



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Pleading Under Cpc

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ABSTRACT

"Pleadings" is defined under Order VI Rule 1 which states pleading as "*written statement*" or "*plaint*". However, the terms *plaint* and *written statement* are not defined anywhere in the Civil Procedure Code ("CPC") but *plaint* can be construed as a document of claim which has the material fact upon which a party (preferably the plaintiff) is relying to establish his/ her case and a *written statement* is the reply filed against the *plaint* filed by the plaintiff wherein the defendant establishes some new facts in support of his/her case and refutes the pleadings put forth by the plaintiff. The object of the pleadings is to afford the other side an opportunity to know the case and for the courts to understand the issue at hand.

There are chances that in the course of the proceedings, an issue arises due to the change in circumstances of the proceedings. Now, in the given set of changes parties cannot rely on their previously filed pleadings but will have to file another one. Just to save parties in this situation and to reduce the multiplicity of the proceedings, the legislature introduced a provision by which parties are allowed to alter or make changes in their already submitted pleadings. This rule is not absolute and parties cannot claim it as a matter of right but what is to be considered here is the gravity of the situation under which a party is claiming the amendment.

This paper will delve deeper into the issue of amendment of pleadings, will further look for the changes made to the proviso of Rule 17 in 2002 amendment, will focus upon the wordings of the proviso and conflicting judgment of different High Courts ("HCs") and the Supreme Court ("SC") and ultimately will conclude on the term of the present scenario with respect to the amendment of pleadings vis-à-vis Court's limited discretion to grant the liberty.

INTRODUCTION

Pleadings are the backbone of profession. It's the inspiration stone on that case of a celebration stands. The case of a celebration should be taken off within the pleadings. Moreover, the relief cannot be claimed on the grounds that don't seem to be contained within the pleadings. The immaterial or imprecise or ambiguous matter ought to be avoided and pleadings ought to be properly framed.

Pleadings are those materials or essential facts that are necessary to be averred so as to place forward a cause or to ascertain a defense during a legal proceeding. It's the backbone of the suit upon that the complete construction of the suit rests. It includes allegations and counter allegations created by one party and denied by the opposite. Etymologically, it suggests that a proper statement to counsel the reason behind action or started a defense against the case of the litigator. In line with Mocha, "Pleadings are statements in writing demanded and filed by every party to a case, stating what his contentions are at the trial and giving all such details as his opponent must apprehend so as to arrange his case in answer."

Order VI of the Code of Civil Procedure, 1908 deals with pleadings generally. Rule one defines pleading, whereas Rule two lays down the basic principles of pleadings. Rules three to thirteen need the parties to provide necessary particulars. Rules fourteen and fifteen give for language and verification of pleadings. Rule sixteen empowers a Court to strike out uncalled-for pleadings. Rules seventeen and eighteen contain provisions with reference to modification of pleadings.

OBJECT AND IMPORTANCE OF PLEADINGS

The object of pleadings area unit - (i) to bring the parties to definite issues; (ii) to stop surprise and miscarriage of justice; (iii) to avoid unessential expense and trouble; (iv) to avoid wasting public time; (v) to eradicate irrelevancy; and (vi) to help the Court.

Importance of pleading can't be underestimated. Jacob states, "Pleadings don't solely outline the problems between the parties for the ultimate call of the court at the trial, they manifest and exert their importance throughout the entire method of the legal proceeding." Pleadings give a guide for the correct mode of trial. They demonstrate upon that party the burden of proof lies, and World Health Organization has the proper to open the case. They additionally confirm the vary of admissible proof that the parties ought to bear witness at the trial. They additionally lay down limit on the relief that may be granted by the Court.

In the leading case of *Throb v. Holds worth*, *Jessen, M. R.* stated: - "The whole object of pleadings is to bring parties to a difficulty, and therefore the that means of the principles (relating to pleadings) was to stop the problem being enlarged, which might stop either party from knowing once the cause came on for trial, what the important purpose to be mentioned and determined was. In fact, the entire that means of the system is to slender the parties to definite problems, and thereby to diminish expense and delay, particularly as regards the quantity of testimony needed on either aspect at the hearing."

ORDER VI RULE 17 AND AMENDMENT OF 1999 & 2000

Order VI Rule 7 of the CPC defines the procedure for amendment of a pleading in a suit. It empowers the court to accept the application of a party to amend the pleading and simultaneously puts restrictions on the courts to use their discretion to the fullest. The proviso added after the CPC (Amendment) Act, 2002 in R.17 is of utmost importance in this regard which states that courts can use their discretion while allowing the application of amendment when they are fully satisfied that after "due diligence" of the party, they were unable to incorporate the changes they are now seeking by way of amendment.

