

Amendment of pleadings: An Analysis

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Table of contents

Serial Number	Content	Page Number
1	Introduction	2
2	Practical aspects concerning the amendment i. Withdrawal of admission ii. Discretion of Court while considering the plea of amendment iii. Post-trial amendment iv. Amendment to change valuation v. Amendment to bring barred claims vi. Amendment of written statement	3,4,5
3.	Conclusion and general principles	5, 6
	Bibliography and Endnotes	7

List of Abbreviations used:

AIR.....for All India Reporter

Ibid.....for Ibidem

SCC.....for Supreme Court Cases

v.....for Versus

1. Introduction

Order VI Rule 17 of the Code of Civil Procedure, 1908 governs the amendment of pleadings. It states that the Court may permit either party to amend his pleadings at any point during the proceedings in a way and on any terms that may be reasonable. All necessary amendments must be allowed in order to identify the actual issues that the parties are disputing with the caveat that no amendment will be granted once the trial has begun unless the Court determines that the party could not have brought up the petition before the commencement of the trial despite their best efforts.

The Courts must consider the case on its merits and, as a result, permit any changes that may be required to ascertain the real issue at hand between the parties, so long as doing so does not unfairly or negatively impact the other side. The accuracy or falsity of the case in the amendment should not be considered by the Court when deciding whether to grant an amendment application or not. Similarly, it should not document a conclusion regarding the merits of the amendment, and the merits of the amendment that is being sought to be integrated through an amendment should not be decided at the time the amendment prayer is granted.ⁱ The real controversy test, also known as the cardinal or basic test, manifests the main responsibility of the Court to determine whether an amendment is required to determine actual bone of contention. The modification will be accepted if it is; if not, it will be rejected. Numerous rulings have established that the rule of amendment is fundamentally a rule of justice, equity, and good conscience, and that its use should be directed toward the greater good of providing the parties to the case with full and complete justice.ⁱⁱ

The main purpose of the proviso is to prevent surprises by delaying the filing of applications to modify pleadings after the trial has begun and ensuring that both parties are sufficiently aware of each other's positions. Nevertheless, an exception has been established in cases where it is demonstrated that party was unable to enter a plea while exercising full diligence; the Court will have to take this into account. As a result, it is neither a complete bar nor does it preclude consideration of any subsequent applications. The proviso was added in order to reduce delays and speed up case hearings.ⁱⁱⁱ

2. Practical aspects concerning amendment

i. Withdrawal of admission –

The question as to whether withdrawal of admission is permissible or not by way of amendment is not res integra. It goes without saying that the Court should grant amendments with great leniency. It is similarly established, that an amendment that results in the withdrawal of an admission is not acceptable. Additionally, the proposed amendment could not be permitted if it results in the introduction of a wholly new case that aims to completely displace the opposing side from the admission made. The law is that travesty of justice would result if the amendment application that would allow for the revocation of admission was granted.^{iv} To put it simply, it is impossible to back out of a categorical admission.^v

ii. Discretion of the Court while considering plea of amendment-

In *Baldev Singh v Manohar Singh*,^{vi} it has been ruled that Courts should be very lenient while adjudicating amendment petitions unless the opposing side suffers grave injustice or irreversible loss. Therefore, it is undeniable that the Court has been given broad discretion to permit a party to amend their pleadings in any way and on any terms that the Court deems appropriate and just in light of the provisions made under Order 6 Rule 17 of the Code of Civil Procedure. The amending application should ordinarily be allowed in accordance with Order 6 Rule 17 of the Civil Procedure Code, unless doing so will affect the essence of the matter or cause the defendant to suffer any harm was the principle laid down in *Mount Mary Enterprises v. Jivratna Medi Treat (P) Ltd.*^{vii}

iii. Post-trial amendment –

In *Ajendraprasadji N. Pandey vs. Swamy Keshavprakeshdasji*,^{viii} in the absence of due diligence, the trial Court denied a petition for amendment submitted after the trial began, and the Honourable Supreme Court noted that the trial Court had correctly rejected the remedy of amendment. It was decided that, in accordance with the proviso, no amendment request may be granted after the trial had already started, unless the issue could not be brought up prior to the trial's start despite every effort. It is evident that until the due diligence condition is met, no pleading application will be permitted once the trial has begun.

iv. Amendment to change valuation -

It is an established law that the Court does not analyze the merits of the case and decide whether the claim made in the amendment is legitimate while determining whether or not to grant it. Additionally, it is established law that a Court cannot reject an amendment just because doing so will oust the pecuniary jurisdiction of the Court.^{ix} In *Mount Mary Enterprises v. Jivratna Medi Treat (P) Ltd.*,^x at first, the suit property was valued at Rs 13,50,000. After realizing that the property in question had a market value of around Rs 1,20,00,000, the plaintiff filed an application to amend the plaint. After the trial Court denied the petition, the case ultimately reached the Honorable Supreme Court, which granted the amendment. It was decided that an amendment application should be granted generally unless doing so would affect the essence of the matter or cause the defendant any prejudice. As the suit was for specific performance and the property was originally valued at Rs 13,50,000, it was decided that granting the amendment application would not change the nature of the case because the plaintiff had legitimately filed an application for an amendment to provide the correct value of the suit property in the plaint, even though the property's market value was actually Rs 1,20,00,000.

