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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF JULY, 2023

MISC. PETITION No. 741 of 2020

BETWEEN:-

**VEENA W/O CAPT. RASHPAL SIKKA,
AGED ABOUT 66 YEARS, OCCUPATION:
HOUSEWIFE N-101, VASTU
APARTMENT ACQUAPOINT, VILLAGE
UMARIYA, DR. AMBEDKAR NAGAR,
MHOW (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ABHIJEET SINGH CHOUHAN, ADVOCATE)

AND

**RAJYE S/O MANOHAR CHOUHAN
OCCUPATION: BUSINESS 13, NEW
SHIKSHAK NAGAR, SHIV VIHAR
COLONY, HARNIYAKHEDI, TEHSIL
MHOW (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI SANJAY KUMAR SHARMA, ADVOCATE)

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This petition coming on for orders this day, the court passed the following:

ORDER

01] This petition has been filed by the petitioner/plaintiff under

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Article 227 of the Constitution of India against the order dated 15.1.2020, passed in Civil Suit No.6-B of 2018 by Vth Civil Judge, Class-I, Mhow, District- Indore whereby, the plaintiff's application filed under Order 6 Rule 17 of the CPC has been rejected.

02] In brief, the facts of the case are that the petitioner has filed a civil suit against the respondent for recovery of an amount of Rs.2,35,125/-. The suit was filed on the ground that the principal amount sought to be recovered from the defendant was Rs.1,71,000/-, out of which, a sum of Rs.34,000/- was received in cash, whereas, the amount of Rs.64,000/- was paid by cheque no.146914 and Rs.76,6000/- was paid by cheque no. 146917 drawn on an account held by the petitioner with IDBI bank. In the aforesaid suit, the written statement has also been filed the defendant and the case is fixed for evidence of the plaintiff. The plaintiff has also filed his affidavit under Order 18 Rule 4 of CPC and was also cross-examined by the defendant. During the course of the cross-examination, the plaintiff's witness was also confronted with his affidavit under Order 18 Rule 4 of the CPC in which, he has also stated that the amount given by the plaintiff through two cheques nos. 146914 and 146917 has been received by Rajesh Chouhan on 30.11.2015 and 05.12.2015 in his *account*, but, in his evidence, he has stated that the cheques which had been given by the plaintiff to Rajesh Chouhan were *bearer cheques*. Thus, there was a discrepancy in the plaint averments and in the affidavit under Order 18 Rule 4 of the CPC and in the cross-

examination.

03] Taking a clue of the same, the application under Order 6 Rule 17 CPC was filed by the plaintiff wherein, it was stated that the cheques actually given to the respondent were bearer cheques and the amount has been received by defendant in cash, which is also reflected from the plaintiff's bank account. But, the plaintiff somehow forgot to inform her counsel that the cheques were bearer cheques and not the account payee cheques which fact could not be mentioned by her advocate in the plaint and it has been wrongly mentioned that the amount has been received in his account. It is also stated that the defendant has nowhere denied the receiving of the said cheques but has only denied that the amount has been received by him in his account.

04] Counsel for the petitioner has submitted that the learned Judge of the trial court has rejected the application on the ground of due diligence as the plaintiff has not been able to show that the amendment sought by her to the amendment application could not have been made at the time of filing of the plaint, and it appears that only to fill the lacuna, this application has been filed subsequently. Counsel has further submitted that the amendment sought is only in the nature of explanation and no new case is being introduced by the plaintiff and, thus, the application ought not to have been rejected only by reference to under Order 6 Rule 17 of CPC.

05] In support of his submissions, learned counsel for the petitioner

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Shri Abhijeet Singh Chouhan has relied upon the decision rendered by the Supreme Court in the case of *Usha Devi vs. Rijwan Ahmad and others* reported as AIR 2008 SC 1147, and the decision rendered by the Division Bench of this High Court in the case of *Gopi Ramchandani vs. A.H. Ramchandani* reported as 2009 (I) MPWN 93 in which, it is held that the amendment application in the nature of explanation for elaboration of facts already pleaded should be allowed. Reliance is also placed on the decision rendered by the Supreme Court in the case of *Ganesh Prasad vs. Rajeswar Prasad and others* reported as 2023 (2) SCCD 576 (SC) in which, the Court has held that the amendments of pleadings should be allowed liberally.

