



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1738 OF 2021**

Shri. Parmanand Motar Vahatuk Sahakari
Sanstha Ltd. Khedle Parmanand,
At Post: Khedle Permandand, Ta. Newasa,
District Ahmednagar,
Through its Chairman,
Mr. Popatrao Suryabhan Aghav,
Age: 48 years, Occup.: Agril. & Business,
R/o.: Khedle Parmanand, Ta. Newasa,
District Ahmednagar.

..Petitioner
(Org. Disputant)

Versus

1. The Shriram Ustod Majur Seva Sangh Maryadit,
C/o. Kukadi Sahakari Sakhari Karkhana Ltd.,
Pimpalgaon Pisa,
At Post: Pimpalgaon Pisa,
Tq.: Shrigonda, Dist. Ahmednagar.

2. The Chairman
Shriram Ustod Majur Seva Sangh Maryadit,
C/o. Kukadi Sahakari Sakhari Karkhana Ltd.,
Pimpalgaon Pisa,
At Post: Pimpalgaon Pisa,
Tq.: Shrigonda, Dist. Ahmednagar.

3. The Managing Director.
Shriram Ustod Majur Seva Sangh Maryadit,
C/o. Kukadi Sahakari Sakhari Karkhana Ltd.,
Pimpalgaon Pisa,
At Post: Pimpalgaon Pisa,
Tq.: Shrigonda, Dist. Ahmednagar.

..Respondents
(Ori. Opponents)

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Mr. Jiwan J. Patil h/f Mr. A. B. Jagtap, Advocate for Petitioner.
Mr. Youraj Kakade h/f Mr. N. V. Gaware, Advocate for
Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

**Reserved On : 17th JULY, 2025.
Pronounce On : 22nd JULY, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of the parties, matter is taken up for final hearing at admission stage.

2. The petitioner/original disputant impugns order dated 22.07.2020 passed by Judge, Co-operative Court, Shrirampur in A.B.N. No.232/2010, thereby rejecting prayers seeking amendment in plaint.

3. Brief facts giving rise to present petition are as under:

The petitioner/society filed dispute before Co-operative Court seeking recovery of amount of Rs.54,75,482/- alleging breach of contract dated 18.07.2006 and consequential losses. It is contention of petitioner that in pursuance to agreement dated 18.07.2006, respondent no.1 had entered into contract with petitioner for harvesting of sugarcane and transportation. The terms of agreement were reduced into writing. In deference to such contract, petitioner executed work, however, opponent no.1 failed to comply with his obligation in tune with terms of agreement and released bills towards work executed by petitioner. Eventually, petitioner suffered losses.

The opponent no.1 filed written statement and generally denied averments made in plaint. The Co-operative Court framed issues on 18.11.2011 and posted matter for evidence. However, due

to failure of petitioner, suit was dismissed for want of prosecution vide order dated 03.03.2012. Later on, it was restored.

On 16.12.2019, petitioner filed application below Exhibit-19 seeking permission to amend plaint contending that trial in suit is yet to be commenced. There are some inadvertent errors in plaint, which needs to be corrected, so also some additional facts are required to be brought on record. Eventually, petitioner sought deletion of some portion from paragraph nos.1 and 2 of plaint and replace it by adding some facts. The petitioner sought addition of Kukadi Sahakari Sakhar Karkhana and its Chairman as defendant nos.4 and 5. The aforesaid application was opposed by respondent no.1. The Trial Court after hearing parties, rejected application Exhibit-19 vide impugned order dated 22.07.2020.

4. Mr. Patil, learned Advocate appearing for petitioner submits that dispute before Co-operative Court is at the stage of evidence, however, trial is not yet commenced. The petitioner sought amendment in plaint to remove inadvertent pleadings and addition of parties whose presence is necessary for effective adjudication of dispute. After taking this Court through proposed amendment, he would submit that amendment would not bring time barred claim or change the nature of suit or no prejudice would be caused to respondents by introduction of amendment. Relying upon judgment of Supreme Court of India in case of *Life Insurance*

Corporation of India Vs. Sanjeev Builders Private Limited and Anr.¹, he submits that amendment needs to be allowed, if it is necessary for determining real question in controversy and even when it avoids multiplicity of proceeding. According to him, Trial Court adopted hyper-technical approach. He would further submit that delay in applying for amendment alone is not ground to disallow prayer.