The said rule was omitted by the way of amendment of 1999 as there were so many applications being filed to delay the suit proceedings which ultimately furthered the pendency of the cases. The omission was made to shorten the duration of litigation and to speed up the trial. But after sort of agitation from the suffering class of the society, the rule was restored to its original position but now with an additional proviso that empowers the courts to entertain

such plea where parties have applied their due diligence but didn't have the opportunity to raise the matter before.

The said amendment of 2002 was challenged in the case of *Salem Bar Association, Tamil Nadu v. Union of India*, there was also a challenge to proviso added to Rule 17. SC upheld the validity of the said rule and stated that the legislature after deleting it through the 1999 amendment has re-inserted it with the intent to minimize or to prevent the frivolous applications which are filed to delay the trial. Also, the said amendment curtails the absolute discretion of the courts to allow amendments at any stage of the suit proceedings.

MEANING OF TRIAL AS INTERPRETED BY COURTS

While interpreting the provision under O.VI R.17 it will be important to focus upon the terms used in the provision. The proviso states that no amendment will be allowed once the trial has been commenced, so, now the focus will be on as to what is the significance of the term "*commencement of trial*". The views expressed by HCs and SC in the different case laws will be of utmost importance in this regard.

In the case of *Kailash v. Nanhku*, where the question involves that when does the trial in an election petition commence. SC while answering this question delve into the aspect of commencement of trial in a civil suit and held that once the issues are framed and the case is ready for the recording of evidence then it will be considered as the commencement of trial.

The alternative point arises when Calcutta HC in the case of *Sree Sree Iswar Radha Behari Jew v. Malti P. Soni* while dealing with a situation where an amendment was asked for the correct valuation of the suit and to include some new premises acquired by the defendant. The Calcutta in this case only referred to the legal question involved, i.e., what will be constituted as the "commencement of trial"? The same was answered by observing that the judgment of *Kailash* is the obiter and the trial will be considered to be commenced when after submitting the affidavit the court first applies its mind and the commencement of cross-examination of the witness begins.

The situation here is doubtful as to what we have to consider as the commencement of trial. As iterated by SC in *Vidyabai* that commencement of trial would mean the filing of an affidavit for examination-in-chief. The reasoning behind this dictum as discussed by many scholars and in judgments is that filing an affidavit is an instrumental act and this is the first instance in a suit where the court applies its mind to take note of the issue at hand.

SCOPE AND EXTENT OF AMENDMENT: JUDGEMENTS DISCUSSING THE POSITION OF LAW

Amendment is that the formal revision or addition or alteration or modification of the pleadings. Provisions for the change of pleadings square measure meant for promoting the ends of justice and not for defeating them. Rules seventeen and eighteen of Order VI of Code of Civil Procedure, 1908 deals with provisions relating to change of pleadings and failure to amend once order severally. Rule seventeen of the CPC provides that, "The Court might at any stage of the proceedings permit either party to change or amend his pleadings in such manner and on such terms as could also be simply, and every one such amendments shall be created as could also be necessary for the aim of determinant the important queries in difference of opinion between the parties.

Proviso to the Rule seventeen of Order VI of CPC, as inserted by the Code of Civil Procedure (Amendment) Act, 2002 restricts and curtails power of the Court to permit change in pleadings by enacting that no application for change ought to be allowed once the trial has commenced, unless the Court involves the conclusion that in spite of due diligence, the party couldn't have raised the matter before the commencement of trial.

Amendment of pleadings once granted: - change of pleadings is granted by the Court in 2 things particularly, (i) wherever the change is important for the determination of the important question in controversy; and (ii) will the change be allowed while not injustice to the opposite facet.

Amendment of pleadings once refused: - change of pleadings will be refused in several circumstances. Following square measure, the things or circumstances once change of pleadings is refused by the Court: -

- (1) Once the projected change makes no sense.
- (2) Once the projected change causes associate injury to the other party that can't be salaried for by prices.
- (3) Once the planned change changes the character of the case.
- (4) Once the applying for change isn't created in honesty.
- (5) Once there has been an excessive delay in filing the change application.

Delhi HC ("**DHC**") in the case of **Inderjeet v. Agricultural Produce Market Committee** where the appellant seeks amendment to incorporate some additional facts. Respondent opposed it by stating that such an amendment is barred by limitation. DHC while considering the question of whether on what ground an amendment can be sought and can be allowed held that where it is necessary and for the interest of the justice an amendment can be allowed so that the controversy can be fully settled.

