

(2015) 04 KAR CK 0377

In the Karnataka High Court

Case No : Writ Petition Nos. 22427-428/2010 (GM-CPC)

Vinayaka House Building Co-operative Society

APPELLANT

Vs

Chikka Thimmaiah and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 16, 7
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Constitution of India, 1950 — Article 227
Contract Act, 1872 — Section 230
General Clauses Act, 1897 — Section 6
Karnataka Land Revenue Act, 1964 — Section 136(3), 25, 56

Citation : (2015) 4 AKR 269 : (2015) ILR (Kar) 4596 : (2015) 5 KarLJ 671

Hon'ble Judges : S. Sujatha, J

Bench : Single Bench

Advocate : K.V. Narasimhan, for the Appellant; S. Rajendra, Advocates for the Respondent

Final Decision : Allowed

Judgement

S. Sujatha, J—These petitions are filed challenging the common order dated 26.06.2010 passed by the I Addl. City Civil and Sessions Judge, Bangalore City, on I.A. Nos. 62 and - 64 in O.S. No. 1717/1998.

2. These cases have a chequered history. O.S. No. 1717/1998 was filed by the first respondent-plaintiff on the file of the I Addl. City Civil Judge, Bangalore, against the petitioner, a house building Cooperative Society for the relief of bare injunction in respect of four acres of land being part of Sy. No. 17 of Nagarabhavi Village, Bangalore.

3. The petitioner-Society herein filed written statement disputing the title of the plaintiff/first respondent herein. In view of the denial of title of the 1st respondent by the petitioner, an application for amendment of the plaint was moved by the first respondent seeking for declaration of title. The said

application was allowed and the plaintiff filed amended plaint.

4. Pursuant to this, the petitioner filed additional written statement and has taken a stand in the written statement that Sy. No. 17 measures 35 acres 33 guntas as against 18 acres 19 guntas pleaded earlier in the original written statement. The first respondent had initiated necessary proceedings before the competent authority for plodding and fixing the boundaries of 4 acres of granted land in Sy. No. 17 of suit schedule property.

5. After following due procedure, the granted land of the first respondent measuring 4 acres out of Sy. No. 17 was assigned with new Sy. No. as Sy. No. 143 and the boundaries were fixed. The first respondent moved another application for amendment of the plaint to bring in the said changes on record. Subsequently, the plaintiff filed the amended plaint to which additional written statement was filed by the petitioner. In the meanwhile some of the allottees of sites under petitioner-Society, also got impleaded by themselves in the suit of the first respondent as additional defendants and filed their written statements. After issues being framed by the Trial Court, the plaintiff and the defendants except petitioner-Society have led their evidence and documents marked. Despite sufficient opportunity provided, no evidence was led by the petitioner. As such, the Trial Court took the evidence of the petitioner as nil and posted the matter for arguments on merits of the case. On 08.04.2010, arguments on main case were addressed by the Advocate of the first respondent in part and the matter was again posted for further arguments on 09.04.2010. On 09.04.2010, the petitioner had filed a writ petition before this Court in W.P. No. 11625/2010 seeking permission to lead evidence which came to be allowed by imposing condition that the petitioner has to lead its evidence on the same day. On 09.04.2010 itself the petitioner filed affidavit evidence of its witness and got marked some documents and the matter was posted for cross examination of the petitioner witness on 15.04.2010. On the said date the petitioner filed I.A. No. 62 under Order 6 rule 17 read with Section 151 CPC for amendment of written statement and subsequently filed I.A. No. 64 under Order 6 Rule 17 CPC again seeking for an amendment of written statement. The Trial Judge after considering the objections filed by the first respondent and hearing the parties, rejected the applications filed by the petitioner by a common order dated 26.06.2010, which are impugned in these writ petitions.

6. I have heard Sri K.V. Narasimhan, learned Counsel appearing for the petitioner as well as Sri S. Rajendra, learned Counsel appearing for the first respondent at length.

