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# **O6R17 (AMENDMENT OF PLEADINGS)**

## **CASE LAW: KAILASH V NANKU (2005)**

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### **INTRODUCTION TO CPC**

The Code of Civil Procedure of 1908 regulates the laws governing the practises and procedures to be followed in the Civil Courts. The definition of the term CODE is "a collection of legislation designed to eliminate inconsistency and duplication."

The primary purpose of this code of civil process is to consolidate and revise the laws governing the procedure and practises of the Indian Civil Courts. In the preamble of the code, it was stated that it was adopted to consolidate and alter the laws governing the process to be followed in civil courts with civil jurisdiction in India. The Civil Procedure Code governs all civil court proceedings and the parties involved until the implementation of the judgement and order.

The purpose of procedural law is to execute substantive law's principles. This Code provides equitable justice by upholding rights and responsibilities.

The Civil Procedure Code was adopted in 1908 and became effective on January 1, 1909. The Code applies to the whole nation with the exception of –

- The Jammu and Kashmir State
- State of Nagaland and tribal regions

The respective state governments may also make the provisions of this code applicable to the whole or a portion of the State of Nagaland or similar tribal territories by notifying the official gazette.

This code applies to the designated regions of the former State of Madras (Lakshadweep), the East Godavari, West Godavari, and Visakhapatnam agencies (Now in Andhra Pradesh State).<sup>1</sup>

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<sup>1</sup> LexisGreen Civil Procedure: Law Books & Bare Acts

The Code is comprehensive in other areas but exhaustive in the things it specifically addresses. The code's creators were unable to anticipate potential conditions that might arise in future lawsuits and could not have provided a method for them. In order to address these situations (where the code could not offer a method), the law's authors (the legislature) granted the court inherent powers in accordance with natural justice, equity, and good conscience.

This Code's general procedural nature ensures that it does not conflict with any current local or special laws. The special law will take precedence over the civil procedure code in any situation where there is a dispute between them. When a specific area of local or general law remains silent, the civil procedure code's rules take precedence<sup>2</sup>.

## **Introduction to Order VI Rule 17: Amendment of Pleadings**

The CPC's Order VI Rule 17 ("O.VI R.17") outlines the steps for amending a pleading in a lawsuit. It gives the court the authority to grant a party's request to change the pleading while also placing constraints on how much discretion the courts may exercise. The proviso added to R.17 following the CPC (Amendment) Act, 2002, which states that courts can use their discretion while allowing the application of amendment when they are fully satisfied that the party exerted "due diligence" but was unable to incorporate the changes they are now seeking by way of amendment, is of the utmost significance in this regard.

By way of an amendment in 1999, the aforementioned provision was removed due to the large number of petitions submitted to drag out the litigation process, which eventually increased the number of cases still pending. The exclusion was done in an effort to expedite the trial and reduce the length of the legal dispute. After some sort of uprising from the oppressed section of society, the rule was eventually reinstated, but with a new proviso that gives the courts the authority to consider such arguments in cases where parties have done their due diligence but weren't given the chance to raise the issue previously.

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<sup>2</sup> RAY SUKUMAR, TEXTBOOK ON THE CODE OF CIVIL PROCEDURE (2008).

The SC and the HCs have interpreted the position of the law regarding the amending of pleadings following the 2002 revision and the addition of proviso in R.17. In some cases, courts prioritise the interests of justice over the interests of the parties when deciding whether to accept an amendment. The courts repeatedly iterated the general guidelines for amending pleadings.

However, O.VI R.17 concentrates on something more significant. The approach used by the courts is lenient when offering the opportunity to change the pleadings prior to the trial; nevertheless, after the trial has begun, the courts are constrained in their ability to grant such motions. The revision of pleadings cannot be requested as a matter of right by a party, nor can it be refused arbitrarily by the court, based on the aforementioned propositions and decisions of the lower courts and the Supreme Court. Nonetheless, the discretion to be exercised by the Court is governed by the principles outlined in the exception to Rule 17 and is dependent on the specifics of each case. In light of the fact that O.VI R.17 is meant to promote the purposes of justice and not to oppose them, modifications are granted as a general rule and are denied only in exceptional circumstances.

