REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6921 OF 2009.
(Arising out of SLP (c) No.1552 OF 2007)

Revajeetu Builders & Developers ….. Appellant

Versus

Narayanaswamy & Sons & Others ….. Respondents

J U D G M E N T

Dalveer Bhandari, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 16.9.2006 passed by the High Court of Karnataka at Bangalore in Writ Petition No.36550 of 2003.

3. Brief facts in nutshell are as under:

The appellant (original plaintiff) filed an Original Suit no. 2265 of 1996 before the XXXI Additional City Civil Judge, Bangalore against the respondents (defendant nos. 1 to 10) for recovery of Rs.52,97,111/- with interest at the rate of 18% per annum from the date of filing of suit till payment. The appellant alternatively had taken the plea that if the court for any reason comes to the conclusion that a decree for a sum of Rs.52,97,111/- cannot be passed

as prayed by the appellant against respondents (original defendant nos. 1 and 2), then the court may at least pass a decree for Rs.19,12,500/- with interest at the rate of 18% from the date of suit till the date of realization against the respondents.

4. The appellant also claimed that it be declared absolute owner of the scheduled property on the basis of the sale deed dated 30.9.1987. The sale deed was executed by the respondents in favour of the appellant after obtaining permission from the State of Karnataka under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976.

5. A petition in public interest was filed by one S. Vasudeva which ultimately came up before this Court in Civil Appeal Nos.1454-56 of 1993 challenging the aforementioned transfer of land. This court in those proceedings held that the sale deed executed by the respondent in favour of the appellant on 30.9.1987 is held to be invalid and inoperative. It may be pertinent to mention that after the institution of the suit, the Urban Land (Ceiling and Regulation) Act, 1976 has been repealed.

6. After the Act has been repealed, the appellant filed an application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking leave of the trial court to add two additional paragraphs as 2(A) and (B) and few prayers and to delete certain paragraphs in the

plaint and also to delete the prayer (a), (b) and (c).

Paragraphs 2(A) and (B) are set out as under:

> **"2(A). With the enactment of the Urban Land (Ceiling & Regulation) Act, 1976, the first defendant firm was prohibited from holding vacant land in excess of ceiling limits. As provided by the said Act, such vacant land, in excess of ceiling limits, was liable to be acquired by the State Government. Therefore, the first defendant firm applied to the State Government for exemption, under section 20(1) of the said Act, and sought permission to hold excess vacant land to an extent admeasuring 16194 square metres. Vide Government Order dated 17.07.85, in exercise of its power under section 20(1) of the said Act, the state government permitted the first defendant firm to hold the excess vacant land. Subsequently, as stated in para 4 hereinafter, the first defendant firm made another application to the state government to exempt the balance excess vacant land admeasuring 3444 square metres and the same was permitted by the state government vide its order dated 18.04.87. Thus, the entire extent of vacant land in excess of ceiling limits admeasuring a total aggregate extent of 19638 square metres was exempted, by the state government, under section 20(1) of the said Act.**

2(B). Thereafter, the defendant firm approached the plaintiff and offered to sell, to the plaintiff, an extent of 5 acres 24 guntas in survey nos.6/1 and 6/2, Dasarahalli, VI Block, Jayanagar, Bangalore, together with building thereon. This extent of 5 acres 24 guntas comprised of 19638 square feet of excess vacant land, in addition to the land with buildings and vacant land within ceiling limits. The first defendant firm, therefore, obtained permission from the state government under orders dated 06.03.87 and 18.04.87 to sell to the plaintiffs, the excess vacant land admeasuring 19638 square metres, as set out in paras 3 and 4 hereinafter. Pursuant thereto, the first defendant firm executed a registered Sale Deed dated 30.09.87 in respect of the total aggregate extent of 5 acres

24 guntas i.e. including the excess vacant land admeasuring 19638 square metres as aforesaid (19638 sq. metres).”

