

Amendment of pleadings - the aspect of limitation

“ ... it is a well-established principle that the object of courts is to decide the rights of the parties, and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights. ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it can be done without injustice to the other party...”

- **Lord Justice Bowen**

in case of H.Cropper v. Smith (1884) 26 Ch. D. 700

Introduction

In Civil litigation, pleadings serve as the bedrock upon which disputes are framed and adjudicated. These formal documents—plaints by plaintiffs and written statements by defendants – outline the factual basis for claims and defenses, enabling courts to ascertain the rights and liabilities of the parties involved. However, as litigation progresses, parties may need to modify their pleadings to reflect new facts, correct errors, or address unforeseen circumstances. The Code of Civil Procedure, 1908 (CPC), under Order VI Rule 17, provides a mechanism for such amendments. Yet, this provision does not confer an absolute right; it is tempered by judicial discretion and significantly influenced by the law of limitation.

The amendment of pleadings is governed by Order VI Rule 17 of the CPC, which grants courts the discretion to permit amendments at any stage of the proceedings, provided they are necessary for determining the real questions in controversy. However, this discretion is not absolute—amendments must not prejudice the opposing party or circumvent the law of limitation, which bars stale claims.

What is meant by “Pleading”

A Pleading is a formal document in which a party to a legal proceeding (esp. a civil lawsuit) sets forth or responds to allegations, claims, denials or defenses. It forms an important part in the resolution of dispute between parties as it contains

fact which forms the basis on which the rights and liabilities of the party to the suit are ascertained.

The provisions with regards to Pleading are found under Order VI of the Code of Civil Procedure, 1908 (hereinafter, the Code). The term pleading is not defined in the code, but under Order VI Rule 1 is stated in the following manner:

*“Pleading”, shall mean *plaint* or *written statement*.*

Plaint as stated above contains the statement of facts which are provided by the plaintiff in order to prove his claim against the defendant. On the other hand, written statements are the statement of defence by the defendant in response to the facts alleged for a claim by the plaintiff. The provision in relation to plaint is provided under Order VII and that of written statement is found under Order VIII of the Code.

Amendment of Pleading:

Before advertent to the aspect of limitation we have to consider the concept of amendment of pleadings in the following perspective:-

- 1) Where the court has general power to order striking off or amend the pleadings under Rule 16 of Order VI
- 2) Where the court has power to allow a party to the proceedings to amend his pleadings under rule 17 of Order VI
- 3) Where the Court has general power to amend the proceedings under section 153 of CPC.

I. Amendment of Pleadings under Order VI rule 16

Rule 16 of Order VI took care to ensure fair trial free from abuse of process and delay and invested power in the court to order the amend of pleadings in the following circumstances where the court finds that the pleadings:

- i. are scandalous, vexatious, unnecessary or frivolous
- ii. tend to prejudice, embrace or delay the fair trial of the suit
- iii. which may otherwise an abuse of process of court.

This rule does not provide any time frame. The court can order at any stage of the matter.

II. Where the court has power to allow a party to the proceedings to amend his pleadings under rule 17 of Order VI

Amendment of pleadings by the parties under Order VI Rule 17, which is reproduced as below:

“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.”

This provision under the code has had a chequered history. The provision has been adopted and interpreted a number of times by the apex court as well as the different High Courts in order to allow the parties to present their complete claims as well as to bring an end to litigation. We will look at the same under the various heads hereinafter.

Firstly, the provision under the order and the particular rule can be interpreted to mean that the court has discretionary power to allow any party to the matter, at any stage, to amend the pleadings by way of alteration, deletion, or addition. The court may or may not allow the parties to amend the pleadings. Further, the court has the power to decide on case to case basis the manner and terms on which the parties may be allowed to amend the same. Therefore, it can be said that the amendment of pleadings is not a right vested with the parties, but is at the discretion of the court.