To prevent duplication, it is in the interest of justice that all topics related to a given action be resolved in a single suit, and parties should be free to amend their pleadings during the court's processes. While doing so, it will be up to the courts to determine if the change has any bearing on the processes in question, and it should have no negative impact on the lawsuit. In the matter of Anita v. Anil<sup>3</sup>, the Supreme Court recently issued a notice in the SLP filed against the Bombay High Court's verdict, which had followed the dicta of Vidya Bai. It is just a question of time until we get the proper legal position.<sup>4</sup>

## Related Case Laws<sup>5</sup>

The aforementioned 2002 alteration was contested in **Salem Bar Association, Tamil Nadu v. Union of India**<sup>6</sup>, as did the provision inserted to Rule 17. The Supreme Court affirmed the constitutionality of the aforementioned regulation and noted that the legislature, after removing it through the 1999

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<sup>3</sup> Special Leave Petition (C) No. 13691/2021.

<sup>4</sup> Manupatra, MANUPATRA ARTICLES

<sup>5</sup> Manupatra, Manupatra Articles,

<sup>6</sup> Salem Bar Association, T.N. v. Union of India, MANU/SC/0450/2005.

amendment, reintroduced it in an effort to limit or avoid frivolous petitions submitted to postpone the trial. In addition, the amendment restricts the courts' unlimited ability to permit revisions at any point of the suit procedures.

Similarly, in **Chander Kanta Bansal v. Rajinder Singh Anand**<sup>7</sup>, the Supreme Court highlighted the 2002 modification and offered light on its influence on the amending of pleadings. In the given instance, the Supreme Court noted that the amendment in question was enacted to accelerate the procedures, but that by attaching a proviso to it, the legislature attempted not to make it impossible for parties to submit an application for modification. The purpose of the stipulation is to provide limited power to the courts, based on their subjective satisfaction, to permit some alterations to the procedures. However, the final attention will be on the party seeking the amendment to demonstrate its need, good faith, and the necessity of seeking it sooner notwithstanding thorough diligence.

In **Usha Balasaheb Swami v. Kiran Appasso Swami**,<sup>8</sup> ("Usha Balasaheb"), the dispute included the division of a property, and an amendment motion was filed to prevent defendants 3 through 7 from receiving the suit property on the grounds that they were illegitimate offspring. The trial court denied the request on the grounds that it would eventually alter the essence of the case and bias the opposing party. The issue here is whether a statement that has already been acknowledged in the complaint may be modified by submitting an application. The High Court responded in the negative, and the Supreme Court, although granting the motion for revision, ruled that the changing of pleas and the addition of additional reasons in the pleadings are permissible so long as they do not impede the whole judicial process. The line of reasoning presented in this case was valid; nonetheless, the Supreme Court proceeded with the split of revisions of pleadings and amendments of the written statement and the associated process, which, to some degree, produced an entirely new problem in this dilemma.

**The Delhi High Court ("DHC") in the matter of Inderjeet v. Agricultural Produce Market**

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<sup>7</sup> Chander Kanta Bansal v. Rajinder Singh Anand, MANU/SC/7310/2008.

<sup>8</sup> Usha Balasaheb Swami v. Kiran Appasso Swami, MANU/SC/7318/2007.

