

“The Law on Amendment of Pleadings in Civil Suits”

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Abstract

Order 6 Rule 17 of CPC 1908 i.e, Civil Procedure Code forms the foundation on the law of pleading in civil suits it says as:

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 Hon’ble Supreme Court in the judgement of Advocates Bar Association, Tamil Nadu v. Union of India¹ held that:

“Order 6 Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added provision to prevent application for amendment being 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 proviso, to some extent, curtails absolute discretion to allow amendment at any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial.”

¹ (2005) 6 SCC 344.

This paper investigates the situation of Indian law on when pleadings can be changed and the degree to which Courts would allow such revision, as developed and clarified by legal points of reference.

GENERAL PRINCIPLE:

It is genuinely settled law that change of pleadings under Order 6 Rule 17 of CPC i.e, Civil Procedure Code is to be permitted if such a revision is required for appropriate and compelling mediation of contention between the gatherings and to maintain a strategic distance from assortment of legal procedures, subject to specific conditions, for example, permitting the alteration ought not bring about foul play to the opposite side. Further, in ordinary conditions, an affirmation made by the litigant, presenting certain rights on Plaintiff isn't permitted to be pulled back, bringing about bias to such right of the Plaintiff, contingent upon the realities and conditions of a given case. In specific circumstances, a period banished guarantee can't be permitted to be raised by proposing an alteration to remove the significant collected right of a gathering. In any case, simple postponement in making a correction application itself isn't sufficient to deny change as the deferral can be remunerated as far as cash.

The Hon'ble Supreme Court held that the purpose of Order 6 Rule 17 of Civil Procedure Code 1908 i.e, CPC is to permit either gathering to modify or revise his pleadings in such way and on such standing as might be simply.² The ability to permit revision is wide and can be practiced at any phase of the procedures in light of a legitimate concern for equity based on rules set somewhere around different High Courts and the Hon'ble Supreme Court. Alteration of Pleadings can't be asserted as an issue of right and under all conditions. Be that as it may, the Courts, while choosing such supplications, ought not receive a hyper-specialized methodology. A liberal methodology ought to be the overall guideline, especially in situations where the opposite side can be repaid with costs.³

The Hon'ble Supreme Court also held in the case of *A.K. Gupta and Sons Ltd. v. Damodar Valley Corporation*⁴ that a gathering isn't permitted by correction to set up another case or another reason for activity, especially when a suit on another case or reason for activity is banished.

It has been mentioned in the case of *Charan Das v. Amir Khan*⁵ that in any case, it is very much perceived that where the revision doesn't establish the option of another reason for activity or

² B.K. Narayana Pillai v. Parameswaran Pillai (2000) 1 SCC 712

³ *Ibid.*

⁴ (1966) 1 SCR 796.

⁵ AIR 1921 PC 50.

raise an alternate case, yet sums to close to an alternate or an extra way to deal with similar realities, the change will be permitted, even after the expiry of the legal time of impediment.

The Hon'ble Supreme Court in the case of *Andhra Bank v. ABN Amro Bank N.V. & Ors.*⁶ held that it is very much settled law that delay in documenting the application for alteration of the composed articulation isn't a ground for refusal of petition for change. Further, the Court can't go into the value of such correction. The main inquiry at the hour of considering alteration of the pleadings would be whether such change would be important for choice of the genuine discussion between parties in the suit.

In the landmark judgement of *Reevajeetu Builders and Developers v. Narayanaswamy and Sons & Ors.*⁷ the Hon'ble Supreme Court held that on an examination of English and Indian cases, a portion of the essential standards which should be mulled over while permitting or dismissing an application for alteration of pleadings are:

- Whether the alteration looked for is basic for legitimate and compelling settling of the case;
- Whether the application for alteration is bona or mala fide;
- the change ought not make such bias the opposite side which can't be remunerated regarding cash;
- refusing change would in truth lead to unfairness or lead to numerous prosecution;
- whether the proposed correction naturally or essentially changes the nature and character of the case;
- as an overall guideline, the court should decrease corrections if a new suit on the revised cases would be banned by restriction on the date of the application.

AMENDMENT OF PLAINT BY WRITTEN STATEMENT

The Hon'ble Supreme Court has held in the case of *State of Uttar Pradesh v. Ashok Kumar*⁸ that the correction of a plaint and revision of a composed articulation are not actually represented by a similar guideline. While some broad standards are regular to both, however the guidelines that the offended party can't be permitted to revise his pleadings to adjust substantially or substitute his reason for activity or the idea of his case has essentially no partner in the law identifying with the correction of the composed articulation, since including another ground of guard or subbing

⁶ AIR 2007 SC 2511.

⁷ (2009) 10 SCC 84.

⁸ 2015(2) ALJ 5.

or modifying a protection doesn't raise a similar issue as including, changing, or subbing another reason for activity. The Court has thus held that inconsistent pleas can be raised by defendants in the written statement, although the same may not be permissible in case of plaint.