Secondly, the other part of the Rule 17 of Order VI leaves no discretion to the court but is mandatory. It orders the court to allow only all such applications for the

amendment of pleadings, which are necessary to determine the real questions in controversy between the parties. It is to be noted that the rule allows the court to exercise the discretion before the commencement of trial.

Lastly, the proviso to the rule states that the court shall not allow permission to any application for the amendment of pleadings after the commencement of trial. The second part of the provision states that an application for amendment can be allowed even after the commencement of trial if 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.

Key Features of the Rule:

- Discretionary Power of the Court:
- The court has the authority to allow amendments at any stage before the trial begins.
- The amendment must be necessary to resolve the real dispute between the parties.
- Proviso – Post-Commencement of Trial:
- After the trial begins, amendments are barred unless the party proves that, despite due diligence, they could not have raised the matter earlier.

The Privy Council emphasized that procedural rules should facilitate justice, not obstruct it. The concept of amendment of pleadings can be traced back to the decision of the Privy Council in the case of *Ma Shwe Mya vs. Maung Mo Huang*, where “the Court observed that the rules of Courts are nothing but provisions intended for securing the ends of justice and all those rules must be subordinate to achieve that purpose. For that to be achieved, full powers of amendment must be enjoyed and liberally exercised by the courts and it has added a caveat that an amendment cannot be made to substitute one cause of action for another.”

III. Where the Court has general power to amend the proceedings under section 153 of CPC.

This contingency also is provided by the Code to *secure fair trial of the suit* and technicalities shall not stand in the way of substantial justice.

- 1) Though this section does not use the word '**pleadings**' but the word '**proceedings**' used in it is more comprehensive and wide enough enabling the parties to correct the defects and errors in the plaint and written statement also.
- 2) Where a party wants to correct his pleadings which does not form part of material facts basing on which he sought the adjudication he can apply to cure the defect under this section. The instances are normally and generally:
 - a. Correction of name of the party in the cause title
 - b. Correct of any defect in the verification of plaint or written statement
 - c. Inclusion of the name of heir of party who happens to be dead person as on the date of presentation of suit
 - d. Inclusion of heirs of deceased party who died interregnum to the decree and the presentation of appeal.

Guidelines for Amendment of pleadings

Two judge bench comprising of Hon'ble Justice Anirudha Bose and Hon'ble Justice J.B Pardiwala in the case of *Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. and Anr* - 2022 LiveLaw (SC) 729 has laid down guidelines to be kept in mind for amendment of pleadings under Order VI Rule 17 of the Code of Civil Procedure, 1908 ("CPC").

The guidelines are as follows:

(ii) 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 VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) 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).

(iv) A prayer for amendment is generally required to be allowed unless

(i) 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,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

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

(vi) 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.

(vii) 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.

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

(ix) 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.

(x) 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.

(xi) 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*, 2022 SCC OnLine Del 1897)

Factors to be considered for amendment of plaint

Factors to be taken into consideration while dealing with the applications for amendments are given by the Hon'ble Apex court in *Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others*-2009 SCC 10 84

"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 effective adjudication of the case;
- (2) Whether the application for amendment is bona fide or mala fide;
- (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 multiplies litigation;
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) **As a general rule, the court should decline amendments, if a fresh suit on the maddened claims would be barred by limitation on the date of application;**

In *Kedar Nath Agrawal (Dead) and another Vs. Dhanraji Devi (Dead) and another*, (2004) 8 SCC 76, the Hon'ble Apex Court while relying upon the earlier law laid down by the Apex Court, held as under:-

16. In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this: The basic rule is that the rights of the parties should be determined on the basis of the date of institution of the, suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:

- (i) The relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or
- (ii) It is necessary to take notice of subsequent events in order to shorten litigation; or
- (iii) It is necessary to do so in order to do complete justice between the parties.

[Re: Shikharchand Jain v. Digamber Jain Praband Karini Sabha and Ors., SCC p. 681, para 10].