7. The appellant sought to add the following prayers in the plaint by an amendment in the plaint:-

(a) to declare that from 1.4.1988, the defendants are trespassers and or in unauthorized occupation of the building which they were permitted, under the Sale Deed dated 30.9.1987 to use as a licensee till 31.3.1988;

(b) to issue a mandatory injunction directing the defendants to vacate and deliver to the plaintiff, vacant and peaceful possession of the building within 30 days; and

(c) to issue a permanent injunction restraining the defendants or any of them, or their agents, representatives, servants or any other persons claiming through, under or on behalf of any of them from interfering with or in any manner disturbing, hindering, obstructing, the plaintiff’s enjoyment and possession of the entire suit schedule property including the building portion ordered to be evicted in terms of prayer (b) hereinabove.

8. The trial court vide order dated 5.4.2003 allowed application for amendment filed under Order VI Rule 17 CPC. The respondents aggrieved by the said order of the trial court preferred a writ petition No.36550 of 2003 under Article 227 of the Constitution before the High Court of Karnataka on the ground that the amendment as sought and granted has changed the entire nature of the suit and cause of action. The respondents also submitted that the fact of allowing amendment would be taking away admissions in the

plaint by the appellant and such an amendment cannot be permitted by any court of law. It was further submitted by the respondents that by the order of the trial court the rights accrued to the respondents have been taken away.

9. The respondents submitted that the original suit was instituted for recovery of Rs.52,97,111/-. Alternatively, the appellant requested the court to declare it as the absolute owner based on the basis of sale deed dated 30.9.1987 and direct the respondents to deliver vacant possession of the plaint schedule property. The respondents also submitted that the appellant relying upon the sale deed dated 30.9.1987 requested the court to declare it as the absolute owner and since it sought possession of the property from the respondents meaning thereby that the respondents are in possession of the entire suit property. If the appellant are in possession of only a portion of the suit property, the same ought to have been mentioned in the plaint and the prayer in respect of the same would be limited and not seeking relief of possession in respect of the entire suit property. Now by virtue of the amendment, the appellant is trying to contend that the respondents are to be treated as trespassers and unauthorized occupants of the building in question.

10. The learned counsel for the respondents submitted that when the appellant had originally sought possession of

the entire property from the respondents, by giving up such a claim, now the appellant is trying to introduce a new case which would certainly affect the rights of the respondents when the appellant had earlier requested the court to pass a decree for possession of the entire property. Learned counsel for the appellant also submitted that the trial court without considering or properly comprehending implications of all these aspects has allowed the amendment application.

11. In the impugned judgment, the High Court after considering the rival contentions came to the definite conclusion that the appellant while seeking permission to amend the plaint is trying to introduce a new case which was not his case in the original plaint and proposed amendment if allowed would certainly affect the rights of the respondents adversely. In the impugned judgment, the High Court also held that the appellant cannot be permitted to withdraw the admissions made in the plaint as it would affect the rights of the respondents.

12. The High Court in the impugned judgment also held that any such amendment which changes the entire character of the plaint cannot be permitted and that too after a lapse of four years after the institution of the suit. The High Court has set aside the order of the trial court which allowed the amendment under Order VI Rule 17 CPC.

13. Being aggrieved by the impugned judgment, the appellant has preferred this appeal.

14. We have heard the learned counsel for the parties and have also perused the written submissions filed by the parties.

15. It is submitted by the learned counsel for the appellant that the suit, as originally framed, was only for refund of sale consideration and alternatively for possession. The appellant also submitted that the relief for possession was always there, although it was in respect of the entire land which is sought to be amended and reduced to the licensed area only. According to the appellant, the amendment under Order VI Rule 17 is consequent to the subsequent Urban Land (Ceiling & Regulation) Repeal Act, 1999 which validated all exemption orders notwithstanding any court orders, judgments or decrees to the contrary. The appellant also submitted that the amendment is necessary to elucidate the real points in controversy. It was also submitted by the appellant that the amendment will not cause any prejudice to the respondents. It was also submitted that the stand taken up by the respondents is totally dishonest, wrong and not *bona fide*. The appellant submitted that the court should be liberal in allowing amendments and the respondents be compensated by costs.

