
LAW ON AMENDMENT OF PLEADINGS - A CRITIQUE

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ABSTRACT

The article aims to conclusively deal with the law on Amendment of Pleadings under the Code of Civil Procedure, 1908. It comes in aid of the party who suffers due to the mistake of his counsel. The purpose of law is to advance justice and not to defeat it in the name of technical considerations. The main objective is to help determine the real issue in controversy between the parties in order to prevent any further litigation and give relief to the party whose subsequent relief may be barred by provisions like *res judicata*, Order II Rule 2. Order VI Rule 17 of the Code of Civil Procedure, 1908 gives discretion to the court to allow either party by virtue of an application to amend its pleading. It is a voluntary amendment. The proviso to this rule places an embargo on this wide discretion conferred on the court. The position pre and post commencement of trial stands on separate footings, the former being more liberal than the latter. The initial part of the rule covers pre-trial amendment of pleadings wherein no strict proof of due diligence is required. It is only in the proviso which deals with post trial amendment of pleadings that proof of due diligence comes in. The proviso however, is not to be construed in a manner that defeats substantial justice and is not absolute in that sense. This article by way of judicial decisions seeks to throw light upon the nuances of the rule and the various principles laid down by courts while dealing with such applications. The author has tried to comprehensively deal with to all issues that come up while dealing with an application for amendment of pleadings.

Keywords: Amendment of Pleadings, discretionary, proviso, justice.

INTRODUCTION

The object of law is to administer justice and not penalize the parties. Pleadings i.e. Plaint for plaintiff and Written Statement for defendant are drafted by counsels on behalf of the parties. It is highly probable that these pleadings may suffer from some inadvertent mistake or omission due to workload or the fallible nature of humans. The court of law is not a court of technicality. The parties must not suffer due to the mistakes made by their counsels and the parties must be given a chance to present the real question in controversy between them before the court. In the interest of doing complete justice and not merely relying on technicalities the provision for Amendment of Pleadings was introduced in the Civil Procedure Code, 1908 by virtue of Order VI Rule 17.

However, as the very famous saying goes “Justice delayed is Justice denied”, amendment must not be allowed to be used as a weapon to delay the case. It may happen that the party who is under the impression of losing the case may use this power to win time. It is here that the role of court comes in. It is the duty of the court to strike balance between the interest of the party who suffers due to the mistake of the counsel and the need to timely deliver justice.

In order to ensure timely disposal of cases the provision with regard to Amendment of Pleadings i.e. Order VI Rule 17 was deleted by virtue of the 1999 Amendment. This led to massive uproar and boycott of courts by legal community. It was then in 2002 the same was introduced with a proviso to restrict this unfettered discretion of court. The proviso has undeniably improved the situation.

AMENDMENTS ALLOWED IN THE CODE OF CIVIL PROCEDURE, 1908

1. Section 152: It enables the court to correct any clerical or arithmetical mistake in its judgement, decree or order on application of the parties or on its own motion.
2. Section 153: It deals with the court’s general power to amend and gives discretion to the court to correct any defect in proceedings necessary to determine the real issue between the parties.
3. Section 153A: It empowers the court of first instance to amend its decree or order even though the appeal against the same has been summarily disposed off by the Appellate Court.

4. Order 1 Rule 10: Subrule 2 enables the court at any stage of the proceedings in the interest of justice either on its own motion or application by any of the parties to either strike out or add the name of the person who ought not or ought to have been joined respectively.
5. Order VI Rule 16: It deals with courts' power to strike out or amend pleadings on the following grounds:
 - a) The same being frivolous or vexatious
 - b) The same may delay or embarrass or prejudice trial
 - c) The same is an abuse of the process of court
6. Order VI Rule 17: It is a discretionary relief granted by the court in order to determine the real question in controversy between the parties.

AMENDMENT OF PLEADINGS (Order VI Rule 17)

The rule states as under:

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.

The object behind amendment of pleadings is to determine the real question in controversy between the parties. In *Cropper v. Smith*¹, Bowen LJ highlighted that the objective behind granting amendment is not to punish the parties but to guard their rights.