7. Learned Counsel appearing for the petitioner contended that the proviso to Order 6 Rule 17 of CPC, is not applicable to the facts of the case, as the suit was instituted in the year 1998 before the amendment Act No. 22/2002 which came into effect from 01.07.2002 and in terms of Order 6 Rule 17 CPC, the parties to the suit are entitled to move for an amendment of the pleadings at any stage of the suit. It was also contended that the amendment sought in the written

statement does not change the nature of the original defence taken by the petitioner and the said amendment is necessary to determine the real controversy in dispute between the parties and also relied on the following judgments:

1. Sushil Kumar Jain Vs. Manoj Kumar and Another, AIR 2009 SC 2544 : (2009) 8 JT 392 : (2009) 7 SCALE 103 : (2009) 10 SCC 434 : (2009) 10 SCR 944 : (2009) 6 UJ 2570 : (2009) AIRSCW 4441

2. Andhra Bank Vs. ABN Amro Bank N.V. and Others, AIR 2007 SC 2511 : (2007) 139 CompCas 111 : (2007) 3 ComplJ 185 : (2007) 9 JT 244 : (2007) 9 SCALE 96 : (2007) 6 SCC 167 : (2007) 77 SCL 209 : (2007) 2 UJ 859 : (2007) AIRSCW 4466 : (2007) 5 Supreme 792

3. Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, AIR 2007 SC 1663 : (2007) 3 CTC 400 : (2007) 5 JT 476 : (2007) 5 SCALE 831 : (2007) 5 SCC 602 : (2007) 6 SCR 306 : (2007) AIRSCW 2545 : (2007) 3 Supreme 582

4. Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., AIR 2006 SC 2832 : (2006) 7 JT 139 : (2006) 7 SCALE 517 : (2006) 6 SCC 498 : (2006) 4 SCR 259 Supp : (2006) AIRSCW 3956 : (2006) 5 Supreme 943

5. Hi. Sheet Industries a partnership firm Vs. Litelon Limited and Others, (2007) 1 LW 32

6. Om Rice Mill and Others Vs. Banaras State Bank Ltd. and Another, AIR 2000 All 90 : (2001) 107 CompCas 278

8. Per contra, learned Counsel Sri S. Rajendra, appearing for the first respondent supported the order passed by the Trial Judge and vehemently argued that there is no consistency in the stand taken by the petitioner in the written statement and by virtue of the proposed amendment the petitioner is trying to introduce a new defence which would prejudice the rights of the respondent. It was contended that the suit is of the year 1998 and at the stage of arguments, the petitioner in order to overcome the inconsistency in the defence, has moved this application, which is not permissible and further, it was also contended that the proviso to Order 6 Rule 17 CPC specifically bars allowing the amendment, subsequent to commencement of the trial. Accordingly, sought for rejection of the writ petition.

9. The learned Counsel for the first respondent has relied on the following judgments:

1. Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others, AIR 2007 SC 806 : (2007) 1 JT 579 : (2006) 13 SCALE 525 : (2006) 10 SCR 477 Supp

2. Chander Kanta Bansal Vs. Rajinder Singh Anand, AIR 2008 SC 2234 : (2008) 1 CLT 347 : (2008) 4 JT 496 : (2008) 4 SCALE 546 : (2008) 5 SCC 117 : (2008)

3. Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another, AIR 2008 SC 2303 : (2008) 5 CTC 253 : (2008) 7 SCALE 471 : (2008) 14 SCC 364 : (2008) AIRSCW 4007 : (2008) 4 Supreme 435

4. Vidyabai and Others Vs. Padmalatha and Another, AIR 2009 SC 1433 : (2009) 1 JT 302 : (2009) 154 PLR 490 : (2009) 1 SCALE 202 : (2009) 2 SCC 409 : (2009) 12 Vat Reporter 2524 : (2009) AIRSCW 899 : (2009) 1 Supreme 238

5. Shiromani Gurdwara Prabhandak Committee Vs. Jaswant Singh, (1996) 7 AD 587 : (1996) 8 JT 292 : (1997) 116 PLR 648 : (1996) 7 SCALE 19 : (1996) 11 SCC 690 : (1996) 5 SCR 538 Supp : (1997) 1 UJ 142

10. After hearing both the parties and perusing the material on record, the questions that arise for consideration of this Court are:

(1) Whether the applications filed by the petitioner seeking for amendment of the written statement requires to be allowed after the commencement of the trial i.e., at the stage of arguments?