v. Amendment to bring barred claims-

It is undisputable that if a new amendment which would be prohibited by limitation is sought, Courts would often refuse to allow changes. Nevertheless, the same may be permitted if it is necessary for the sake of justice.^{xi}

vi. Amendment of written statement-

It is a well-established notion that a prayer for the plaint to be amended and a petition for the written statement to be amended are on separate grounds. Amendments to plaints are subject to the general rule that pleadings cannot be changed in a way that would materially change or substitute the cause of action or the nature of the claim. It is not equivalent to the principles pertaining to amendment of the written statement. Therefore, while adding, changing, or substituting a new cause of action in the plaint may be problematic, adding a new basis of defence, changing a defence, or making conflicting pleas in the written statement would not be.^{xii} Because there would be significantly less concern about prejudice in the context of amendment of a written statement than in a plaint, the Courts are more lenient when it comes to permitting an alteration.^{xiii}

3. Conclusion and general principles -

The discretion to permit an amendment is clearly broad and may be properly used at any time for the sake of justice. However, judicial factors regulate the exercise of such broad discretionary powers, and the more discretion, the more caution and care the Court should exercise. Any changes to the pleadings that are required to identify the real issues in the case should be permitted, so long as the proposed change doesn't change or replace the initial cause of action or defence that was raised. It should not be permitted to alter the pleadings in order to include contradictory or inconsistent claims that contradict the acknowledged position of facts or that are mutually destructive. The other party shouldn't suffer any harm from the proposed alteration that can't be made up.^{xiv} No change should be permitted that

would defeat a legal entitlement that the opposing party has accrued due to the passage of the time. Costs should be appropriately awarded for the delay in submitting the petition for amendment. If the error or mistake is not fraudulent, it should not be used as a reason to deny the application to amend plaint or written statement.^{xv} Certain general principles as laid down by Hon'ble Supreme Court recently in *Dinesh Goyal alias Pappu v. Suman Agarwal*,^{xvi} which can act as a guiding factor while deciding the petition of amendment is summarized as under :

- a. As long as it doesn't unfairly or negatively impact the adversary, all petitions that are required to ascertain the true issues at hand are permissible.
- b. If the alteration is necessary for a proper and efficient resolution of the dispute between the parties, the prayer for an amendment is tenable.
- c. If the alteration is malicious, or deprives the opposing party of a legitimate defence, amendment cannot be granted.^{xvii}
- d. The Court must typically be liberal when handling a prayer for a change of pleadings and refrain from taking a too technical approach, particularly where the opposing party may be reimbursed with costs.
- e. The amendment should be granted if it will help the Court in reaching a more satisfying ruling and allow it to evaluate the dispute in a comprehensive manner.
- f. When an amendment is meant to address important details, it may be justified.^{xviii}
- g. Delay in filing of amendment petition is not itself a ground to reject it.
- h. An amendment must be rejected if it alters the suit or the cause of action in a way that creates an entirely different case from the one outlined in the plaint. However, in most cases, the amendment must be granted if it simply pertains to the relief in the plaint and is based on facts that have already been stated in the plaint.
- i. The Court must exercise discretion when the change is requested prior to the start of the trial. The Court must consider that the opposing party would have an opportunity to present the case as outlined in the amendment. Therefore, the change must be permitted if it does not cause irreversible harm to the opposing party or deprive it of an advantage that it had gained as a result of an acknowledgment by the party requesting the amendment. On the other hand, the change ought to be permitted if it

is required for the Court to efficiently decide on the primary matters in dispute between the parties.^{xix}

ⁱ *Rajesh Kumar Aggarwal v. K.K. Modi*, (2006) 4 SCC 385.

ⁱⁱ *Ibid.*

ⁱⁱⁱ *Chander Kanta Bansal v. Rajinder Singh Anand*, (2008) 5 SCC 117

^{iv} *M. Revanna v. Anjanamma*, (2019) 4 SCC 332,

^v *Gautam Sarup v. Leela Jetly*, (2008) 7 SCC 85

^{vi} AIR 2006 SC 2832.

^{vii} (2015) 4 SCC 182.

^{viii} (2006) 12 SCC 1.

^{ix} *Lakha Ram Sharma v. Balar Mktg. (P) Ltd.*, (2008) 17 SCC 671.

x *Supra* note vii.

^{xi} *L.J. Leach & Co. Ltd. & Anr. v. Jardine Skinner & Co.*, AIR 1957 SC 357

^{xii} *Usha Balashaheb Swami v. Kiran Appaso Swami*, (2007) 5 SCC 602.

^{xiii} *Ibid.*

^{xiv} *B.K. Narayana Pillai v. Parameswaran Pillai & Anr.*, (2000) 1 SCC 712

^{xv} *Ibid.*

^{xvi} 2024 SCC OnLine SC 2615

^{xvii} *Ganesh Prasad v. Rajeshwar Prasad*, 2023 SCC OnLine SC 256

^{xviii} *Ibid.*

^{xix} *Life Insurance Corporation of India v. Sanjeev Builders Private Limited*, 2022 Live Law (SC) 729

Bibliography: -

Primary Source: -

- a. The Code of Civil Procedure (Act 5 of 1908).

Secondary Source: -

- a. All India Reporter
- b. Supreme Court Cases
- c. SCC OnLine
- d. Live Law