06] Counsel for the respondent, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out, as the plaintiff has sought the amendment only after she was cross examined and, thus, the learned Judge of the trial Court has rightly held that the amendment sought is only to fill the lacuna. Counsel has further submitted that the plaintiff was well aware of the fact that the cheques were bearer cheques and not the account payee cheques; but still this fact has not been pleaded by her in the plaint and thus, the application has been rightly rejected by the trial court.

07] Heard the counsel for the parties and also perused the record.

08] On due consideration of the rival submissions and on perusal of

the documents filed on record, this Court is inclined to allow the present application for the reason that the payment of money to the defendant through cheques bearing Nos.146914 and 146917 is averred in the plaint, and only during the cross examination the plaintiff realised that the cheques were actually bearer cheques and not the account payee cheques. In such circumstances, if the application has been filed only to rectify the error which was in the nature of explanation only about the cheques being the bearer cheques and not the account payee cheques, it cannot be said that it is an after thought or a new case is introduced by such amendment. Thus, it is a case where only the true nature of the documents (cheques), which were already part of the record, was tried to be explained by way of amendment, and nothing new is tried to be added which the plaintiff did not plead initially, the application for amendment can be allowed as in the considered opinion of this court, the amendments sought appears to be necessary for the purpose of determining the real questions in controversy between the parties.

09] At this juncture, reference may be had to a recent decision rendered by the Supreme Court in the case of ***L.I.C. v. Sanjeev Builders (P) Ltd., 2022 SCC OnLine SC 1128*** in para 33 of the same, it is observed as under:-

“33. Again, in *Vineet Kumar v. Mangal Sain Wadhera*, (1984) 3 SCC 352: AIR 1985 SC 817, this Court held that *if a prayer for amendment merely adds to the facts already on record, the amendment*

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would be allowed even after the statutory period of limitation.”

(emphasis supplied)

10] Similarly, in para 9 of ***Gopi Ramchandani's*** case (supra), the Division Bench of this Court has held as follows:-

“9. On going through paras 2 and 4 of the written statement it is revealed that certain custom has been pleaded that in *Sindhi* community there is provision of having divorce being accorded by the *Sindhi Panchayat* and accordingly defendant divorced her earlier husband Ashok Khotani. This fact has also been pleaded that it was well within the knowledge of plaintiff-respondent that she is a divorcee of Ashok Khotani and divorcee has been accorded by the *Sindhi Panchayat* according to their custom. Thus, according to us, the proposed amendment is nothing but explanation and elaboration of the facts which were already pleaded by the defendant. In the proposed amendment it has been pleaded that in the said *Panchayat* when the divorce between defendant and her earlier husband took place, plaintiff, his sister and other family members were present and, therefore, according to us, learned Family Court has erred in rejecting the application for amendment filed by defendant. We do not find any merit in the contention of learned counsel for the respondent-plaintiff that without any due diligence amendment application has been filed. On going through para 3 of the amendment application it is revealed that clarification, explanation and elaboration which now defendant is making through amendment application were not

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taken by her earlier counsel. According to us, this would amount to due diligence because a party does not know whether those facts were required to be pleaded or not and it was for the counsel to draft the written statement accordingly.”

(emphasis supplied)

11] Accordingly, the petition stands **allowed**. The impugned order dated 15.1.2020 is set aside and the application filed under Order 6 Rule 17 of the CPC is hereby allowed. Learned Judge of the trial court is directed to allow the petitioner to carry out necessary amendments within a fixed time and proceed further accordingly.

12] The Miscellaneous Petition stands **allowed**.

(SUBHODH ABHYANKAR)
JUDGE

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