(2) In the facts and circumstances of the case, whether the trial Judge is justified in dismissing the amendment applications?

11. Order 6 Rule 17 of CPC reads thus:

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 in spite of due diligence, the party could not have raised the matter before the commencement of trial]

Proviso was inserted by amendment Act 22/2002 w.e.f. 01.07.2002.

12. The Apex Court in the case of State Bank of Hyderabad Vs. Town Municipal Council, (2006) 5 CTC 874 : (2007) 145 PLR 332 : (2006) 13 SCALE 332 : (2007) 1 SCC 765 : (2006) 9 SCR 919 Supp : (2006) 2 UJ 1557 , has held that

"Section 16(2) of the amending Act of 2002 reads as under:

Notwithstanding that the provisions of this Act have come into force or repeal under sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897,-

(a)* * *

(b)the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as

omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;

In view of the above said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order 6 Rule 17 shall not apply".

13. The Full Bench of Madras High Court in the case of HI SHEET INDUSTRIES (supra) held that:

"12.00

(1).....

(2).....

(3) The proviso to Order 6, Rule 17 of Act 22 of 2002 is applicable to the pleadings instituted with effect from 1-7-2002 and not to the pleadings instituted prior to 1-7-2002 and while considering the proviso to Order 6 Rule 17, the Court has to examine in detail and commencement of trial must be understood as final hearing of the suit i.e., examination of witnesses, filing of documents, addressing of arguments etc., and the Court should not forget its unfettered discretion to allow the amendment after applying itself the judicial discretion, if there is no negligence on the part of the party".

14. In view of the said legal propositions, I am of the view that proviso to Order 6 Rule 17 is not applicable to the present case since the suit was instituted on 26.02.1998, much earlier to the amendment Act 22 of 2002.

15. As regards, I.A. No. 62, the petitioner is proposing to amend the written statement to delete the averments in page No. 3 para 6 i.e., "it is submitted that the Sy. No. 17 totally measures 18 acre 19 guntas. The entire extent of Sy. No. 18 was notified in favour of BDA on 12.09.1982 under Section 17(1) of BDA Act." To substitute in its place the following para:

"Sy. No. 17 of Nagarabhavi Village totally measures 35 acres 33 guntas and an extent of 18 acres and 19 guntas in Sy. No. 17 was notified in favour of BDA on 12.08.1982 under Section 17(1) of the BDA Act."

16. As regards I.A. No. 64, the petitioner is seeking to incorporate one para 11(a) after para 11 of the written statement which reads as follows:

"In year 1992 even prior to sanction of the lay out plan by the B.D.A., the B.D.A. left 3 acre 32 guntas of kharab land out of 18 acre 11 guntas in Sy. No. 17 of Nagarabhavi village to the 1st defendant society, since it was surrounded by the acquired land of the 1st defendant society. Since the Ring road and 80 feet road formed by the B.D.A. towards Mallatahalli Road, passed through the acquired land of the 1st defendant society, and as a result, the 1st defendant society lost

about 4 acres of land, to compensate it said 3 acre 22 guntas of land was given to 1st defendant society."

17. The Apex Court in the case of SUSHIL KUMAR JAIN VS. MANOJ KUMAR & ANR. (supra) has held as under.

"At this stage, we may remind ourselves that law is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering, substituting a new cause of action (See Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., AIR 2006 SC 2832 : (2006) 7 JT 139 : (2006) 7 SCALE 517 : (2006) 6 SCC 498 : (2006) 4 SCR 259 Supp : (2006) AIRSCW 3956 : (2006) 5 Supreme 943 .