Considering the issue of limitation in Amendment of pleading proceeding

The Law of Limitation applies to amendments of pleadings, meaning that a court will generally decline to allow amendments that would introduce a time-barred claim, or if the amendment changes the nature of the suit.

Key Points Regarding Applicability of Law of Limitation to Amendments:

- **Purpose of Amendments:** Amendments to pleadings are allowed to enable parties to address unforeseen circumstances or to present a more complete case.
- **Discretion of the Court:** Courts have discretion to allow or disallow amendments, considering whether the amendment is necessary to determine the real questions in controversy.

- **Time-Barred Claims:** Courts generally refuse to allow amendments that would introduce a claim that would be time-barred if a fresh suit were filed based on that claim.
- **Change in Nature of Suit:** Amendments that fundamentally alter the nature of the suit or introduce new issues that were not part of the original case may also be disallowed.
- **Order 6, Rule 17 of CPC:** The Code of Civil Procedure (CPC) governs the procedure for amending pleadings, allowing parties to alter or amend their pleadings at any stage of the proceedings, subject to the court's discretion.
- **No Limitation for Decree Amendment:** There is no limitation period for applying to amend a decree under Section 152 of the CPC, however, the power to amend is limited to the scope of the section.
- **Example:** If a suit was filed for recovery of money and the original pleadings stated a specific date of the loan, but the amendment seeks to change the date to a date outside the limitation period, the court may refuse to allow the amendment.
- **No Limitation** for seeking amendment plaintiff for **alternative relief** for refund of earnest money under section 22 of specific relief Act.

Section 22 of Specific Relief Act starts with non-obstante clause saying that notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, a person suing for the specific performance of a contract may also claim certain reliefs and those additional reliefs cannot be granted by the Court without having been asked for. However, the amendment praying those reliefs can be made at any time during the proceeding. Therefore, right from the day on which the suit is filed till the day on which the execution is fully satisfied, plaintiff decree-holder can amend the plaint and pray for reliefs like partition and separate possession or refund of consideration or deposit. There is no question of any limitation. This is a special provision which excludes operation in other rule on limitation so far as these prayers are concerned as held by the Hon'ble High court of Bombay in case of

Kutbuddin Riyazuddin Shaikh Vs. Subhash Rangnath Wadane - 1998(3) ALL MR 19.

Obviously these additional reliefs fall for consideration only on the adjudication of the main relief sought for in the suit.

Doctrine of Relation Back

The Doctrine of Relation Back allows an amended pleading to be treated as if it were part of the original pleading for certain legal timelines, such as limitation periods. This means that the filing date of the original suit is considered the effective date for the amended claims, preventing parties from restarting the limitation period through amendments.

According to the principle established in *Sampath Kumar v. Ayyakannu* - AIR 2002 SC 3369 and *Tarlok Singh v. Vijay Kumar Sabharwal*-(1996) 8 SCC 367 unless the amendment seeks a new relief or introduces a new cause of action, the limitation period generally relates back to the original filing date.

The Court emphasized that the amendment was grounded in admitted facts already present in the record, thereby not bypassing the doctrinal safeguards against delay in litigation.

Referencing *Siddalingamma v. Mamtha Shenoy*-AIR 2001 SC 2896 Hon'ble Court reiterated that the doctrine of relation back applies unless explicitly restricted. In this case, no such restriction was applied, and the amendment was seamlessly integrated into the original pleadings.