¹ (1884) L.R. 26 Ch. D., 700 (710)

The essentials to grant amendment of pleadings are:

- The court is given discretion
- At any stage of the proceedings
- To allow any party to alter or amend his pleadings
- For determination of real question in controversy
- No amendment shall be granted after commencement of trial unless the court is satisfied that:
 - ~inspite of due diligence
 - ~parties could not have raised the same before commencement of trial.

The first part of Order VI Rule 17 gives a wide discretion to the court to allow any of the parties to amend its pleading at any stage in order to decide the case on merits and address the real question in controversy between them.

The proviso creates an embargo on this unfettered power and in cases where trial has commenced the amendment can only be allowed if the party concerned satisfies the court that despite due diligence the same could not have been raised before the trial commenced.

Due diligence means the reasonable conduct that is expected out of a prudent man in dealing with his/her own affairs.

Trial is said to have commenced when there is examination in chief in lieu of first witness or when affidavit is first produced in lieu of examination in chief.

In *Vidyabai v. Padmalatha*² the Supreme Court clarified the difference between date of first hearing and commencement of trial. The day issues are framed it is the date of first hearing and trial is not said to have commenced on that day. It is when affidavit is filed in lieu of examination of chief of witness the trial is said to have commenced.

Amendment can be granted no matter how grave is the negligence on part of the parties provided the following two conditions are satisfied:

1. It is pertinent to determine the real question in controversy between the parties.
2. It will not cause injustice and unnecessary hardship to the other party.

² AIR 2009 SC 1433

Generally all amendments that that can be compensated by cost to the other party are allowed. However, the proposed amendment must not change the nature of the proceedings or result in substitution of one cause of action for another. It must enable the court to effectively decide the matter of real controversy between the parties on merits.

BAR OF LIMITATION ON AMENDMENT OF PLEADINGS

The power under Order VI Rule 17 is a discretionary power to meet the ends of justice. The court has in various cases held that there is no automatic rejection of application if the bar of limitation applies in amendment of pleadings, it depends upon the facts and circumstances of the each case. The court cannot lay it as rule to allow or disallow amendment in case of time barred suit.

In case of *Pankaja v Yellapa*³ it was held that no straightjacket formula can be laid for the same. If on examination of the facts the court comes to the conclusion that amendment is required in order to effectively settle the dispute between the parties and avoid any further litigation the court may allow amendment even against the bar of limitation.

PRINCIPLES FOR GRANTING AMENDMENT OF PLEADINGS:

1. It should enable the determination of real question in controversy between the parties.
2. It would prevent multiplicity of litigation.
3. It would not cause injustice to the other party which cannot be compensated by cost. As stated by Bowen LJ “cost is panacea to all ills”.
4. It would not result in changing the nature of the case or relief claimed and not substitute the cause of action or relief.
5. It deals with facts and situations arisen after filing of the pleading.
6. It deals with bonafide mistake or omission.
7. It does not defeat the bar of limitation.

In *Revajeetu Builders & Developers vs. V. Narayanaswamy & Sons*⁴, the Supreme Court laid down the general principles that must be borne in mind while dealing with an application under Order VI Rule 17, which are as under:

3 (2008) 14 SCC 632
4 (2009)10 SCC 84

1. *Whether the amendment sought is imperative for proper and effective adjudication of the case.*
2. *Whether the application for amendment is bona fide or mala fide;*
3. *The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
4. *Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
5. *Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
6. *As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*⁵

In *Mount Mary Enterprises v. Jivratna Medi Treat Pvt. Ltd.*⁶ the Supreme Court held that plaintiff should be allowed to amend his plaint in order to correct the valuation of the suit property and merely because the suit would transfer to the High Court due to change in jurisdiction is not a ground to reject the application for amendment.

In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & Ors.*⁷ it was observed by the Apex Court that when the party can be compensated by cost for any inconvenience cause amendment should be granted, it is when the party cannot be restored back to the original position that amendment should not be granted.

