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SCOPE AND INTERPRETATION OF ORDER 7 RULE 13: AMENDMENT OF PLEADINGS IN CIVIL PROCEDURE

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1. INTRODUCTION

Order VI¹ deals with pleading in general where it provides for different aspect provided in law regarding pleadings. Pleading is a statement in written form, prepared by both parties to the suit and the statement is known as plaint for the plaintiff and written statement for the defendant.

Specifically, Rule 17² talks about amendment of pleading and provision related thereto. The rule provides that the court has discretion to allow any of the parties to the suit to alter or amend his pleading at any stage but before the commencement of trial and the same should be necessary to determine the real question between the parties. The proviso of the rule talks about limitation to the amendment of pleading that anytime before commencement of trial unless with leave of the court is obtained.

The Hon'ble Supreme Court, in the landmark case of "*Salem Advocate Bar Association, T.N. v. Union of India*", highlighted the history and object of Order VI Rule 17³ as follows:

"Order 6 Rule 17⁴ 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 proviso 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 an 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

¹ Order VI, Rule 17, Code of Civil Procedure, No. 5 of 1908, § VI

² Order VI, Rule 17, Code of Civil Procedure, No. 5 of 1908, § VI, cl. 17 (India)

³ Id.

⁴ Id.

filed to delay the trial.”

This analysis of *Order VI Rule 17*⁵ delves into aspect of law relating to pleadings and the court’s position on it.

1.1 General rules on amendment of pleadings

The rule implies that amendments or modifications are permitted only when necessary to resolve the dispute between the parties in a just and equitable manner. Another objective is to avoid multiple prosecutions. Furthermore, it is generally not possible to withdraw a defendant’s admission, conferring certain rights on the plaintiff, thereby prejudice the plaintiff’s rights, depending on the facts and circumstances of a particular case. In some cases, it is not possible to invoke a time-barred claim by proposing an amendment that would eliminate a party’s valuable rights. However, mere delay in filing a request for amendment is not sufficient to deny the amendment, as the delay may be compensated in money. The Supreme Court has held in one of its judgments that the purpose of this rule is to allow each party to amend or modify its pleadings for a legitimate purpose. This power is very broad and can be exercised at any time subject to certain limitations. Rule 17 cannot be invoked as a right, but various courts have adopted a liberal approach to deciding issues related to it, especially when it concerns the issue of compensation to the other party.

In one of the landmark judgements of “Reevajeetu Builders and Developers vs. Narayanaswamy and Sons & Ors⁶”, some basic principles were stated by the Hon’ble court while dealing with matter of amendment of the pleadings. The principles are as follows: -

- a. *“Whether the amendment sought is imperative for proper and effective adjudication of the case”;*
- b. *“Whether the application for amendment is bona fide or mala fide”;*
- c. *“The amendment should not cause such prejudice to the other side which cannot be compensated in terms of money”;*
- d. *“Refusing amendment would in fact lead to injustice or lead to multiple litigation”;*
- e. *“Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case”;*
- f. *“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 the application”.*

⁵ Id.

⁶ Revajeetu Builders & Developers vs. V. Narayanaswamy & Sons (2009)10 SCC 84

2. ANALYSIS OF ORDER VI RULE 17

2.1 Order VI Rule 17

The first part of Rule 17⁷ of Order VI gives the court wide latitude to allow either party to amend his pleadings at any time to decide the case on its merits and to deal with the real issue in dispute between them. This provision places a ban on this unlimited power and in cases where the case has already commenced, amendment can only be allowed if the party concerned satisfies the court that despite “due diligence” the same could not have been brought before the “commencement of the trial”. Due diligence means the reasonable conduct expected of a prudent person in the management of his own affairs. The trial is deemed to have commenced when the examiner takes the place of the first witness or when the first affidavit is filed on behalf of the examiner.

In *Vidyabai v. Padmalatha*⁸, the Supreme Court clarified the distinction between the first date of hearing and the date of commencement of the trial. The date on which the questions were framed is the date of the first hearing and the trial is not deemed to have commenced on that date. When an affidavit is filed in lieu of examination of the principal witness, the trial is deemed to have commenced.

Amendments are permissible irrespective of the gravity of the negligence on the part of the parties, provided the following two conditions are satisfied:

1. *“It is essential to determine the real issue in dispute between the parties”.*
2. *“Will not cause injustice or unnecessary hardship to the other party”.*

Generally, any change that can be offset by costs to the other party is permissible. However, the proposed amendment must not alter the nature of the proceedings or result in the substitution of one cause of action for another. It must allow the court to decide effectively on the merits of the issue that is the subject of the actual dispute between the parties.