What the limitation of the term 'sue' used in Order II Rule 2

The term 'sue' in Order II Rule 2 of the Code of Civil Procedure should be read in the light of the entire tenure of the suit, not just the point of institution, and the omission to sue or intentional relinquishment of a part of claim would have to mean that the court has to wait till the culmination of the suit for the plaintiffs to ask for a claim relinquished, or relief omitted, in the first suit, in a subsequent suit, for

attracting the bar of Order II Rule 2 of the Code as held by the Hon'ble High court of Calcutta in the case of *Twilight Properties Pvt. Ltd. VS Supratik Bhattacharjee* -2019 SCC ONLINE CAL 8173

"due diligence" means

What is *due diligence* has though not been defined in the Code, but has then been explained by the Hon'ble Supreme Court in *Chander Kanta Bansal v. Rajinder Singh Anand*- (2008) 5 SCC 117 in the following terms: –

"16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn.2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn.13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

Whether time barred relief can be permitted to introduce by way of amendment of plaint

In *Vineet Kumar Vs. Mangal Sain Wadhera*, (1984) 3 SCC 352 the Hon'ble Supreme Court held that it is well recognized that where the amendment does not constitute the addition of a new cause of action, the amendment would be allowed even after the statutory period of limitation.

In Case of Laxmidas Dahyabhai kabarwala v. Nanabhai Chunilal Kabarwala, 1964 AIR SC 11 the Hon'ble Supreme Court held as under:

"it is, no doubt, true that, save in exceptional cases, leave to amend under Or. 6, Rule 17 of the Code will ordinarily be refused when the effect of the amendment would be take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations are added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an

existing pleading and does not in substance add or to alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. "

In the year 1957, the Hon'ble Supreme Court laid down in *L.J. Leach & Co. Ltd. v. Jardine Skinner and Co.*- AIR 1957 SC 357 that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.

In case of *Aisha v. State of Jammu & Kashmir*- AIR 1978 J & K 34 the Hon'ble High court of Jammu & Kashmir High court pleased held that:

" It is also well settled that amendments to the pleadings may not be allowed if it is found that the application for this purpose is not made in good faith and also if this may not be done without causing injustice to the opposite party. The general rule is to allow the amendment of the pleadings but it may be done only in cases where no injustice is caused to the other side. While considering the request for amendment of the pleadings, the most important aspect to be gone into is whether or not by permitting an amendment injustice would result to the other side. If an amendment if allowed takes away from a party a right accrued to him by lapse of time, it may well be said that it would undoubtedly result in injustice to that party. As a rule the plaintiff may not be allowed to amend the plaint by introducing a new cause of action which has become time barred since the institution of the suit. In other words no such amendment should be allowed as will take away a valid defence under the law of Limitation"

It is important to note that there is no straitjacket formula for addressing the limitation issue in amendment of pleading. A mere delay cannot be a ground for refusing a prayer for amendment and the determination is entirely discretionary and depends on the specific facts and circumstances of each case and . In this regard, the Hon'ble Supreme Court in case of *Pankaja and Anr. vs. Yellappa (dead) by Lrs. And Ors.*-(2004) 6 SCC 415) held as follows:

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts

and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really sub serves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392] . Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice".

It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 CPC is to be allowed if such an amendment is required for proper and effective adjudication of real controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of the plaintiff, depending on the facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side.

A Division Bench of Hon'ble High of Court of Andhra Pradesh in *Jangili venkateswarlu and others v. Bandaru omakaraiah and another-* 2003 (2) ALD 259

"The plaintiffs instituted the suit for mere injunction asserting that they were in possession of suit schedule land, but they could not establish the same. Once the suit was dismissed holding that they were not in possession as on the date of the suit a different cause of action arose and it cannot be said that the new relief of recovery of possession sought by way of amendment is based on the original cause of action pleaded in the suit. As a matter of fact, the alternative relief of possession was available to be asked

for when the suit was filed or at least when the defendants filed written statement asserting that the possession of suit land was never delivered to the plaintiff/s under Ex. A-1 sale deed. In our considered opinion, the plaintiffs who failed to seek appropriate relief either pending the suit or immediately after the dismissal of the suit in which there is a clear finding against them cannot be permitted to seek the relief of recovery of possession by way of amendment of pleading after a long lapse of 20 years after the dismissal of the suit. Allowing such an amendment would be nothing but extending the period of limitation to an unsuccessful plaintiff. Certainly the amendment seriously prejudices the defendants, which cannot be compensated in costs, since the valuable right accrued to them to raise the plea of adverse possession would be defeated."