In the case of **Revajeetu Builders v. Narayanswamy and Sons**, where the matter was pertaining to the recovery of some amount and claiming absolute ownership in the scheduled property. For the same, an amendment was sought to delete certain paras and to incorporate some. HC while setting aside the application holds that through amendment a new case will be introduced which will prejudicially affect the other party. SC after perusing a catena of judgments dismiss the application on this very line and laid down the guidelines for the courts to follow which must satisfy before the amendment can be allowed. Apart from the guidelines SC also stated as to what factors should be considered while dealing with the application for amendments.

In a recent judgment of **T.V. Sasikala v. C.P. Joseph**, the Kerala HC has iterated its views on the same line. The matter here is related to a suit for declaration of ownership over the property and after commencement of examination of a witness, the plaintiff sought an amendment to its pleadings. The question arose as to on what grounds an amendment application can be allowed? Answering the question, the HC held that before allowing the amendment the court must make sure that the party seeking such amendment has bonafide intentions and satisfy itself that despite the due diligence the party couldn't seek this amendment earlier.

The issue at hand needs to be settled down. SC in many instances has tried to relax the situation with regards to the discretion of the courts. In **Revajeetu**, SC laid down the guidelines for the courts to make sure the compliance of the proviso of R.17. Similarly, in many instances, SC and even the HCs has reiterated the same position that discretion of the courts has some restrictions and courts are duty-bound to take into account the mandate of the proviso to ensure justice. However, the judgment of SC in **Usha Balasaheb** where SC differentiated b/w the proviso to be followed in amendments of the plaint and written statements will be the one that will cause the problem as it is going against the O.VI R.1

defining pleadings.

Failure to amend: - Rule eighteen of Order VI of CPC, 1908 deals with this issue. It provides that if a celebration United Nations agency has obtained an order for leave to amend doesn't amend consequently inside the time restricted for that purpose by the order, or if no time is thereby restricted then inside fourteen days from the date of the order, he shall not be permissible to amend once the expiration of such restricted time as aforementioned or of such fourteen days, because the case could also be, unless the time is extended by the Court.

CONCLUSION

Given the aforesaid propositions and judgments of the HCs as well as the SC, it can be concluded that the amendment of pleadings cannot be claimed by the party as a matter of right nor can be denied by the Court arbitrarily. However, the discretion to be exercised by the Court is guided by the principles mentioned under the proviso to R.17 and depends on the facts and circumstances of each case. As such O.VI R.17 is intended for promoting the ends of justice and not for defeating them, therefore grant of amendments is the rule and refusal is the exception.

It is in the interest of justice that all the matters connected to a particular suit must be adjudicated in a single suit to avoid multiplicity and for that matter, parties should be at the liberty to alter their pleadings in course of the suit proceedings. While doing so, the onus will be on the courts to adjudicate that whether the amendment has any relation to the said proceedings and it should not have any adverse effect on the suit. However, the issue is still *sub-judices* as SC in the case of *Anita vs Anil* has recently issued a notice in the SLP filed against the Bombay HC judgment which had followed the dicta of Vidya Bai. It will be a matter of time now when we will get the correct position of law.

Pleadings are the backbone of bar. It's the muse stone on that case of a celebration stands. The case of a celebration should be kicked off within the pleadings. Pleadings don't solely outline the problems between the parties for the ultimate call of the court at the trial; they manifest and exert their importance throughout the full method of the judicial proceeding. Pleadings offer a guide for the correct mode of trial. They demonstrate upon that party the burden of proof lies, and United Nations agency has the proper to open the case. They additionally confirm the vary of admissible proof that the parties ought to testify at the trial. They additionally lay down limit on the relief which will be granted by the Court.

SUGGESTIONS

Suggestions for a plaintiff (Plaintiff)

- **Establish jurisdiction:** State the facts that demonstrate why the court you have chosen has the territorial and pecuniary jurisdiction to hear the case.
- **Disclose a clear cause of action:** The facts you present must constitute a valid cause of action. Without it, your plaint can be rejected.
- **Specify the relief sought:** Clearly and accurately state the relief you are claiming from the court. If you seek multiple forms of relief, such as an injunction and damages, specify each one.
- **Identify parties correctly:** Ensure the names, descriptions, and addresses of all plaintiffs and defendants are accurately stated.
- **Explain delays:** If the suit is filed after the limitation period has expired, provide a statement explaining the grounds for exemption.

Suggestions for a written statement (Defendant)

- **Address each allegation specifically:** Do not make general or evasive denials. You must deal with every allegation of fact in the plaint specifically and substantively. Any fact not specifically denied is considered admitted.
- **Raise all available defenses:** Include all relevant defenses, whether they are based on fact or law. This includes jurisdictional issues, limitation, or *res judicata*.
- **Consider counterclaims and set-offs:** If you have a counter-demand against the plaintiff, you should include it in the written statement. A counterclaim functions like a separate suit and allows the court to resolve all related claims in one proceeding.

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