Similar view has also been expressed in Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, AIR 2007 SC 1663 : (2007) 3 CTC 400 : (2007) 5 JT 476 : (2007) 5 SCALE 831 : (2007) 5 SCC 602 : (2007) 6 SCR 306 : (2007) AIRSCW 2545 : (2007) 3 Supreme 582 . It is equally well settled that in the case of an amendment of a written statement, the Courts would be more liberal in allowing than that of a plaint as the question of prejudice would be far less in the former than in the latter and addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement can also be allowed."

18. The Apex Court in the case of (Andhra Bank Vs. ABN Amro Bank N.V. and Others) (supra) has held that:

"We have heard Mr. Rohit Kapadia, learned senior counsel appearing for the appellant and Mr. S. Ganesh, learned senior counsel for the respondent. We have perused the original written statement as well as the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement, we are of the view that the amendment sought to be introduced by the appellant must be allowed. From a perusal of the impugned order of the Special Court we find basically that two grounds have been taken by the Special Court for rejecting the prayer for amendment of the written statement. The first ground is that considerable delay has been caused by the appellant in filing the application for amendment of the written statement. It is well settled that delay is no ground for refusal of prayer for amendment. Mr. Ganesh, appearing for ABN Amro Bank submits before us that by filing of such an application for amendment of the written statement which has been filed with long delay, the appellant sought to stall the hearing of the suit which has been fixed on 13th July, 2007. In response to this Mr. Kapadia, learned counsel for the appellant, submits that in the event the prayer for amendment is allowed by us his client undertakes to file the amended written statement by day after tomorrow, i.e., 12th July, 2007 before the Special Court. Since, we are of the view that delay is no ground for not allowing the prayer for

amendment of the written statement and in view of the submissions made by Mr. Kapadia, we do not think that delay in filing the application for amendment of the written statement can stand in the way of allowing the prayer for amendment of the written statement. So far as the second ground is concerned, we are also of the view that while allowing an application for amendment of the pleadings, the Court cannot go into the question of merit of such amendment. The only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit. From a perusal of the amendment application we find that the appellant in their prayer for amendment has only taken an additional defence that in view of Section 230 of the Indian Contract Act, the suit itself is not maintainable. It is well settled, as noted herein earlier, that at the time of considering the prayer for amendment of the written statement it would not be open to the Court to go into the fact whether in fact the suit in view of Section 230 of the Indian Contract Act was or is not maintainable.

In view of the reasons stated herein above we are of the view that the order of the Special Court rejecting the application for amendment of the written statement filed by the appellant is liable to be set aside and the prayer for amendment of the written statement must be allowed."

19. The Apex Court while considering the case of Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors. (supra) has held that:

"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.

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.N. Narayana Pillai Vs. P. Pillai and Another, AIR 2000 SC 614 : (2000) 1 CTC 163 : (1999) 10 JT 61 : (2000) 125 PLR 547 : (1999) 7 SCALE 463 : (2000) 1 SCC 712 : (1999) 5 SCR 271 Supp : (2000) 1 UJ 209 : (2000) AIRSCW 43 : (1999) 10 Supreme 229 and Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., AIR 2006 SC 2832 : (2006) 7 JT 139 : (2006) 7 SCALE 517 : (2006) 6 SCC 498 : (2006) 4 SCR 259 Supp : (2006) AIRSCW 3956 : (2006) 5 Supreme 943]. 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:-

"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."

20. In the case of *Baldev Singh & Ors. Vs. Manohar Singh & Anr. etc.* (supra), it is held that:

"This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of *Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.*, AIR 1977 SC 680 : (1976) 4 SCC 320 : (1977) 1 SCR 728 , this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/appellants are not allowed to take inconsistent pleas in their defence."

