IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

Writ Petition No.688 of 2014

SMT. MEENA GUPTA

Vs.

SHRIMAN AYUKT MAHODAYA

APPERANCE

Shri Vikas Singhal - Advocate for the petitioner.

Shri Kamal Kumar Jain - Advocate for the respondent.

Reserved on : ***08/04/2025***
Delivered on : ***25/4/2025***

This petition having been heard and reserved for orders, coming on for pronouncement this day, the ***Hon'ble Shri Justice Milind Ramesh Phadke*** *pronounced/passed the following:*

ORDER

The instant petition, under Article 227 of the Constitution of India, has been preferred challenging the order dated 06.01.2014 passed by VI Civil Judge, Class-I, Gwalior, in Civil Suit No.27-A of 2012 whereby an application filed by the plaintiff/respondent under Order 6 Rule 17 of C.P.C. was allowed and he was permitted to carry out the necessary amendment in the suit.

2. Brief facts of the case are that petitioner/plaintiff had filed a suit for declaration and permanent injunction against present respondent with regard to Shop No.22 situated at Indira Market (Topi Bazar),

Lashkar, Gwalior to the effect that respondent in order to give shops on rent had published a notice in the daily newspaper "*Dainik Bhaskar*" dated 15.07.1999 inviting applications from public for first floor by fixing monthly rent @ Rs.2,300/- and other miscellaneous charges. The petitioner/plaintiff, relying on the said notice, had deposited Rs.25,000/- as security money through Bank Cheque bearing No.0002524, dated 20.07.1999 of Central Bank of India, Lashkar Branch, Gwalior, which was sent to the defendant by registered A.D. post on 20.07.1999 and thereafter had taken Shop No.22 on rent from the defendant/respondent on 22.07.1959. The respondent through a notice dated 02.08.1999 had demanded Rs.2,80,000/- from the defendant as the cost of repairs done to Shop No. 22. The plaintiff, through her advocate on 22.07.1999 though had sent the rent to the defendant, the authorized representative of the defendant, for Shop No.22, but the defendant has been refused to accept the rent. The defendant, through his advocate on 10.08.1999, had sent a notice bearing registration No.3796, dated 10.08.1999 through registered A.D. post, stating therein that the plaintiff had illegally constructed a tin-shed etc., in the rented shop and is demanding the non-refundable advance amount for Shop No.22 and the cost of repairs. The plaintiff received the said notice on 11.08.1999, but the defendant has neither given any reply to the said notice nor he is ready to accept the rent for the said rented shop, nor he is ready to pay non-refundable advance amount and the cost of repairs.

3. In the pending civil suit, an application under Order VI Rule 17 of CPC was filed by the respondent/defendant for certain amendments in the plaint, which went to the root of the matter and were important for complete adjudication. The said application was opposed by the

plaintiff/petitioner. Learned Trial Court after hearing the parties vide impugned order dated 06.01.2024 had allowed the application of the respondent/defendant. Being aggrieved by the said order, the instant petition has been filed.

4. Learned counsel for the petitioner has submitted that the only question which is required to be gone into at the stage of consideration of the application by the Court is whether such amendment would be necessary for decision of real controversy between the parties of the suit and at that stage, the Court cannot go into question of merits of such amendment and as the learned Trial Court had went on to decide the merits of the application, without deciding the relevancy, the findings are perverse and illegal, therefore, deserves to be quashed.

5. It was further submitted that the proposed amendment is not for correcting any typing/clerical error rather is with an intent to change the suit property by withdrawing his averments made initially in the plaint, thus, the allowing such an amendment is bad in law, as by allowing the said application, the nature of suit will change and new cause of action would arise, thus, the Court below had erred in allowing the application. It was, thus, prayed that the present petition be allowed and impugned order be set aside.

6. *Per contra,* learned counsel appearing for the respondents had opposed the prayer so made by counsel for the petitioner and had prayed for its dismissal alleging that no illegality has been committed by the learned Trial Court in passing the impugned order dated 30.05.2024, as the petitioners have not given any justifiable reason as to why they did not place on record such facts and documents earlier.

7. Heard counsel for the parties and perused the record.

8. Order 6 Rule 17 CPC, as is well-known, pertains to the amendment of pleadings in a civil suit. It reads as under :-

> *"17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

9. What can be understood from a reading of the above provision is that, (a) amendment of pleadings can be allowed at any stage; (b) amendment must be necessary to determine the "real question of controversy" "inter se parties"; (c) if such amendment is sought to be brought after commencement of trial the Court must, in allowing the same has to come to a conclusion that in spite of best efforts on the part of the party to the suit, the same could not have been brought before that point of time, when it was actually brought. The law with regard to the amendment in the pleadings in that regard is required to be considered. The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power.

10. The Apex Court in the matter of **North Eastern Railway**

Administration, Gorakhpur v. Bhagwan Das, reported in **(2008) 8 SCC 511** has held as under:

> *"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in (2008) 8 SCC 511 8|SLP(C)30324/2019 controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar (1990) 1 SCC 166.]"*

11. Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order 6 Rule 17. Recently, the Apex Court in the matter of **Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited & Another** reported in **(2022) 16 SCC 1,** after considering various precedents in regard to the amendment of pleadings, had culled out certain principles, which are

reproduced as under:-

> *"71. Our final conclusions may be summed up thus:*
>
> *71.1. 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.*
>
> *71.2. 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.*
>
> *71.3. The prayer for amendment is to be allowed:*
>
> *71.3.1. If the amendment is required for effective and proper adjudication of the controversy between the parties.*
>
> *71.3.2. 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).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *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,*

71.4.2. *The amendment changes the nature of the suit,*

71.4.3. *The prayer for amendment is malafide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.4.5. *In dealing with a prayer for amendment of pleadings, the court should avoid a hyper technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*

71.4.6. *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.*

71.4.6. *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.*

71.4.8. *Amendment may be justifiably allowed where it*

is intended to rectify the absence of material particulars in the plaint.

71.4.9. *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.*

71.4.10. *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.*

71.4.11. *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. (Pls. See **Vijay Gupta v. Gagninder Kr. Gandhi & Ors.** reported in **2022 SCC OnLine Del 1897**)"*

(Emphasis supplied)"

12. A perusal of the law laid down by the Apex Court makes it clear that the amendments are to be allowed barring the eventualities, i.e., they have effect of changing the nature of litigation or they cause prejudice to the other party or an admission is being sought to be withdrawn by the party on the strength of amendment. In the present case none of the aforesaid eventualities exists and as the case was at the stage of plaintiff evidence, in the considered view of this Court the Trial Court did not commit any error while allowing the application for amendment.

13. Thus, the impugned order dated 06.01.2014 passed by the Learned Trial Court in Civil Suit No.27-A of 2012 is legally sustainable and does not require any interference. Accordingly, the present petition being *sans* merit is hereby **dismissed**.

(Milind Ramesh Phadke)
Judge