

(2025) 05 OHC CK 1235
In the Orissa High Court
Case No : CMP No. 302 Of 2025

Orissa Construction And Techno Engineer Cooperative Society
Limited Represented Through Its Secretary Kulamani
Senapati, Bhubaneswar

APPELLANT

Vs

Brundaban Sahoo Vs

RESPONDENT

Date of Decision : 07-05-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 2 Rule 2, Order 6 Rule 17, Order 21 Rule 2
Orissa Co Operative Societies Act, 1962 — Section 129
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15A

Citation : (2025) 05 OHC CK 1235

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : Amit Prasad Bose, D. Sahoo

Final Decision : Bhadrak Vs State Of Odisha Vs "

Judgement

Savitri Ratho, J

1. This application has been filed by the defendant challenging the order dated 06.01.2025 passed by the learned Civil Judge, Bhubaneswar in C.S. No. 2163 of 2018 rejecting its application under Order-6 Rule 17 read with Section 151 of C.P.C. for amending the written statement.

2. The learned Civil Judge has rejected the application observing that the amendment was filed when the civil suit was posted for defence evidence and the three different legal pleas taken by the defendant were within their knowledge before filing of the written statement on 18.11.2019 and no explanation has been given by the defendant in that regard, as per the proviso to Order 6 Rule 17 C.P.C. which was mandatory as hearing in the suit had commenced.

3. Mr. Amit Prasad Bose, learned counsel for the petitioner, submits that the amendments were formal in nature and pure question of law and in spite of due

diligence, could not be detected earlier and such amendment is necessary for a just decision in the suit, but the learned trial Court erroneously rejected the prayer for amendment, without considering these relevant factors merely because the trial had commenced.

4. Perused the impugned order dated 06.01.2025, the application filed under Order 6, Rule 17 by the defendant and the objection of the plaintiff, which have been annexed as Annexure 1, 4 and 5 respectively to this C.M.P.

5. While dismissing the petition, the learned trial Court has observed as follows:-

"Perused the case record and it is seen that, the present amendment petition has been filed when the suit was posed for defence evidence. The defendant on 18.11.2019 had filed its written statement. Upon perusal of the proposed amendments, it is seen that, three different legal pleas have been taken by the defendant resisting the maintainability of the suit out of which the first one is that the clause no.3 of the covenant of the Sale deed executed in favour of the plaintiff authorizes him to construct residential houses whereas the plaintiff himself had admitted that, he has constructed four shop rooms which is against the terms of such deed for which reason he being a wrong doer is not entitled to the equitable relief of injunction. The second legal plea of the defendant in the proposed amendment is that the alleged constructions were plaintiff without any approval from BDA and the third being the plaintiff in contravention of Section 129 of Cooperative Societies Act 1962, has filed this suit instead of allowing the defendant- society for inspection which was communicated to him vide its letter dated 19.11.2018. from the above legal pleas , one thing is clear that prior to filing its written statement on 18.11.2019, the defendant had knowledge of all the three proposed amendments and there is no question that hearing in the present suit has already commenced. Thus, the defendant has to satisfy this Court that despite due diligence, it could not bring in such amendments. No explanation has been given by the defendant in that regard and the Proviso appended to Order 6 Rule 17 C.P.C. being a statutory mandate stands in the way of the present petition. Accordingly, finding no merit in the petition of the defendant, this Court is compelled to reject the petition dated 05.08.2024 but with due respect to the decisions cited by both the learned counsels. Call on 28.01.2025 for evidence from the side of the defendant.

6. That the defendant has mentioned in the application at paragraph 3 that the facts proposed to be inserted are purely question of law and would neither cause any injustice to the plaintiff nor hamper adjudication of the suit, which was posted for evidence of the defendant. At paragraph 4, it has been mentioned that inspite of due diligence, the facts which were proposed to be inserted in the written statement could not be inserted in the original written statement.

7. The plaintiff had filed an objection to the application citing different case law, earlier orders passed by the trial Court and this Court. He has also stated in his objection that the case was at the hearing stage and the application

had been filed only to linger the case for uncertain period and to amend a written statement which had itself been filed after a delay. The objection of the plaintiff to the proposed amendments has also been mentioned in the impugned order.

8. Order – 6, Rule 17 of the Code of Civil Procedure has been amended in the year 2002, when the proviso was introduced. Before that the provision has undergone various amendments, which have been described in the decisions of the Supreme Court referred to subsequently in this order. The provision is extracted below:-

“17. 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 inspite of due diligence, the party could not have raised the matter before the commencement of trial.”

9. From a reading of the provision, it is apparent that –

(a) pleadings can be amended any stage on such terms as may be just ;

(b) the amendment sought for, must be necessary to determine the real question of controversy between the parties;

(c) if trial has commenced , then the Court must be satisfied that in spite of “due diligence” the party seeking amendment could not do so before the trial started.

10. In the case of Baldev Singh & Others Etc vs. Manohar Singh & Another : (2006) 6 SCC 498, the trial court and high court had rejected the application for amendment of the written statement on three grounds. The Supreme Court explained what amounted “commencement of trial”. On examination of records the Supreme Court found that trial had not commenced as parties were yet to file their documents. The relevant paragraphs of the judgment are extracted below:-

“8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung (AIR 1922 P.C. 249) in which the Privy Council observed:

"All rules of courts 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."

