANKAR, J.

NOVEMBER 10, 2022

dsnss