In *Mahila Ramkali Devi v. Nandram*⁸ the Supreme Court reiterated that procedure is merely handmaid to justice and even though the party is proved to be negligent amendment may be granted by the court. Want of bonafide and proof of malafide is a reason to refuse amendment but mere negligence or mistake on the part of the party is not a valid ground for refusal and a party ought not to suffer unless grave injustice which cannot be compensated by cost is caused to the other side.

APPLICATION OF AMENDMENT OF PLEADINGS CAN BE REFUSED IN THE FOLLOWING SITUATIONS:

1. When the amendment is not necessary to determine the real question in controversy between the parties.

⁵ Para 67, *Revajeetu Builders & Developers Ltd. v V. Narayanaswamy and Sons*

⁶ (2015) 4 SCC 182

⁷ AIR 1957 SC 363

⁸ (2015) 13 SCC 132

2. When the amendment introduces a new cause of action or changes the nature of suit.
3. When the amendment is made with a malafide intent.
4. When the amendment defeats the legal right that exists in favour of the other party by virtue of time.
5. When the amendment would lead to displacing the whole case of the plaintiff.

For instance, in a suit for restitution of conjugal rights, if application to amend the pleading under Order VI Rule 17 of the Code of Civil Procedure 1908, is made by the plaintiff so as to covert the same into a suit for divorce such application cannot be allowed as it completely changes the nature of the proceedings.

In *Steward v. The North Metropolitan Tramways Co.*⁹ where the plaintiff filed a suit against the tramway company for damages on account of negligence in maintaining the tramway and the same was denied by the Company. However, 6 months later the Tramway Co. filed an application to amend its written statement on the ground that the duty of maintaining the tramway had been given to the local authority by virtue of a contract. The position was such that the plaintiff's claim against the local authority was time barred. It was on this ground that amendment was refused.

In *M Revanna v. Anjanamma*¹⁰ where a partition suit was filed and years later into the litigation application was made under Order VI Rule 17 claiming that partition had already taken place in 1972. This showed malafide conduct on part of the applicant and the application was refused. Amendment post commencement of trial is restricted by the proviso unless the applicant proves that inspite of due diligence the same could not have been prayed for before commencement of trial. It cannot be claimed as a matter of right.

AMENDMENT OF PLAINT v. WRITTEN STATEMENT

In *Usha Balasaheb Swami v. Kiran Appaso Swami*¹¹ it was clarified by the Supreme Court that amendment of plaint has stricter considerations in comparison to amendment of written statement, both stand on different footings. The considerations of not changing the nature of

9 (1886) 16 QBD 178

10 AIR 2019 SC 940

11 AIR 2007 SC 1663

suit or substituting a new cause of action exist only while considering amendment of plaint but not amendment of written statement.

APPLICATION OF ORDER VI RULE 17 ON ARBITRATION PROCEEDINGS

Code of Civil Procedure, 1908 does not apply to Arbitration Proceedings. Therefore, Order VI Rule 17 has no application in Arbitration Proceedings.

Section 23(3) of the Arbitration and Conciliation Act, 1996 deals with amendment of statement of claim or defence during the ongoing arbitral proceeding. The arbitrator is however empowered to disallow the amendment on ground of the delay that accrues in making it.

ORDER VI RULE 18

It clearly provides that a party who has been granted leave to amend by the court fails to amend the pleading in the prescribed period stated in the order or 14 days from date of order if no such period is prescribed, such party shall not be allowed to amend the pleading after such period. The court may, however, extend the period to amend.

CONCLUSION

Order VI Rule 17 safeguards the rights of the litigant who places immense trust in his counsel and prevents punishing the litigant for the mistakes made by counsel. The remedy is discretionary and the same must be exercised by the courts reasonably. The proviso as introduced by the 2002 Amendment has put restrictions on this unfettered power. The present provision as it stands places duty on the court to prevent arbitrary exercise of this discretionary remedy and at the same time balance the interest of the applicant as opposed to the opposite party.