**Committee**<sup>9</sup>, where the appellant wants to modify the petition to include new facts. Respondent challenged it on the grounds that such a modification is time-barred. DHC, while evaluating the issue of on what basis an amendment may be requested and granted, determined that, if required and in the interest of justice, an amendment can be granted so that the dispute can be resolved completely. Similarly, in the case of **Saif-ul-Islam Company v. Roshan Lal Arora**,<sup>10</sup> the DHC was confronted with the same difficulty involving a second amendment application filed by the plaintiff since he was unaware of certain facts at the time he sought the first amendment. In this respect, the Delhi High Court adopted a fairly lenient stance and permitted the modification, noting that the primary purpose of an amendment is to get to the heart of the issue, and that it should be permitted so long as it does not damage the opposing side. In the recent case of **P.M. Salim v. Vasudevan Namboothiri**<sup>11</sup>, where the question was whether or not a wilful admission may be retracted by means of an amendment, the Kerala High Court restated the same argument. In this case, the Kerala High Court examines the situation and refuses to accept the amendment motion on the grounds that such withdrawal by amendment would harm the plaintiff and displace the plaintiff's argument.

## **Importance of Amendment of Pleadings in CPC<sup>12</sup>**

It is possible to draw the conclusion that the modification of pleadings cannot be requested by a party as a matter of right, nor can it be refused by the Court arbitrarily, in light of the proposals and decisions that have been made by the higher courts as well as the Supreme Court. On the other hand, the discretion that the Court is tasked with exercising is subject to the facts and circumstances of each individual case, and it is governed by the principles that are outlined in the proviso to Rule 17. As a result of the fact that O.VI R.17 is designed to assist in furthering the goals of justice rather than undermining them, it is customary to approve proposed adjustments and very rarely does it become necessary to reject them.

In the interest of justice, it is essential that all of the issues associated to a given litigation be resolved in a single suit in order to prevent multiplicity. In addition, parties should have the freedom to amend

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<sup>9</sup> Inderjeet v. Agricultural Produce Market Committee, MANU/DE/1432/2001

<sup>10</sup> Saif-ul-Islam Company v. Roshan Lal Arora, MANU/DE/2006/2002

<sup>11</sup> P.M. Salim v. Vasudevan Namboothiri, MANU/KE/2304/2021

<sup>12</sup> Manupatra, Manupatra Articles,

their pleadings while the suit is still in progress. While doing so, the burden of determining whether the change has any bearing on the proceedings at hand and whether it will have any negative impact on the litigation will fall on the courts. The Supreme Court of India, in the case of Anita v. Anil<sup>21</sup>, has only just issued a notice in the Special Leave Petition (SLP) that was filed against the Bombay High Court verdict that had followed the dicta of Vidya Bai.

Despite this, the matter is still up to debate. When we finally do get the legislation to reflect the true stance, it will only be a question of time.

## **Kailash V Nanku (2005)**

### ***Facts of the Case***<sup>13</sup>

In accordance with the Presidential Notification of November 7, 2003, elections for the Uttar Pradesh Legislative Council were conducted recently. It was decided that the appellants should be chosen. Respondent No. 1 submitted a challenge to the election of the appellant in the form of an election petition in accordance with Section 80 of the Representation of the People Act, 1951 (hereinafter referred to simply as "the Act"). The appellant was given a copy of the election petition together with the summons that required his presence in court on 6.4.2004. The appellant was ordered to appear in court on that day. On the day set aside for his appearance, the appellant came before the court via his attorney and asked for an additional month to file the written statement. The deadline for submitting the written statement was extended to May 13, 2004 by the court. The appellant once again submitted a request for further time to file the written statement on 13.5.2004, citing the fact that copies of numerous different documents needed to be secured before the statement could be filed. The High Court was closed for the summer break from May 13th to July 7th, thus the Court decided to postpone the hearing until July 7th, 2004. On June 22, 2004, the advocate for the appellant's family lost a nephew. On the other hand, a written statement was prepared and preserved in a condition of readiness for submission. On the day that was scheduled, the advocate's registered clerk was given the responsibility of submitting the identical document in court. From Gazipur, where the appellant and

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<sup>13</sup> Kailash V Nanku and others on 06 April 2005 - judgement - lawyerservices,

his lawyer called their home, the clerk made their way to Allahabad, which is the location of the High Court. The affidavit of the appellant that was attached to the written statement was sworn in at Allahabad on July 1, 2004, which is two days before the day that the hearing was scheduled to take place.