SUPREME COURT OF INDIA
JUDGMENT

16. The learned counsel for the respondents submitted that in the original plaint, the appellant rightly sought only for recovery of sale price relying on section 65 of the Contract Act. Section 65 of the Contract Act is as follows:-

> **"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."**

17. The original plaint expressly so avers and relies on section 65 of the Contract Act clearly admitting that the sale deed has become void. This admission is now sought to be got rid off and the sale deed is sought to be asserted as valid. It was submitted that the appellant cannot, therefore, seek any amendment of the plaint relying on the circumstances as to the earlier decision having been overruled by seeking amendment of the plaint. This has the effect of changing the character of the suit and also omitting an admission made.

18. Respondents (Defendant nos.1, 2, 4 and 7) filed written statement to the original plaint. They prayed the court to pass a decree in favour of the appellant for a sum of Rs.27,30,339.45/. This is an admission of the respondents in favour of the appellant to an extent of Rs.27,30,339.45/-. The appellant now cannot be permitted to take a complete somersault.

SUPREME COURT OF INDIA
JUDGMENT

19. The respondents also submitted that the appellant cannot now seek recovery of possession of the property. To grant amendment at this stage would not only have the effect of appellant getting rid of the admissions made in the original plaint but defeating the provisions of Order XII Rule 6 of the CPC by changing the cause of action and entire character of the suit and causing serious prejudice to the respondents. The respondents relied on the decision of this court in *Usha Balashaheb Swami & Others v. Kiran Appaso Swami & Others*[1] wherein the court has held that by way of amendment, admission made in pleadings and particularly in the plaint cannot be sought to be omitted or got rid of. The Court further observed that a prayer for amendment of the plaint stand on different footing. The relevant observations of the Court are set out as under:

> **"19. ..a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.**
>
> **20. Such being the settled law, we must hold that in the case of amendment of a written**

1 (2007) 5 SCC 602

statement, the courts are more liberal in allowing an amendment than that of a plaint as a question of prejudice would be far less in the former than in the latter case…….”

20. The learned counsel for the respondents further relied on the decision in *Heeralal v. Kalyan Mal & Others*[2] wherein the court proceeded on the basis that the earlier admissions of the defendant cannot be allowed to be withdrawn. The Court examined the facts and held that the defendant cannot be permitted to withdraw any admission already made.

21. The respondents have also relied on the decision in *Gautam Sarup v. Leela Jetley & Others*[3]. In the said case, it was held that by amendment the admission in the original pleadings cannot be sought to be got rid off.

22. In *M/s Modi Spinning & Weaving Mills Co. Ltd. & Another v. Ladha Ram & Co.*[4], the trial court while rejecting an application under Order VI Rule 17 said that the repudiation of clear admission is motivated to deprive the plaintiff of the valuable right accrued to him and it is against law. The High Court on revision affirmed the judgment of the trial court and held that by means of amendment the defendant wanted to introduce an entirely different case and if such amendments were permitted it would prejudice the other side.

---

2 (1998) 1 SCC 278
3 (2008) 7 SCC 85
4 (1976) 4 SCC 320

23. In the said case, a three-Judge bench of this court observed:

> **"10. It is true that inconsistent pleas can be made in pleadings but the effect of substitution of paragraphs 25 and 26 is not making inconsistent and alternative pleadings but it is seeking to displace the plaintiff completely from the admissions made by the defendants in the written statement. If such amendments are allowed the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants. The High Court rightly rejected the application for amendment and agreed with the trial Court."**

This judgment has been referred in *Usha Balashaheb Swami (supra)* and the court observed that *Modi Spinning's case (supra)* was a clear authority for the proposition that once a written statement contained an admission in favour of the plaintiff, by amendment such an admission of the defendant, cannot be withdrawn and if allowed, it would amount to totally displacing the case of the plaintiff.