WHEN TRIAL COMMENCES

The proviso of Order 6 Rule 17 of CPC 1908 states 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."

Subsequently, remembering the clear ban on the court to permit an alteration application after initiation of preliminary, except if it reaches the resolution that the disregarding due perseverance, the gathering couldn't have raised the issue before beginning, it is of vital significance to decode the importance of the articulations "preliminary has started" and "initiation of preliminary" as utilized in the said stipulation and how somewhere down in the life of a common suit may a preliminary be believed to have started, for the ban under the stipulation to become alright. This has been a wellspring of occasional conversation by the Hon'ble Supreme Court and High Courts, with differing sees.

The Hon'ble Supreme Court in the case of *Baldev Singh & Ors. v. Manohar Singh & Ors.*,⁹ that beginning of preliminary as utilized in the stipulation to Order 6 Rule 17 in the Civil Procedure Code 1908 must be perceived in the restricted sense as importance the last knowing about the suit, assessment of witnesses, recording of archives and tending to of contentions.

The issue was later discussed by the Hon'ble Supreme Court in the case of *Vidyabai & Ors. v. Padmalatha & Anr.*¹⁰ In the said case, in the period between recording of the composed articulation and the application for correction of the composed explanation, issues were encircled, the gatherings documented their particular oaths by method of proof and the dates for the questioning of the observers had been fixed. The Hon'ble Supreme Court considered the equivalent and held that documenting of an affirmation in lieu of assessment in-head of the observer would add up to initiation of the preliminary.

The Hon'ble Supreme Court in the case of *Mohinder Kumar Mehra v. Roop Rani Mehra & Ors.*¹¹ Where it was held that the preliminary initiates after issues are encircled and the case is fixed for hearing and the gathering reserving the option to start, is to deliver his proof. Applying the said law to the curious realities of the case, it was held that the preliminary initiated when the date was fixed for driving proof by the offended party.

⁹ AIR 2006.

¹⁰ (2009) 2 SCC 409.

¹¹ (2018) 2 SCC 132.

Subsequently, as obvious from the above sections, the Hon'ble Supreme Court had veering feelings on when the articulation "initiation of preliminary." In the author's supposition, this issue has been to a great extent settled by the choice of the Hon'ble Calcutta High Court, in its choice on account of *Sree Sree Iswar Radha Behari Jew & Anr. v. Malati P. Soni*,¹² at the point when the said question was set up on reference and the Hon'ble Calcutta High Court inter alia investigated the above choices of the Hon'ble Supreme Court isolated the good product from the debris and held that the articulation "beginning of preliminary" in the stipulation to Order 6 Rule 17 of the Civil Procedure Code 1908 would infer the date when the court initially applies its psyche after the oath of proof is recorded and when the principal witness demonstrates his affirmation of proof or such observer looks to demonstrate a report for it to be offered in proof or the interrogation of such observer starts, whichever is prior.

The Hon'ble Calcutta High Court contemplated that there is a differentiation between when the preliminary stage starts in the life of a common suit and when the preliminary really begins inside the importance of the two pertinent articulations utilized in the stipulation to Order 6 Rule 17 of the Civil Procedure Code 1908. Conventionally, the preliminary stage initiates in a suit quickly upon issues being resolved. In any case, it isn't quickly immediately that the preliminary in a suit begins in right sincere and the beginning of the preliminary is just when any observer takes to the container, regardless of whether to demonstrate his testimony of proof or to demonstrate any archive to be offered into proof or to confront any interrogation; for, it is at this phase the court applies its legal psyche to analyze the proof or to think about whether as a specific report is to be gotten in proof or to consider the admissibility of the inquiries put in questioning.

In this manner, it is just when an oath of proof is looked to be demonstrated by an observer or any report alluded to in such sworn statement is tried to be offered into proof or the significant observer starting to confront questioning, that the preliminary begins inside the importance of the two pertinent articulations in the stipulation of Order 06 Rule 17 of Civil Procedure Code 1908

Conclusion

The law on the correction of pleadings has generally been settled in India regarding the degree and nature of alterations of the two complaints and composed articulations and might be summed up Amendment ought to be required for appropriate and successful arbitration of discussion between the gatherings. Courts should, when in doubt, receive a liberal methodology while permitting correction of pleadings. The Plaintiff can't be permitted to change his pleadings to modify substantially or substitute his reason for activity or the idea of his case. The Defendant is allowed to include new grounds of safeguard or substitute or change a guard or raise conflicting

¹² AIR 2018.

supplications in the composed articulation, which isn't admissible if there should be an occurrence of the plaintiff. The preliminary starts under the stipulation of Order 6 Rule 17 of Civil Procedure Code 1908, when a testimony of proof is looked to be demonstrated by an observer or any record alluded to in such oath is tried to be offered into proof or the pertinent observer starting to confront questioning.