21. In the light of the above judgments, I am of the view that, amendment of plaint and amendment of written statement stand on a different footing and a liberal approach has to be taken, in allowing the amendment of written statement albeit inconsistent pleas taken in the written statement.

22. In the case of *Ajendraprasadji N. Pande Vs. Swami Keshavprakeshdasji N. & Ors.* (supra), the Apex Court has held that:

"In the instant case, the appeal was filed in the second round on 09.10.2002 as could be seen from the dates and events mentioned in the counter affidavit. Special Leave Petition in this Court was filed on 07.07.2004. Additional written statement has been filed on 24.11.2005. Delay in filing the additional written statement from 09.10.2002 to 24.11.2005. From 09.10.2002, the matters sought to be introduced by defendant by way of additional written statement was known to defendant/appellant. The application in respect of additional written statement does not make an unequivocal averment as to due diligence. The averment only reads as follows:-

"Under the circumstances, the facts which were submitted in the said Appeal from Order before the High Court and the facts which are now being submitted in the present application could not be submitted before this Court inspite of utmost care taken by the defendants."

The above averment, in our opinion, does not satisfy the requirement of Order VI Rule 17 without giving the particulars which would satisfy the requirement of law that the matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence. As held by this Court in *Kailash vs. Nankhu & Ors.* (supra), the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence."

23. In *Chander Kanta Bansal Vs. Rajinder Singh Anand* (supra), the Apex Court has held that:

"The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the others case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases."

24. In the case of *Rajkumar Curawara (Dead) Thr. L.Rs. Vs. M/s. S.K. Sarwagi & Co. Pvt. Ltd., & Anr.* (supra), it is held that:

" Originally, the appellant/plaintiff filed the suit for declaration of his exclusive right to do mining operation in the suit property. However, after impleadment of M/s. S.K. Sarwagi and Company as second defendant (first respondent herein) after closing of the evidence and during the course of argument, the plaintiff filed an application under Order VI Rule 17 read with 151 CPC for amendment of the plaint praying for possession over the plaint schedule mentioned property from the defendants and for grant of damages of Rs. 5.00 lacs in favour of the plaintiff for their mining operations without consent of the plaintiff in the plaint schedule property. Though the learned Additional District Judge allowed the application for amendment on payment of cost of Rs. 300/- the High Court in a civil revision filed under Article 227 of the Constitution of India set aside the same and dismissed the application for amendment which is the subject matter in this appeal. In order to consider whether the appellant/plaintiff has made out a case for amendment of his plaint, it is useful to refer Order VI Rule 17 CPC which 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."

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this rule is subject to proviso appended therein. The said rule with proviso again substituted by Act 22 of 2002 with effect from 01.07.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings able to satisfy the court that in spite of due diligence could not raise the issue before the commencement of trial and the court satisfies their explanation, amendment can be allowed even after commencement of the trial. To put it clear, Order VI Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso."

25. In the case of Vidyabai & Ors. Vs. Padmalatha & Anr. (supra), the Apex Court has held that,

"The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to "commencement of proceeding".

It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at

all to allow the amendment of the plaint."

26. All these Judgments are rendered in the context of the Proviso to Order 6 Rule 17 CPC. The learned counsel appearing for the 1st respondent placing reliance on these judgments contended that the amendment of written statement at the arguments stage is not permissible in law. As already noticed, the proviso to Order 6 Rule 17 CPC is not applicable to the facts of the case, the arguments advanced by the learned counsel for the respondent on this issue is not acceptable.

27. The three important factors to be taken into consideration while considering the application for amendment are:

1. Whether the amendment sought for is necessary in determining the real controversy of dispute between the parties?
2. Whether the application for amendment is bona fide?
3. Whether the amendment sought for, if allowed, causes prejudice to the other side which cannot be compensated adequately in terms of money?