SUPREME COURT OF INDIA
JUDGMENT

24. In the same judgment of *Usha Balashaheb Swami (supra)*, the Court dealt with a number of judgments of this Court and laid down that the prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute the cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment

of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or substituting a new cause of action in the plaint may be objectionable.

25. If we carefully examine all the cases, the statement of law declared by the Privy Council in *Ma Shwe Mya v. Maung Mo Hnaung*[5] has been consistently accepted by the courts till date as correct statement of law. The Privy Council observed:

> **"All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit."**

26. When we apply the principle laid down by the above judgments, the conclusion becomes irresistible that the view taken by the High Court in the impugned judgment cannot be said to be unjustified.

27. We are tracing the legislative history, objects and reasons for incorporating Order VI Rule 17 not because it is necessary to dispose of this case, but a large number of applications under Order VI Rule 17 are filed and our

5 AIR 1922 PC 249

courts are flooded with such cases. Indiscriminate filing of applications of amendments is one of the main causes of delay in disposal of civil cases. In our view, clear guideline may help disposing off these applications satisfactorily.

28. We deem it appropriate to give historical background of Rule 17 of Order VI corresponds to section 53 of the Old Code of 1882. It is similar to Order 21 Rule 8 of the English Law. Order VI Rule 17 CPC reads 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."

29. In our considered view, Order VI Rule 17 is one of the important provisions of the CPC, but we have no hesitation in also observing that this is one of the most misused provision of the Code for dragging the proceedings indefinitely, particularly in the Indian courts which are otherwise heavily overburdened with the pending cases. All Civil Courts ordinarily have a long list of cases, therefore, the Courts are compelled to grant long dates which causes delay in disposal of the cases. The

applications for amendment lead to further delay in disposal of the cases.

30. It may be pertinent to mention that with a view to avoid delay and to ensure expeditious disposal of suits, Rule 17 was deleted on the recommendation of Justice Malimath Committee by the Code of Civil Procedure (Amendment) Act, 1999 but because of public uproar, it was revived. Justice C.K. Thakker, an eminent former Judge of this Court in his book on Code of Civil Procedure (2005 Edition) incorporated this information while dealing with the object of amendment.

31. In a recently published unique, unusual and extremely informative book "*Justice, Courts and Delays*", the author Arun Mohan, a Senior Advocate of the High Court of Delhi and of this Court, from his vast experience as a Civil Lawyer observed that 80% applications under Rule VI Order 17 are filed with the sole objective of delaying the proceedings, whereas 15% application are filed because of lackadaisical approach in the first instance, and 5% applications are those where there is actual need of amendment. His experience further revealed that out of these 100 applications, 95 applications are allowed and only 5 (even may be less) are rejected. According to him, a need for amendment of pleading should arise in a few cases, and if proper rules with regard to pleadings are put into place, it would be only in rare cases. Therefore, for

SUPREME COURT OF INDIA
JUDGMENT

allowing amendment, it is not just costs, but the delays caused thereby, benefit of such delays, the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken into consideration while awarding the costs.

32. To curtail delay in disposal of cases, in 1999 the Legislation altogether deleted Rule 17 which meant that amendment of pleading would no longer have been permissible. But immediately after the deletion there was widespread uproar and in 2002 Rule 17 was restored, but added a proviso. That proviso applies only after the trial has commenced. Prior to that stage, the situation remains as it was. According to the view of the learned author Arun Mohan as observed in his book, although the proviso has improved the position, the fact remains that amendments should be permissible, but only if a sufficient ground therefore is made out, and further, only on stringent terms. To that end, the rule needs to be further tightened.

33. The general principle is that courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments must be allowed which are imperative for determining the real question in controversy

between the parties. The basic principles of grant or refusal of amendment articulated almost 125 years ago are still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases.