2.2 LIMITATION BAR ON AMENDMENT OF PLEADINGS

The Power under Rule 17⁹ is a discretionary power to meet the ends of justice. The Court has held that in various cases there will be no automatic dismissal of the application if the bar of

⁷ *Supra* note 2.

⁸ *Vidyabai v. Padmalatha* AIR 2009 SC 1433

⁹ *Supra* note 2.

limitation is applied to amendment of the pleadings, which depends on the facts and circumstances of each case. The Court cannot lay down a rule to allow or refuse amendment where the bar is limited.

In *Pankaja v. Yellapa*¹⁰ it was held that there is no binding formula which can be applied in the same way. If, after considering the facts, the Court held that amendment is necessary to resolve the dispute between the parties effectively and avoid further litigation, the Court can allow the amendment even if the bar is exceeded.

In *Revajeetu Builders & Developers vs. V. Narayanaswamy & Sons*¹¹, the Supreme Court laid down the principles for dealing with an application under Order VI, Rule 17¹², as follows:

- i. *“Whether the amendment sought is imperative for proper and effective adjudication of the case”.*
- ii. *“Whether the application for amendment is bona fide or mala fide”;*
- iii. *“The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money”;*
- iv. *“Refusing amendment would in fact lead to injustice or lead to multiple litigation”;*
- v. *“Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case”;* and
- vi. *“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”.*¹³

2.3 CIRCUMSTANCES WHERE APPLICATION FOR AMENDMENT OF PLEADING CAN BE REFUSED

Application for amendment can be refused by court of law following situations: -

- i. *“When the amendment is not necessary to determine the real question in controversy between the parties”.*
- ii. *“When the amendment introduces a new cause of action or changes the nature of suit”.*
- iii. *“When the amendment is made with a malafide intent”.*

¹⁰ *Pankaja v. Yellapa* (2008) 14 SCC 632

¹¹ *Revajeetu Builders & Developers vs. V. Narayanaswamy & Sons* (2009)10 SCC 84

¹² *Supra* note 2.

¹³ Para 67, *Revajeetu Builders & Developers Ltd. v V. Narayanaswamy and Sons*

- iv. “When the amendment defeats the legal right that exists in favour of the other party by virtue of time”.
- v. “When the amendment would lead to displacing the whole case of the plaintiff”.

For example, in a suit for recovery of matrimonial rights, if an application for amendment of the pleadings provided in Rule 17¹⁴ of Order VI of the Civil Procedure code is made by the plaintiff to convert it into a suit for divorce, such application cannot be accepted because it completely changes the nature of the proceedings.

2.4 LAW OF LIMITATION GOVERNING AMENDMENT OF PLEADINGS

When discussing about amendment of pleading, even though it provides that “at any stage of the proceeding”, the time of application is of foremost importance. In the case of Charan Das v. Amir Khan¹⁵, the Hon’ble court observed that even though the amendment is necessary to determine the question of law but it can sometimes be barred by the law of limitation.

Further more in the case “*South Konkan Distilleries & Anr. V. Prabhakar Gajanan Naik & Ors*”¹⁶. the court held that:

“It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub serve the ultimate cause of justice and avoid further litigation”.

3. OPINION ON ORDER VI RULE 17

Rule 17¹⁷ of Order VI protects the rights of litigants who place great trust in their lawyers and prevents them from being punished for the mistakes of their lawyers. The remedy is discretionary and the court must exercise it reasonably. The provision introduced in the 2002 amendment limits this absolute power. The current provision places on the court the duty to prevent the arbitrary exercise of this discretionary remedy and, at the same time, balance the interests of the plaintiff with those of the opposing party.

Moreover, it has been always observed that where there is more power there is more chances of it being misused, similarly in under Order VI the potential for abuse is more as it can be used

¹⁴ *Supra* note 2.

¹⁵ Charan Das v. Amir Khan, AIR 1921 PC 50.

¹⁶ South Konkan Distilleries & Anr v. Prabhakar Gajanan Naik & Ors, (2008) 14 SCC 632.

¹⁷ *Supra* note 2.

in malafide way to delay the proceeding as to make the law of limitation applicable in respect to suit.

Litigation is that way where the case changes materially from filing of pleading to commencement of trial which may require amendment to reflect the changes. However, if used frivolously this provision can affect the principle of **“Justice delayed is Justice denied”**

While it is argued that the court should choose the liberal way in allowing amendment of pleadings under Rule 17¹⁸ of Order VI, it is argued that where one party is allowed to amend his pleadings and where the other party is not allowed to respond to the amended pleadings of the first party, it causes grave injustice to the interests of those parties.