9. Keeping this principle in mind, let us now consider the provisions relating to amendment of pleadings. Order 6 Rule 17 of the Code of Civil Procedure deals with amendment of pleadings which provides that 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. A bare perusal of this provision, it is pellucid that Order 6 Rule 17 of the Code of Civil Procedure consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. Therefore, in view of the provisions made under Order 6 Rule 17 of the CPC it cannot be doubted that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of Suit can be avoided and that the suit can be disposed of expeditiously. By the Code of Civil Procedure (Amendment) Act, 2002 a proviso has been added to Order 6 Rule 17 which restricts the Courts from permitting an amendment to be allowed in the pleadings either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. So far as proviso to Order 6 Rule 17 of the Code of Civil Procedure is concerned, we shall deal with it later."

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"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we

do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

In the case of Usha Balashaheb Swami and others vs. Kiran Appaso Swami and others, reported in (2007) 5 SCC 602, the Hon'ble Supreme Court held as under:-

"19. It is equally well settled principle that 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 statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see B.K. Narayana Pillai v. Parameswaran Pillai (2000(1) SCC 712) and Baldev Singh & Ors. v. Manohar Singh : 2006 (6) SCC 498]. Even the decision relied on by the plaintiff in

Modi Spinning (supra) clearly recognises that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead) [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in Basavan Jaggu Dhobi's case (supra) as follows :

"3. As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

21. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money.

Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.* [AIR 1957 SC 357], this Court observed

"that the Courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event".

In that case this Court also held

"that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."

In the case of *State of Madhya Pradesh vs. Union of India*: (2011) 12 SCC 268, the Supreme Court has held as follows:-

"8. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations."

In the case of *Revajeetu Builders & Developers vs. Narayanaswamy & Sons*, (2009) 10 SCC 84, the Supreme Court has dealt exhaustively with the historical background of Rule 17, the earlier amendments, the Justice Malimath Committee report and a number of its earlier decisions and has enumerated the factors to be considered while dealing with applications for amendment. Relevant portions of the judgment are extracted below :

"34. 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.

35. 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.”

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

63. 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 bonafide or malafide?

(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 B of the case? and

(6) As amendments a general if a rule, fresh the suit court on the should amended decline claims - would be barred by limitation on the date of application.

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.

64. 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.

65. 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.”

In the case of Life Insurance Corporation vs. Sanjeev Builders Pvt. Ltd.: 2022 Live Law (SC) 729 : 2022 SCC OnLine SC 1128, after referring to a number of decisions, the Supreme Court held as follows :-

“71. Our final conclusions may be summed up thus:

71.1 Order 2I Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order 2 Rule 2 CPC is, thus, misconceived and hence negatived.

71.2 All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order 6 Rule 17 of the CPC.

71.3 The prayer for amendment is to be allowed

71.3.1 If the amendment is required for effective and proper adjudication of the controversy between the parties, and

71.3.2 To avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4 A prayer for amendment is generally required to be allowed unless

71.4.1 By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

71.4.2 The amendment changes the nature of the suit,

71.4.3 The prayer for amendment is malafide, or

71.4.4 By the amendment, the other side loses a valid defence.

71.5 In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6 Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7 Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8 Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9 Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10 Where the amendment changes the nature of the suit or the cause of

action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11 Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi &Ors., 2022 SCC OnLine Del 1897)”

CONCLUSION

11. In view of the pronouncements of the Supreme Court and the proviso of Order 6, Rule – 17 C.P.C and the background of the amendments to the provision itself, it is no longer *res integra* that Courts are more liberal while considering the case of amendment of a written statement as compared to amendment of a plaint, provided the proposed amendment is necessary for proper and effective adjudication of the case. While doing so, in case the trial has commenced in the case, the Court has to necessarily consider if the amendment is allowed and prejudice is caused to the other side, whether that can be compensated by awarding cost.

12. In the case at hand, the learned trial Court has held that the amendment application has been filed after closure of the evidence of the plaintiff and these objections were available to the defendant to have been raised in the written statement and due diligence has not been exercised by the defendant while filing the written statement. But the learned trial court has failed to consider whether the proposed amendment was imperative for proper and effective adjudication of the case, whether it was bonafide or malafide and if it was to be allowed, whether any prejudice or injustice would be caused to the defendant which cannot be compensated by imposing cost and if refusing the amendment would lead to injustice or multiple litigation. It has also not referred to the objection filed by the plaintiff.

13. In such view of the matter, although I was initially not inclined to interfere in the matter, I am of the view that the learned trial Court should decide the application filed by the defendant under Order 6, Rule 17 of the C.P.C., afresh in accordance with law.

14. As the case is posted for evidence of the defendant, in order to avoid delay, instead of keeping the matter pending in this Court, which will result in further

delay, the CMP is disposed of, directing the learned trial Court to hear and dispose of the amendment application in accordance with law, after giving opportunity of hearing to both parties, but expeditiously, if prejudicial by it.

15. It is clarified, that I have not gone into the merits of the application under Order VI Rule 17 C.P.C. or the objection, of the plaintiff, which are to be considered by the learned trial Court in accordance with law.

16. Urgent certified copy of the order be granted on proper application.

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