34. In the leading English case of *Cropper v. Smith*[6], the object underlying amendment of pleadings has been laid down by Browen, L.J. in the following words:

> **"It is a well established principle that the object of the courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct in their cases by deciding otherwise than in accordance with their rights ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace ... it seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as *anything else in the case is a matter of right*."**

35. In *Tildersley v. Harper*[7] which was decided by the English Court even earlier than the *Cropper's* case (supra), in an action against a lessee for setting aside a lease, in the statement of claim it was alleged that the power of attorney of donee had received specified sum as a bribe. In the statement of defence, each circumstance was denied but there was no general denial of a bribe having been

6 (1884) 29 Ch D 700
7 (1878) 10 Ch. D 393

given. A prayer for amendment of the defence statement was refused.

36. The Court of Appeal held that the amendment ought to have been allowed. Bramwell, L.J. made the following pertinent observations:

> **"I have had much to do in Chambers with applications for leave to amend, and I may perhaps be allowed to say that this humble branch of learning is very familiar to me. My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide, or that, by his blunder he had done some injury to his opponent which could not be compensated for by costs or otherwise."**
>
> **(Emphasis added)**

37. In another leading English case *Weldon v. Neal*[8], A filed a suit against B for damages for slander. A thereafter applied for leave to amend the plaint by adding fresh claims in respect of assault and false imprisonment. On the date of the application, those claims were barred by limitation though they were within the period of limitation on the date of filing the suit. The amendment was refused since the effect of granting it would be to take away from B the legal right (the defence under the law of limitation) and thus would cause prejudice to him.

38. The rule, however, is not a universal one and under certain circumstances, such an amendment may be allowed by the court notwithstanding the law of limitation. The fact that the claim is barred by law of limitation is but one of

8 (1880) 19 QBD 394: 56 LJ QB 621

the factors to be taken into account by the court in exercising the discretion as to whether the amendment should be allowed or refused, but it does not affect the power of the court if the amendment is required in the interests of justice.[9]

39. In *Steward v. North Metropolitan Tramways Co.*[10], the plaintiff filed a suit for damages against the tramways Company for negligence of the company in allowing the tramways to be in a defective condition. The company denied the allegation of negligence. It was not even contended that the company was not the proper party to be sued. More than six months after the written statement was filed, the company applied for leave to amend the defence by adding the plea that under the contract entered into between the company and the local authority the liability to maintain tramways in proper condition was of the latter and, therefore, the company was not liable. On the date of the amendment application, the plaintiff's remedy against the local authority was time barred. Had the agreement been pleaded earlier, the plaintiff could have filed a suit even against the local authority. Under the circumstances, the amendment was refused.

40. In the said case, Pollock, J. quoting with approval the observation of Bremwell, LJ. rightly observed: "The test as to whether the amendment should be allowed is,

9 Ganga Bai v. Vijai Kumar (1974) 2 SCC 393; Arundhati Mishra v. Sri Ram Charitra Pandey (1994) 2 SCC 29.
10 (1886) 16 QB 178

whether or not the defendants can amend without placing the plaintiff in such a position that he cannot be recouped, as it were, by any allowance of costs, or otherwise. According to him such an amendment ought not be allowed."

41. *Kisandas v. Rachappa Vithoba*[11] is probably the first leading case decided by the High Court of Bombay under the present Code of 1908. There, A, plaintiff, averred that in pursuance of a partnership agreement, he delivered Rs.4001 worth of cloth to B, defendant, and sued for dissolution of partnership and accounts. The trial court found that A delivered the cloth worth Rs.4001 but held that there was no partnership and the suit was not maintainable. In appeal, A sought amendment of adding a prayer for the recovery of Rs.4001. On that day, claim for recovery of money was barred by limitation. The amendment was allowed by the appellate court and the suit was decreed. B challenged the decree. The High Court upheld the order and dismissed the appeal. Referring to leading English decisions on the point, Batchelor, J. stated:

> **"From the imperative character of the last sentence of the rule it seems to me clear that, at any stage of the proceedings, all amendments ought to be allowed which satisfy the two conditions (a) of not working in justice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties."**

42. In a concurring judgment, Beaman, J. observed that "the practice is to allow all amendments, whether

11 (1909) 33 Bom 644

introducing fresh claims or not, so long as they do not put the other party at a disadvantage for which he cannot be compensated by costs."

