

instance. Therefore, the amendment could not be allowed as the same is barred by provisions of Order II Rule 2 CPC. It has been further contended that the respondent/plaintiff failed to lead evidence despite availing six opportunities. Then, application for amendment of plaint was filed on the lame excuse that he could not file the suit for specific performance due to demonetization. The plaintiff was required to file suit for specific performance and the Court would have given time to pay the court fee. The amendment sought is barred by limitation since the application for amendment has been filed after three years of filing the suit. Reliance in this regard has been placed on judgment of Madras High Court in **M/s Virgo Industries (Engineers) Pvt. Ltd. vs. M/s Venturetech Solutions Pvt. Ltd.** – **Law Finder Doc Id # 1735059** and also on judgment of Bombay High Court in **Gajanan R. Salvi vs. Satish Shankar Gupte and others** – **Law Finder Doc Id # 137230**.

4. I have heard the submissions of learned counsel for the petitioner and perused the case file.

5. The respondent/plaintiff filed suit originally for permanent injunction on the ground that the petitioner/defendant has agreed to sell the suit property to the respondent/plaintiff for consideration vide agreement to sell dated 24.11.2015. An amount of Rs.36 lakhs was paid in cash as earnest money at the time of execution of said agreement. The stipulated date for sale deed was fixed as 30.05.2016. The respondent/plaintiff was ready and willing to get the sale deed executed and remained present in the office of Sub-Registrar on the stipulated date but petitioner/defendant did not turn up.

On 22.06.2016, a sum of Rs.16 lakhs was paid by the respondent/plaintiff. Again, tentative date for executing the sale deed was extended to 10.09.2016, on which date, respondent/plaintiff being ready and willing to get the sale deed executed, went to the office of Sub-Registrar but petitioner/defendant did not turn up. The petitioner/defendant filed written statement inter alia raising objection regarding cause of action, which arose to the respondent/plaintiff to file suit for specific performance, thereby seeking relief of execution of sale deed. So, the respondent/plaintiff moved application for withdrawal of the suit, with liberty to file fresh one but the same was dismissed vide order dated 27.08.2018. The respondent/plaintiff then moved application on 10.09.2018 for amendment of plaint. The respondent/plaintiff wanted to convert the suit for permanent injunction to suit for specific performance of agreement to sell. There is no change in the cause of action by way of amendment of plaint. The merits of the case are not be seen for allowing or dismissing the prayer for amendment of the plaint. Recently, in case **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another** reported as **2022 AIR (Supreme Court) 4256**, the law of amendment has been summed up by Hon'ble Supreme Court, 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 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**)."*

6. In addition to what has been discussed in the preceding paragraphs, it is apt to note here that the issue, whether the suit is barred by provisions of Order II Rule 2 CPC or not, can not be seen at the stage of deciding the application for amendment.

7. In view of the above discussion, I do not find any illegality or perversity in the impugned order dated 30.03.2019 (Annexure P-5), passed by learned Trial Court, thereby allowing application under Order 6 Rule 17 CPC, filed by respondent/plaintiff seeking amendment of plaint. The authorities cited by the learned counsel for the defendant/petitioner are of no help.

8. Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

9. Pending applications, if any, shall stand disposed of along with this judgment.

February 13, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.