



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

WRIT PETITION NO. 1102 OF 2023

PETITIONER: Ekvira Nagri Pat-Sanstha Maryadit
through its General Manager
Nitin Pandurang Band,
Near Bus Stand, Akot Road,
Anjangaon Surji, Tq. Anjangaon Surji,
Dist - Amravati.

V E R S U S

RESPONDENT : Sandeep Marotrao Pande,
Age about 38 years,
Occupation : Nil.
R/o Nerpingalai, Tq. Morshi,
Dist. Amravati.

Shri Y. N. Sambre, Advocate for petitioner.
Shri P. S. Patil, Advocate for respondent.

CORAM: BHARAT P. DESHPANDE, J.
DATED : 12/03/2024.

ORAL JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. Heard learned counsel appearing for the parties, with consent for final disposal.

2. The impugned order in the present petition is dated 07/09/2022 by which the application for amendment of the written statement stands rejected.

3. Learned counsel for the petitioner would submit that the amendment application was filed to amend only the fact that

Party No.2 has already withdrawn the Provident Fund before approaching the said Court.

4. It is his contention that amendment is formal in nature and only to bring on record the fact of withdrawal of Provident Fund by the employee before approaching the concerned authority. Such amendment is not going to prejudice in any manner to respondent / employee, however, the amendment is rejected without giving any plausible reason.

5. Per contra, learned counsel for the respondent would submit that such amendment is not necessary, as nothing is going to be changed by allowing such amendment application.

6. The rival contention calls for consideration.

7. Learned counsel for the petitioner while placing reliance on Life Insurance Corporation of India Vrs. Sanjeev Builders Private Limited and another, reported in 2022 SCC OnLine SC 1128 and Usha Balashaheb Swami and others Vrs. Kiran Appaso Swami and others, reported in (2007) 5 SCC 602, would submit that amendment of written statement needs to be considered more liberally, however, learned Trial Court has rejected it without considering this settled proposition of law.

8. In the case of Life Insurance Corporation of India (supra), the Hon'ble Apex Court after considering various earlier decisions, culled out the principles as found in Paragraph No.70 which reads thus :-

"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 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 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](#), 2022 SCC OnLine Del 1897)".

9. Similarly, in the case of [Usha Balashaheb Swami \(supra\)](#), the Hon'ble Apex Court while considering the principles for amendment of the written statement observed that the Court should be more liberal in granting amendment to the written statement specifically if no prejudice is caused to other side.

10. Proposed amendment found in the application is only to the effect that the workman has already withdrawn the Provident Fund amount prior to approaching the said authority, though he was not entitled to do so. The said amendment is based on facts of the matter in hand. No prejudice is going to be caused to the respondent, in case such amendment is allowed. Even though the amendment is filed belatedly, that could not be a ground for rejection of the amendment. The question while deciding the amendment application is whether such amendment is necessary for deciding the real controversy in the matter. If it is found that the proposed amendment is necessary, the same should be allowed even at a belated stage.

11. In the present matter, the impugned order would go to show that these settled propositions of law are not at all taken into

consideration and that the impugned order reveals non-application of mind.

12. Having said so, the impugned order needs to be quashed and set aside. The amendment application filed by the petitioner, needs to be allowed.

13. The petition stands allowed and the impugned order is quashed and set aside.

14. The application for amendment filed by the petitioner, stands allowed.

15. Rule is made absolute in the above terms. No costs.

[BHARAT P. DESHPANDE, J.]