The Hon'ble Apex Court in *B.K Narayana Pillai v. Parameswaran Pillai* (2000) 1 SCC 712 after referring to a number of decisions, the Hon'ble Apex Court held that:

" The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation."

In Para No.4 of the same judgment this Court has quoted the following passage from the judgment in *A.K Gupta and Sons Ltd. v. Damodar Valley Corpn.* AIR 1967 SC 96, (1966) 1 SCR 796: (AIR pp. 97-98, Para No.7)

"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal* (1887) 19 QBD 394. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different

or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See Charan Das v. Amir Khan AIR 1921 PC 50 and L.J Leach and Co. Ltd. v. Jardine Skinner and Co. AIR 1957 SC 357, 1957 SCR 438”

In *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* reported in (1969) 1 SCC 869, the Hon’ble Apex Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

The settled position is that amendment of pleadings can be allowed at any stage of the proceedings, provided it is necessary for the purpose of deciding the controversies between the parties. They further clarified that even if such an amendment is barred by time, that factor is to be taken into consideration in exercise of the discretion as to whether amendment should be allowed or not and when it does not affect the cause of action and when it does not introduce a new case and when there is no serious prejudice caused to the opposite party and when such amendment is required to do justice, the Court has wide discretionary power to allow such amendment as held by the Hon’ble High Court of Madras in the case of *Hi. Sheet industries v. Litelon limited* - 2007 AIR MAD 78

In situation where there is a dispute as to the bar of limitation the Hon’ble Supreme Court in the case of *Ragu Thilak D. John Vs. S. Rayappan & Ors.*- 2001(2) SCC 472 (supra) has held :-

“The amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case. The plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for.”

Correcting party description does not bar limitation, in case of *Andhra Pradesh State Electricity Board v. Patel And Patel*-1976 ANDHWR 2 241 the Hon’ble High Court of Andhra Pradesh held that:

“What is manifest from the aforesaid authorities is that the provisions of the Code of Civil Procedure are intended to defend but not to defeat the substantial justice. It is the substance that has got to be looked into but not the form in which the pleadings are drafted. The Court is always competent to correct mere errors of description under the provisions of the Code of Civil Procedure, particularly under Order 1, Rule 10 of the CPC. Mere correction of errors as regards description does not involve any addition or substitution of parties as to attract the inhibition of the provisions contained in Section 21 of the present Limitation Act....”

It is well settled that when there are several reliefs claimed in a suit, the limitation period would be that of the main relief, the limitation for ancillary relief being ignored and further held that the court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of cost as held by Hon’ble Supreme Court in its very recent judgment in *Mallavva vs. Kalsammanavara Kalamma (Since Dead) By Legal Heirs* on 20 December, 2024 - -2024 INSC 1021.

English Jurisprudence: Cropper v. Smith

The English case of Cropper v. Smith (1884) Ch D 700(CA), endorsed by Indian courts, underscores that courts exist to resolve disputes, not punish procedural errors. Amendments correcting mistakes, absent fraud or injustice, are a matter of right, not grace - a principle echoed in India rulings like Revajeetu Builders.

Scope of the proviso.

Order 6 Rule 17 Proviso says

“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** unless the court finds the party could not have raised the matter earlier despite due diligence:”

The proviso under this rule says that after the trial has commenced, an application for amendment shall not be allowed.

“Commencement of trial”

Two Judge Bench of the Hon’ble Supreme Court decided *Baldev Singh and Others Vs Manohar Singh and another* - (2006) 6 SCC 498, AIR 2006 S.C. 2832.