His Lordship proceeded to state:

> **"In my opinion two simple tests, and two only, need to be applied, in order to ascertain whether a given case is within the principle. First, could the party asking to amend obtain the same quantity of relief without the amendment? If not, then it follows necessarily that the proposed amendment places the other party at a disadvantage, it allows his opponent to obtain more from him than he would have been able to obtain but for the amendment. Second, in those circumstances, can the party thus placed at a disadvantage be compensated for it by costs? If not, then the amendment ought not, unless the case is so peculiar as to be taken out of the scope of the rule, to be allowed."**

43. In *Amulakchand Mewaram & Others v. Babulal Kanalal Taliwala*[12], the Bombay High Court again had an occasion to decide a case under Order VI Rule 17. In that case, the Court approved the following observations of Beaumont, C.J. and observed:

> **"... the question whether there should be an amendment or not really turns upon whether the name in which the suit is brought in the name of a non-existent person or whether it is merely a misdescription of existing persons. If the former is the case, the suit is a nullity and no amendment can cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposing party can be compensated for by costs."**

12 (1933) 35 Bom. L.R. 569

44. In *L.J. Leach & Co. Ltd. & Another v. Jardine, Skinner & Co.*[13], a suit for damages for 'conversion of goods' filed by the plaintiff was decreed by the trial court but the decree was set aside by the High Court. In an appeal before this Court, the plaintiff applied for amendment of the plaint by raising an alternative claim for damages for breach of contract for 'non-delivery of goods'. The amendment was resisted by the defendant contending that it sought to introduce a new cause of action which was barred by limitation on the day the amendment was sought and, hence, it would seriously prejudice the defendant.

45. Though the Court noticed 'considerable force' in the objection, keeping in view the prayer in the amendment which was not 'foreign to the scope of the suit' and all necessary facts were on record, it allowed the amendment.

46. In *P.H. Patil v. K.S. Patil*[14], A obtained a decree for possession against B. He was, however, obstructed in obtaining possession by C in execution. A then filed a substantive suit against B and C. In the plaint, except saying that he had obtained a decree against B, nothing more was stated by A. Hence, he filed an application for amendment which was rejected by the trial court but allowed by the High Court. C approached this Court.

47. Dismissing the appeal and confirming the order of

13 AIR 1957 SC 357
14 AIR 1957 SC 363

the High Court, this Court observed that the discretionary power of amendment was not exercised by the High Court on wrong principles. There was merely a defect in the pleading which was removed by the amendment. The quality and quantity of the reliefs sought remained the same. Since the amendment did not introduce a new case, the defendant was not taken by surprise.

48. In *Pursuhottam Umedbhai & Co. v. Manilal & Sons*[15] a suit was instituted in the name of the firm by the partners doing business outside India. It was held that there was only mis-description of the plaintiff. The plaint in the name of the firm was not a nullity and could be amended by substituting the names of partners.

49. In similar circumstances, in a subsequent case *Ganesh Trading Co. v. Moji Ram*[16], this Court reiterated the law laid down in *Purushottam Umedbhai & Co.* (supra). The Court observed:

> **"It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff**

15 AIR 1961 SC 325
16 (1978) 2 SCC 91

must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation; to be put on every defective state of pleadings. Defective pleadings are generally curable, if the cause of action sought to be brought out was not *ab initio* completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings."

50. In *Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala & Others*[17], the defendant's prayer for amendment by treating a counter claim as cross-suit was objected to by the plaintiff *inter alia* on the ground of limitation. The amendment, however, was allowed.

51. When the matter reached this Court, while affirming the order of the High Court, the majority stated:

"…..It is, no doubt, true that, save in exceptional cases, leave to amend under O. 6, r. 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations are added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is

17 AIR 1964 SC 11

one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading."