28. Keeping these three important factors in mind, if the present case is analysed, it is no doubt true that the petitioner is seeking an amendment of the written statement after the evidence was closed and the matter was at the stage of arguments. Ordinarily, the amendment shall not be allowed unless it is so imperative to determine the real controversy of dispute between the parties. As, that the proviso to Order 6 Rule 17 of CPC is not applicable to the facts of the present case, if the first part of Order 6 Rule 17 of CPC is applied, parties to the suit can move for an amendment of the pleadings at any stage of the suit provided nature of the suit is not changed and no prejudice would be caused to the other side.

29. It is pertinent to note here that a detailed order was passed by this Court on 27.07.2010 in the present case, at the time of granting stay. Relevant paras of which are reproduced below:

"7. As rightly contended by the Counsel for plaintiff such an amendment at this stage normally cannot be allowed. But the facts and circumstances of this case are totally different. The plaintiff is trying to set up a claim in respect of 4 acres of valuable land within the city of Bangalore claiming that it has been granted to him way back in the year 1954 based on certain documents. Against which there is already a finding by this Court to the effect that prima facie those documents appear to be bogus, concocted and forged. The correctness or otherwise of such finding is pending in writ appeal. If the case of 1st defendant is looked into in the light of this the applications for amendment requires to be allowed without blinking the eyelid for a moment. The paramount interest in any litigation is to see that the Courts will reach the depth of facts to find the truth in it. In the instant case, the plea of both parties is confined to the revenue records and documents produced by the parties regarding the extent of land in sy. No. 17 is

different at different stages of the suit. Therefore, the parties are not in agreement with what is the total extent of land in sy. No. 17; out of which what extent is acquired by Government through Land Acquisition Officer to be allotted to 1st defendant-society for formation of a Layout for the benefit of its members. Likewise, there is no clear picture about what is the extent of land that is acquired by BDA for formation of Nagarbhavi layout and while doing so, whether 4 acres of land, which is claiming by plaintiff, is left out or not. These are the facts, which are required to be seen keeping the other facts aside. On technical ground if the applications and the order passed thereon is viewed, it is like searching for a tree and missing the wood, which may not be proper in the given set of facts and circumstances of the case.

8. This Court is inclined to set aside the order passed by the Court below and allow the applications on the strength of the finding given in WP. No. 19720/2007, for the reason that, if the finding of the learned single judge in the aforesaid writ petition is confirmed in the writ appeal, the date of plaintiff so far as his title to suit schedule property would be sealed. If the finding of the learned single judge regarding the fraudulent aspect of the documents is confirmed, the entire suit will go. Therefore, it is necessary to wait for a finding to be given by the Division Bench of this court in the aforesaid writ appeal. If the finding of the Division Bench of this court in writ appeal is to accept the finding of learned Single Judge in writ petition then what follows is the application filed by 1st defendant will have to be allowed by setting aside the order passed by the court below and sufficient opportunity will have to be given to it to lead evidence. If it reaches such a stage, this Court is also of the opinion that the trial court suo moto should implead BDA and Government as parties to the suit, secure the original documents from both the departments and to see that the interest of the members of society who have been already allotted sites in the said area is to be protected. Contrary to that if the division bench of this Court comes to a conclusion that the finding of the learned single judge in the aforesaid writ petition is incorrect, then the contention raised by plaintiff that the order passed by the court below in rejecting the plea of the 1st defendant seeking amendment at the stage of final arguments will have to be accepted and the order passed by the court below will have to be confirmed rejecting the claim of 1st defendant.

9. In view of the above, this court feel that further proceedings in OS. No. 1717/1998 is required to be stayed until disposal of Writ Appeal No. 218/2008 and depending on the outcome of the said writ appeal the correctness or otherwise of the order passed on IA. Nos. 62 and 64 will be decided by this court. Hence by staying the further proceedings in OS. No. 1717/1998 this matter is kept pending to await the result in WA. No. 218/2008."