5. Per contra, Mr. Kakade, learned Advocate appearing for respondents vehemently opposed prayers. According to him dispute is instituted in the year 2010, whereas application for amendment is filed in the year 2020. The disputant has not demonstrated due diligence in prosecuting suit. The amendment is sought to be introduced when suit is already reached at the stage of evidence. According to Mr. Kakade proposed withdrawal of pleadings would amount to withdrawal of admissions and, therefore, proposed amendment is rightly rejected. In support of his contentions he relies upon following judgments:

1. ***Rasiklal Manikchand Dhariwal and Others Vs. Kishore Washwani and another***².
2. ***Barkatali Abdul Razzak Kazi and Ors. Vs. Manzoor Abdul Razzak Kazi and Anr***³.

¹ AIR 2022 SC 4256.

² 2005 (3) Bom. C.R. 104.

³ 2014 (4) Bom. C.R. 327.

3. ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others***⁴.

4. ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr.***⁵

6. Having considered submissions advanced, it would be apposite to refer to the parameters for deciding application seeking amendment of pleadings as laid down by Supreme Court of India in case of ***Life Insurance Corporation of India*** (supra). It is observed that in dealing with prayers for amendment of pleadings, Court should avoid hyper-technical approach and is ordinarily required to be liberal. The amendment has to be allowed, when it would enable Court to pin-pointedly consider the dispute. Even amendment which sought to introduce an additional or a new approach without introducing a time barred cause of action or intended to rectify the absence of material particulars in the plaint has to be allowed. However, if changes sought to be introduced by way of an amendment intends to set up an entirely new case, foreign to the case set up in the plaint, the amendment has to be disallowed. It is further observed that where amendment is sought before commencement of trial, liberal approach has to be adopted, as opposite party has chance to meet the case set up in amendment and no prejudice would be caused to opposite party.

⁴ (2009) 10 SCC 84.

⁵ AIR 2022 SC 4256.

7. Turning back to the facts of present case, petitioner instituted dispute for recovery of amount alleging breach of contract by opponent no.1 i.e. Shriram Ustod Majur Seva Sangh Maryadit. Primarily, suit is filed with contention that there was an agreement between disputant and opponent no.1 through opponent nos.2 and 3. Copy of agreement is also placed on record. Primarily agreement was for supply of labours for harvesting sugarcane and its transportation. Now by way of amendment, petitioner wants to plead that opponent no.1/Society is under control and supervision of Kukadi Sahakari Sakhar Karkhana. Even Directors of that Karkhana are *ex-officio* Members or Directors of opponent no.1 and affairs of opponent no.1 are indirectly controlled by said Karkhana and its office bearers. The amendment suggests that even liability to reimburse, opponent no.1 or third party on behalf of opponent no.1 is with Kukadi Sahakari Sakhar Karkhana. Accordingly, defendant no.4-Karkhana and defendant no.5-its Chairman are sought to be introduced as defendants. Evidently, even by adding amended pleadings, claim in the suit for recovery of amount subsists as it is. Basis of such claim remains to be agreement between disputant and opponents. Even deletion of some portion of pleadings in paragraph nos.1 and 2 of dispute, nowhere suggests that any admission has been withdrawn that would have benefited respondents or prejudices defence of respondent.

8. As observed above, suit is reached at the stage of evidence, but trial is not yet commenced. Therefore, even if amendment is allowed, opponents would have right to file written statement to amended plaint. Only because amendment is brought at belated stage, same cannot be rejected, unless it has shown substantial prejudice is caused to respondents. Except some delay in commencement of trial, no prejudice would be caused to respondents. In facts of this case it is hardly affects respondent.

9. Perusal of impugned order shows that learned Judge observed that amendment would totally change nature of dispute and new case is sought to be introduced. However, aforesaid statement is not elaborated in the order. It nowhere depicts how nature of suit would change or would amount to introduction of new case. It is true that, by way of amendment, petitioner is trying to encompass liability of sugar factory alongwith original opponent nos.1 to 3. However, that itself cannot be construed as change in nature of suit or introduction of new case. The impugned order appears to be passed ignoring basic parameters for exercise of jurisdiction under Order VI Rule 17 of the Code of Civil Procedure.

10. Although Mr. Kakade, learned Advocate relied upon multiple judgments of Supreme Court of India as well as this Court, those are distinguishable from facts of present case. There cannot be dispute about exposition of law laid therein, but even applying

same in facts of this case, rejection of amendment cannot be justified. In result, Writ Petition succeeds and allowed in terms of prayer Clause (B).

11. Rule made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025