“That apart the commencement of the 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

The Hon’ble Apex court in *Ajendra Prasadji N. Pandey v. Swami Keshav Prakesh Dasji N.* -(2006) 12 SCC 1, 2006(13) SCALE 525and AIR 2007 S.C. 806 In Para 57 of the decision, it was observed as follows:, , (2006)12 SCC 1

“54. It is submitted that the date of settlement of issue is the date of commencement of trial. [Kailash Vs Nankhu & Ors.]. Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination-in-chief as date of commencement of trial, the matter will fall under the proviso to Order 6 Rule 17 CPC. The defendant has, therefore, to prove that in spite of due diligence, he could not have raised the matter before the commencement of trial.....”

Time frame after leave granted.

In terms of **Order 6 Rule 18** of the Code of Civil Procedure, such amendments are required to be carried out in the pleadings by a party which has obtained leave to amend his pleadings within the time granted therefore and if no time was specified then within fourteen days from the date of passing of the order. The consequence of failure to amend the pleadings within the period specified therein as laid down in Order 6 Rule 18 of the Code is that the party shall not be permitted to amend its pleadings thereafter unless the time is extended by the court.

As per **Rule 28 of A.P. Civil rules of practice** An application for amendment made under Order I, Rule 103, Order VI, Rule 17, or Order XXII of the Code, shall

also contain a prayer for all consequential amendments. The Presiding Officer shall reject the application if it is not in accordance with the law or these rules. Provided that verbal corrections may at any time be made in pleadings with permission of the Court.

Conclusion:

The amendment of pleadings under Order VI Rule 17, when viewed through the lens of limitation, reveals a judicial endeavour to harmonize procedural adaptability with legal certainty. Courts wield discretionary power to permit amendments, guided by a liberal ethos to achieve justice, yet tempered by the need to protect rights accrued through time.

To summarise the scope of the right of applicant vis a vis the power of the courts to grant leave to amend the precedential plethora till 2002 time and again provided the guide lines for liberal approach inter alia cautioned by the limits of laches though not limitation of time frame.

Equity does not prescribe a specific period of limitation. It considers the circumstances of each case. Chiefly the law of equity considers in every case independently as to

1. Whether there is any delay on the part of the plaintiff in approaching the court for his redressal?
2. If so such delay amounts to laches?
3. Whether there is any delay on the part of the plaintiff in approaching the court for his redressal?
4. If so such delay amounts to laches?

Acquiescence in this sense does not mean standing by while the violation of the right is in progress, but assent after the violation has been completed and the plaintiff has become aware of it.

EQUITY considers that

- a. it is unfair to give relief to the plaintiff, which by his conduct, reasonably and fairly be inferred, that he has waived such right.

- b. Or though not waived the remedy, a plaintiff, by his conduct and neglect, puts the other party in a position in which it would not be reasonable to place him if the remedy were after to be asserted.

In such case lapse of time and delay are more material. Each case is to be decided on its own facts and circumstances.

The above test is the prime and ultimate consideration to recognize the right of party either to allow him for an independent action or to amend the action already initiated. It is controlled by his diligence and vigilance. Generally, the courts were liberal to allow the amendment if no further pleadings and further evidence are required and by settling the issue on the point raised by amendment. Time-barred amendments may be allowed if they clarify existing claims, avoid litigation multiplicity, or serve justice without prejudice. However, they are curtailed when they introduce new causes of action or disrupt the suit's essence.

Ultimately the principle is statutorized by enacting proviso to Order VI Rule 17 making the absence of diligence and vigilance of the party a bar to seek the amendment of pleading. It is thus founded more on the principle of laches than on rule of limitation.

Therefore, the time barred amendments may be allowed if they clarify existing claims, avoid litigation multiplicity, or serve justice without prejudice subject to principle of "due diligence" in the proviso after the commencement of trial is strictly applicable.

----- o O o -----

- **Grandhi Subrahmanyam**
XI Addl. District & Sessions Judge
Gudivada