30. Mutation entries made in favour of the first respondent as regards 4 acres of land were challenged by the petitioner invoking revisional powers of the Deputy Commissioner under Section 136(3) of the Karnataka Land Revenue Act, wherein, Deputy Commissioner, in the enquiry found that the documents

produced by the 1st respondent was not valid, deleted the entry in favour of first respondent. This order was challenged in W.P. No. 19720/2007. Learned Single Judge by order dated 17.12.2007 dismissed the Writ Petition No. 19720/2007, against which, Writ Appeal No. 218/2008 was filed by the 1st respondent. W.A. No. 218/2008 was disposed on 19.06.2013 remanding the case back to the Deputy Commissioner to decide the legality of the grant by giving fair opportunity to the first respondent. The relevant paragraphs are reproduced hereunder:

"The issue, whether the Deputy Commissioner has jurisdiction U/s. 136(3) of the Karnataka Land Revenue Act to go into the question of legality of grant or not was strenuously argued by both sides. It may be that U/s. 136(3) of the Act the Deputy Commissioner cannot get direct jurisdiction but however the Deputy Commissioner as revenue head of the district will have jurisdiction under Sections 25 and 56 of the Karnataka Land Revenue Act to exercise inherent power to protect the property of the Government. However, no fair opportunity was given to the appellant before the Deputy Commissioner to prove his contentions. Under the circumstances the order of the Deputy Commissioner and the learned Single Judge are modified and the Deputy Commissioner shall afresh decide the legality of the grant by giving fair opportunity to the appellant. It is made clear that the Deputy Commissioner should further hold survey and demark the boundaries of the land acquired for the purpose of BDA and the respondent-Society and should also find out whether the disputed portions of land forms part of acquired land in favour of the respondent-Society and the said survey shall be held by due notice to the appellant as well as to the first respondent-Society."

31. It is noticed that the petitioner has stated in its additional written statement dated 07.03.2003, that Sy. No. 17 measures 35 acres 33 guntas but has not rectified the same in the original written statement. The sum and substance of the amendment proposed to be carried out are to give the exact measurement of Sy. No. 17 of Nagarabhavi Village, Bangalore, the extent of the land acquired by the Government and BDA for formation of Nagarabhavi Layout and the extent of land allotted to the first respondent-Society.

32. As contended, only at the time of arguments, the mistake that has crept in, in the written statement was noticed by the petitioner, to rectify the same, the amendment was sought, to put forth the true facts before the Court. These facts are necessary to determine the real controversy of dispute between the parties in the background of the case discussed above. The amendment now sought is not barred by any law and it does not change the nature of the suit. As such in order to avoid multiplicity of proceedings and in the interest of justice, it is appropriate for this Court to allow the writ petitions permitting the petitioner to amend the written statement as prayed for subject to the petitioner compensates the first respondent. In my view, the application is bona fide, not to prolong the matter but is necessary in the facts and circumstances of the case for the proper

adjudication of the matter in the background of the case narrated above. Since the petitioner being a registered house Building Cooperative Society managed by competent personalities with rich experience duly elected by its members would have taken much care in filing the written statement/additional written statement. It is a clear case of delay and lack of diligence on the part of the petitioner in moving the applications repeatedly for amendment of the written statement at the fag end of the arguments. As such, the amendment applications have to be allowed by awarding costs to compensate the prejudice caused to the first respondent. The Apex Court in the case of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, (2009) 13 JT 366 : (2009) 10 SCC 84 : (2009) 15 SCR 103 : (2009) 10 UJ 4850 has held as under:

"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."

33. In the light of the said judgment, to meet the ends of justice, it would be appropriate to allow these two applications compensating the first respondent with costs of Rs. 30,000/- to be paid within two weeks from the date of receipt of the copy of the order, cost to be paid directly to the first respondent and if the petitioner fails to make good of this cost to the first respondent within the stipulated time prescribed, the applications I.A. No. 62 and I.A. No. 64 filed by the petitioner automatically stands dismissed.

34. For the foregoing reasons, writ petitions are allowed. Accordingly, I.A. Nos. 62 and 64 are allowed with costs of Rs. 30,000/- as indicated above.