52. The Court further observed that since there was no addition to the averments or relief, it was not possible to uphold the contention of the plaintiff that by conversion of written statement into a plaint in a cross-suit, a fresh claim was made or a new relief was sought. To the facts of the present case, therefore, the decisions holding that amendments could not ordinarily be allowed beyond the period of limitation and the limited exceptions to that rule have no application.

53. In *Jai Jai Ram Manohar Lal v. National Building Material Supply*[18], *A* sued *B* in his individual name but afterward soughts leave to amend the plaint to sue as the proprietor of a Hindu Joint Family business. The amendment was granted and the suit was decreed. The High Court, however, reversed the decree observing that the action was brought by a 'non-existing person'.

54. Reversing the order of the High Court, this Court (per Shah, J., as he then was) made the following oft-quoted observations:

18 (1969) 1 SCC 869

> **"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party Applying, was acting *mala fide*, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. *However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side*." (Emphasis Added)**

55. In *Ganga Bai v. Vijay Kumar*[19], an appeal was filed against a mere finding recorded by the trial court. After a lapse of more than seven years, amendment was sought by which a preliminary decree was challenged which was granted by the High Court by a laconic order.

56. Setting aside the order of the High Court, this Court stated:

> **"The preliminary decree had remained unchallenged since September 1958 and by lapse of time a valuable right had accrued in favour of the decree-holder. The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the court."**

57. In *Haridas Aildas Thadani & Others v. Godraj Rustom Kermani*[20] this Court said that "It is well settled that the

19 (1974) 2 SCC 393
20 (1984) 1 SCC 668

court should be extremely liberal in granting prayer for amendment of pleading unless serious injustice or irreparable loss is caused to the other side. It is also clear that a revisional court ought not to lightly interfere with a discretion exercised in allowing amendment in absence of cogent reasons or compelling circumstances.

58. In *B. K. Narayana Pillai v. Parameshwaram Pillai & Another*[21], a suit was filed by A for recovery of possession from B alleging that B was a licensee. In the written statement B contended that he was a lessee. After the trial began, he applied for amendment of the written statement by adding an alternative plea that in case B is held to be a licensee, the licence was irrevocable. The amendment was refused.

59. Setting aside the orders refusing amendment, this Court stated:

> **"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in, the administration of justice between the parties. Amendments are**

21 (2000) 1 SCC 712

allowed in the pleadings to avoid uncalled for multiplicity of litigation."

60. In *Suraj Prakash Bhasin v. Raj Rani Bhasin & Others*[22], this Court held that liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment, that one distinct cause of action should not be substituted for anther and that the subject-matter of the suit should not be changed by amendment.

WHETHER AMENDMENT IS NECESSARY TO DECIDE REAL CONTROVERSY:

61. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

NO PREJUDICE OR INJUSTICE TO OTHER PARTY:

62. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to

22 (1981) 3 SCC 652

other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side.

63. The Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

64. In *Ganga Bai's* case (supra), this Court has rightly observed:

> **"The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and *wider the discretion, greater ought to be the care and circumspection on the part of the court*."**

COSTS:

65. The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

(i) At what stage the amendment was sought?

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial

or post-trial stage;

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic;

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

66. The purpose of imposing costs is to:

a) Discourage malafide amendments designed to delay the legal proceedings;

b) Compensate the other party for the delay and the inconvenience caused;

c) Compensate the other party for avoidable expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and

d) To send a clear message that the parties have to be careful while drafting the original pleadings.

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the

application for amendment.

(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.

68. These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner.

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary

amendments and should never permit mala fide, worthless and/or dishonest amendments.

71. When we apply these parameters to the present case, then the application for amendment deserves to be dismissed with costs of Rs.1,00,000/- (Rupees One Lakh) because the respondents were compelled to oppose the amendment application before different Courts. This appeal being devoid of any merit is accordingly dismissed with costs.

…….……..……..J.
(Dalveer Bhandari)

…….……..……..J.
(Harjit Singh Bedi)

New Delhi,
October 9, 2009.

SUPREME COURT OF INDIA
JUDGMENT