3.1 WAY AHEAD

Filing a pleading initiates a legal process and should be done with great care. If the facts of the case change, a party to the litigation must file a motion to amend pleadings. Courts usually grant motions to amend pleadings, but it is important to note that this does not change the original facts of the case. A motion to amend pleadings must be approved by the court before the trial begins. The court may grant such a request to avoid backlogs in the case. At the same time, the court is of the view that accepting this offer to amend pleadings will not be prejudicial to the other party. In this case, the court may reject the request for amendment of pleadings. It is widely believed that Rule 17 of Order VI will help ensure justice, reduce the number of litigation and associated costs, and avoid excessive litigation. The scope of this provision suggests that the rules of civil procedure are subordinate to justice, and therefore the courts are very liberal in ordering amendment of pleadings. Case law has cited many reasons for granting or refusing leave. It is well known that delay in administration of justice is one of the fundamental flaws in the Indian legal system, with amendment of pleadings being a key element of it. Though amendment of pleadings is not a right that can be exercised at any time and in all circumstances, courts should not decide such applications mechanically. Where the opposite party is entitled to reimbursement of costs and delay, courts should be more lenient. The Law Commission's 27th Report¹⁹ recommended that the law should clarify whether a civil court can grant amendment of a pleading if it would result in the loss of jurisdiction to try the case. However, this was not done. This problem should be remedied by ensuring that civil courts grant amendment of pleadings only for pleadings filed in good faith, as this is a good

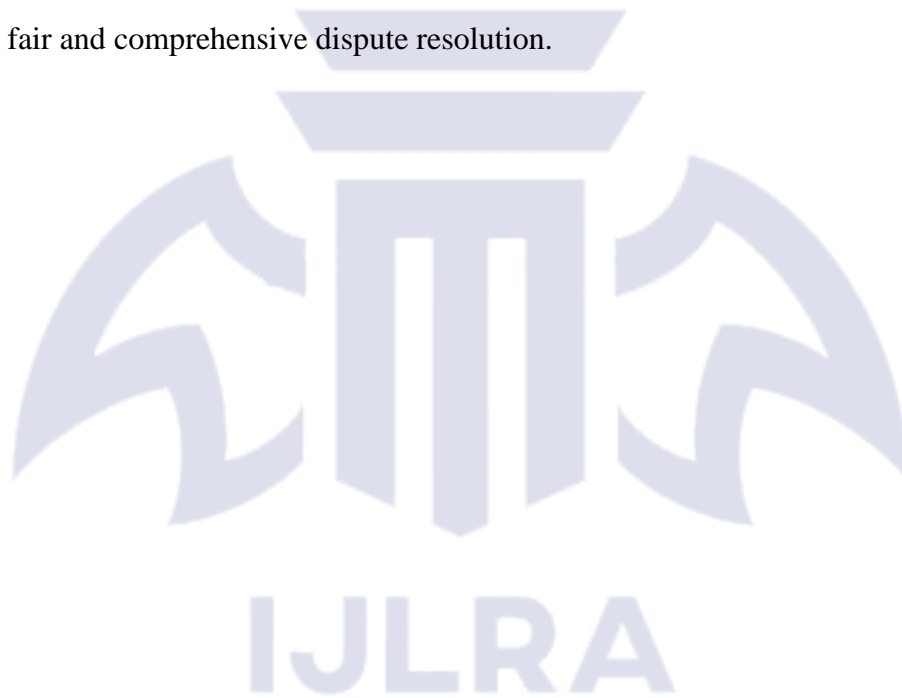
¹⁸ Id.

¹⁹ J L Kaput, *The 27th Law Commission Report on The Code of Civil Procedure, 1908* 28 (1964).

mechanism to avoid errors in pleadings.

4. CONCLUSION

Order VI, Rule 17²⁰ of the CPC represents an essential aspect of procedural law in India, providing flexibility in amending pleadings to ensure that the substantive issues between the parties are effectively resolved. While the court has the discretion to allow amendments, this discretion is exercised judiciously to balance the interests of fairness, efficiency and equity. Amendments are encouraged to avoid the complexity of multiple procedures, but are carefully considered to avoid abuse of process. The evolving case law surrounding Section O-R-17 continues to shape its application, ensuring that the rule fulfils its original purpose of facilitating fair and comprehensive dispute resolution.



²⁰ *Supra* note 2.