However, (as is stated later on), due to a lack of understanding on the part of the registered clerk, the written statement was not able to be filed on 3.7.2004. Instead, it was filed on 8.7.2004 along with an application for condonation of delay in filing the written statement, briefly stating the reasons set out hereinbefore. This was done in conjunction with an application for condonation of delay in filing the written statement. The application submitted by the appellant was rejected by the High Court on 23.8.2004, and the court refused to take the written statement into record for the reason that it was submitted more than 90 days after the date of service of the summons. This was the period of limitation as provided by the Proviso to Rule 1 of Order VIII of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC," the short), which was brought into effect by Act 22 of 2002 with effect from 1.7.2002. The successful candidate, who is also the defendant and respondent in the case before the High Court, has filed this appeal by special leave because they feel wronged by the aforementioned ruling.

### *Judgement<sup>14</sup>*

- The provision of a time schedule for the submission of the written statement in accordance with Order VIII, Rule 1 of the CPC is intended to hasten the hearing rather than to scuttle it. A limitation is placed on the defendant as a result of this clause. It does not restrict the ability of the Court to extend the allotted amount of time in any way.

Despite the fact that the wording of the proviso to Rule 1 of Order VIII of the CPC is written in the negative, the proviso does not indicate any punitive penalties that would result from a lack of compliance. Due to the fact that the provision is within the purview of the Procedural Law, it is

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<sup>14</sup> Ashok KM, TIME LIMIT FOR FILING OF WRITTEN STATEMENT UNDER ORDER VIII RULE 1 CPC IS NOT MANDATORY: SUPREME COURT LIVE LAW (2022),

required to be treated as directory rather than obligatory. The discretion of the Court to extend the deadline for submitting the written statement beyond the time limit specified in Order VIII, Rule 1 of the CPC has not been eliminated entirely.

- It is held that the time schedule contained in the provision is to be followed as a rule, and any departure from it would be by way of exception, even though Order VIII, Rule 1 of the CPC is a part of Procedural Law and is therefore a directory. This is because the need for expeditious trial of civil causes is what persuaded the Parliament to enact the provision in its present form. It is not acceptable for the court to approve the defendant's request for an extension of time as a matter of routine or just because they have asked for it; this is especially true after the first term of 90 days has passed. An extension of time may be granted on the basis of an exception for reasons that must be submitted by the defendant and also be put on record in writing by the court, however briefly, upon its being satisfied. These reasons must be assigned by the defendant. It is possible that a request for a time extension will be granted if the court determines that the request is warranted by exceptional circumstances that were brought about by factors that were beyond the defendant's control and that a significant amount of injustice would be brought about if the time limit was not extended. Depending on the specifics of the case, the court may decide to levy costs on the defendant and require them to provide an affidavit or supporting papers in order to validate the reasons for why they have requested an extension of the deadline.

## Conclusion<sup>15</sup>

It is possible to draw the conclusion that the modification of pleadings cannot be requested by a party as a matter of right, nor can it be refused by the Court arbitrarily, in light of the proposals and decisions that have been made by the higher courts as well as the Supreme Court. On the other hand, the discretion that the Court is tasked with exercising is subject to the facts and circumstances of each individual case, and it is governed by the principles that are outlined in the proviso to Rule 17. As a result of the fact that O.VI R.17 is designed to assist in furthering the goals of justice rather than undermining them, it is customary to approve proposed adjustments and very rarely does it become necessary to reject them.

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<sup>15</sup> Manupatra, MANUPATRA ARTICLES

In the interest of justice, it is essential that all of the issues associated to a given litigation be resolved in a single suit in order to prevent multiplicity. In addition, parties should have the freedom to amend their pleadings while the suit is still in progress. While doing so, the burden of determining whether the change has any bearing on the proceedings at hand and whether it will have any negative impact on the litigation will fall on the courts. The Supreme Court of India, in the case of Anita v. Anil<sup>21</sup>, has only just issued a notice in the Special Leave Petition (SLP) that was filed against the Bombay High Court verdict that had followed the dicta of Vidya Bai.

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