



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.15299 OF 2023

Naresh Brothers Through Special Power Of Attorney Amol
Naresh Gosaliya

VERSUS

Universal Starch Chem Allied Ltd Through Kailas Narayan
Pawar

...

Advocate for Petitioner : Mr. H.V. Tungar

Advocate for Respondent : Mr. A.A. Fulfagar

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : July 11, 2025

ORDER :-

1. The petitioner impugns the order dated 5.10.2023 passed by the Civil Judge S.D., Dhule below Exhibit-44 in Special Civil Suit No.96 of 2017, by which prayer of the petitioner/original defendant seeking amendment in the written statement has been declined. (For the sake of brevity, parties hereinafter referred to as per 'their original status').

2. Respondent/plaintiff instituted Special Civil Suit No.96 of 2017 for recovery of amount of Rs.12,05,623/- before the Civil Judge S.D. Dhule. It is contention of plaintiff that it is a Private Limited Company and engaged in production of starch powder, liquid glucose etc and sells the same.

Defendant has taken material on credit. Total bill amount due to defendant is quantified to Rs.12,05,623/- which is not cleared till the date. Defendant appeared, filed written statement and denied adverse contentions made in the plaint. In paragraph no.14 defendant pleaded that since plaintiff failed to supply goods as per Schedule, defendant suffered losses worth Rs.10,40,000/- during period from 2013 to 2017. In prayer clause, defendant raised counter-claim towards compensatory costs of Rs.59,90,000/-.

3. Trial Court framed issues based on pleading of parties. However, when matter was posted for evidence, defendant filed an application below Exhibit-27 for amendment contending that, although he has filed counter-claim, there are some shortfalls in pleading that needs to be corrected. Since cross-examination of plaintiff is yet to be started, trial is not practically commenced. Therefore, amendment as prayed may be permitted.

4. Learned Trial Court, after considering rival submissions, rejected petitioner's application only on the ground that it has been filed belatedly. Learned Trial Court

relied upon riders stipulated in Order VI Rule 17 of the Civil Procedure Code and then observed that no application for amendment can be allowed after trial has commenced, unless due diligence on the part of defendant is shown.

5. Mr. H.V. Tungar, learned counsel appearing for petitioner invites attention of this Court to contents of written statement and submit that counter-claim is already made in written statement. In prayer clause, amount of counter-claim is quantified. According to him, amendment is only explanatory in nature and for correction of inadvertent errors occurred at the time of filing written statement. Mr. Tungar would submit that, if amendment is allowed, no prejudice would be caused to respondent.

6. Per contra, Mr. A.A. Fulpagar, learned advocate appearing for respondent relying upon text of Order 6 Rule 17 of the Code submits that application for amendment has been filed after commencement of the trial. Defendant failed to take steps for amendment at the earlier stage and it is only when plaintiff filed his evidence affidavit, application seeking amendment is filed, which cannot be allowed. In support of his contentions he relies upon order of this Court dated

12.11.2024 in case of **Pandit Anna Gaikwad and another Vs. Kantilal Mishrilal Kothari** passed in Writ Petition No.12067 of 2024. He submits that, although Court has discretion to entertain counterclaim after filing written statement, same cannot be taken on record after framing of the issues.

7. Having considered submissions advanced, it can be observed that petitioner's written statement at Exhibit-19 elaborates counterclaim and also prayer to grant compensatory costs of Rs.59,90,000/-. All ingredients of counterclaim are present in petitioner's written statement, but what remained is valuation of the claim and payment of court fees. Learned Trial Court observed that counter-claim was made within time-line, however, amendment in counter-claim is hit by Order VI Rule 17 of CPC, which prohibits entertaining application after trial has commenced.

8. There cannot be two views that rider created under Order VI Rule 17 of the Civil Procedure Code restricting amendment up to the stage of commencement of trial has to be followed. But there are exception to said Rule. The discretion available with Courts to permit amendment can be exercised in

appropriate cases and particularly, keeping in mind nature of proposed amendment.

9. In the present case, if amendment is allowed, controversy between parties can be settled at rest and multiplicity of litigation can be avoided. As such, object of enabling provisions for permitting amendment would be subserved if in facts of this case, amendment is permitted. It neither changes nature of the dispute between parties nor give rise to any new claim. Amendment is merely a clarificatory in nature.

10. It is a matter of record that although plaintiff has filed his evidence affidavit, cross-examination is yet to be commenced. Therefore, if amendment is permitted, plaintiff/defendant in counterclaim would have an opportunity to refute contentions introduced by filing the written statement. All objections as to merit of proposed amendment, issue of limitation, Court fees shall be open for decision in trial. It would cause no prejudice to the plaintiff.

11. In that view of the matter, this Court deem it fit to allow the writ petition in terms of prayer clause **“B”**, with

liberty in favour of plaintiff to file written statement to the counterclaim.

(S. G. CHAPALGAONKAR)
Judge

...

AAA-