



## **HON'BLE SUPREME COURT ISSUES GUIDELINES ON AMENDMENT OF PLEADINGS UNDER ORDER VI RULE 17, CODE OF CIVIL PROCEDURE, 1908**

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### **I. BACKGROUND**

A Division Bench of the Hon'ble Supreme Court comprising of Hon'ble Mr. Justice Aniruddha Bose and Hon'ble Mr. Justice J.B. Pardiwala on September 01, 2022<sup>2</sup> upheld the orders passed by the High Court of Judicature at Bombay whereby an application for amendment of pleadings under Order VI Rule 17 of the Code of Civil Procedure, 1908 ("CPC") filed by the Respondent was allowed. While deciding the appeal, the Supreme Court summarised the guiding principles for deciding an application under Order VI Rule 17, CPC.

### **II. FACTS AND APPEAL**

The parties to the appeal before the Hon'ble Supreme Court were involved in a suit for specific performance of an agreement dated June 08, 1979 and a claim for damages. During the pendency of the suit, the Plaintiff filed an application for amendment of the suit for revising the claim of damages from Rs. 1,01,00,000/- (Rupees One Crore and One Lakh) to Rs. 4,00,01,00,000/- (Rupees Four Hundred Crore & One Lakh only). The amendment was allowed by the learned single judge. The Defendant appealed against this order; however, the Hon'ble Division Bench of the High Court of Judicature at Bombay affirmed the order. Aggrieved, the Defendant/Appellant approached the Hon'ble Supreme Court.

It was contended by the Defendant/Appellant before the Hon'ble Supreme Court that the amendment was filed after a period of thirty-one years, but the Hon'ble Supreme Court dismissed the appeal

### **III. OBSERVATIONS OF THE HON'BLE SUPREME COURT OF INDIA**

#### **General Rule**

The Hon'ble Supreme Court concluded that the latter part of Order VI Rule 17, CPC uses the word "shall" which is mandatory. Hence, all amendments are to be allowed

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<sup>2</sup> Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another [2022 SCC Online SC 1128].

which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side.

### **Guiding principles for deciding an application for amendment of pleading under Order VI Rule 17**

Following the law laid down in a catena of judicial precedents, the Hon'ble Supreme Court laid down certain guiding principles. 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).
- (iii) A prayer for amendment is generally required to be allowed unless:
  - a. 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,
  - b. the amendment changes the nature of the suit,
  - c. the prayer for amendment is mala-fide, or
  - d. by the amendment, the other side loses a valid defence.
  - e. 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.
  - f. 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.
  - g. 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.
  - h. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.
  - i. 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.
  - j. 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.
  - k. 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.

#### **IV. CONCLUSION**

There is no straight jacketed formula for allowing an application for amendment of pleadings. However, the courts can take aid of the above principles, analyse the facts of the case meticulously, circumstances leading to filing the application and whether any prejudice will be caused to the opposite party. The courts are expected to balance the scales of justice and if a party can be compensated with cost, the amendment is to be allowed.

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