

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.2031/2021

Narayan and another V Sau. Jyoti and others

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mrs. V. Thakre, Adv. for petitioners.

Mr. D.S. Lambat, Adv. for resp. no.1.

CORAM : AVINASH G GHAROTE, J.

DATE : 03-01-2023

Heard Mrs. Thakre, learned Counsel for the
petitioners and Mr. Lambat, learned Counsel for the
respondent no1.

2. The petition challenges the order dated 09-02-2021 (Exh-117), whereby the application for amendment of the written statement filed by defendant no. 2 has been rejected (pg 64). It is contended that an application for amendment of the plaint was filed by the plaintiff at Exh 18 which was granted on 24-04-2017 (pg 33) and the present application is in the nature of consequential amendment on account of the order below Exh 18. It is therefore contended that since the amendment is consequential in nature, the same ought to be allowed. Reliance is placed upon the judgment of the Hon'ble Apex Court in *Life Insurance Corporation of India vs Sanjeev Builders Private Limited and another*,

reported in **2022 SCC OnLine SC 1128**.

3. Mr. Lambat, learned Counsel for the respondent no.1/plaintiff, opposes the contention and submits that the delay of merely 5 years in filing the application has not been explained, considering which, the same is liable to be dismissed.

4. In **Life Insurance Corporation of India** (supra), the Honble Apex Court has summed up the position regarding amendments 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 its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.*

(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 pin-pointedly 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)"*

(emphasis supplied)

5. In the instant case, it is material to note that after the order below Exh-18 dated 24-04-2017, an affidavit of evidence was also filed by the plaintiff on 24-04-2017. However, thereafter, the plaintiff himself filed another application for amendment of plaint at Exh.110 on 26-11-2019, which came to be allowed by the order dated 26-02-2020 (pg 43). That being the position, in my considered opinion, an opportunity ought to have been granted by the learned trial Court to defendant no.2/petitioner to amend the written statement as it had already considered the application at Exh 110.

6. In view of the above position, the impugned order dated 09-02-2021 below Exh-117 is hereby quashed and set aside and application Exh-117 is allowed.

7. Petition is allowed accordingly in above terms. No costs.

JUDGE