

**12 SCOB [2019] HCD**

**HIGH COURT DIVISION**

**(CIVIL REVISIONAL JURISDICTION)**

Civil Revision no. 4486 of 2015

**British American Tobacco Bangladesh Company Ltd., represented by its Company Secretary Md. Azizur Rahman, New DOHS Road, Mohakhali, Dhak-1206.**

..... Defendant-petitioner.

Versus

**Begum Shamsun Nahar,**

.....Plaintiff-opposite party.

Mr. A.J. Mohammad Ali, Senior Advocate with Ms. Rubaiyat Hossain, Advocate, and Ms. Jamila Mamtaz, Advocate,  
..... For the defendant petitioner.

Mr. Muhammad Nawshed Jamir, Advocate, with  
Mr. A.H.M. Abdul Wahab, Advocate,  
Mr. Reajul Hasan, Advocate, and  
Mr. Tanvir Prodhan, Advocate,  
... For the Plaintiff opposite party.

Hearing on: 04-10-2017,

And

Judgment delivered on: 05-10-2017

**Present:**

**Mr. Justice Syed Md. Ziaul Karim**

**And**

**Mr. Justice Sheikh Md. Zakir Hossain**

**Principle to amend Pleadings;**

**We find that one of the fundamental principles governing the amendment of the pleadings is that all the controversies between the parties as far as possible should be included and multiplicity of the proceedings avoided. ... (Para 15)**

**JUDGMENT**

**Syed Md. Ziaul Karim, J:**

1. This Rule was issued on an application under section 115(1) of the Code of Civil Procedure ( briefly as the Code) at the instance of defendant petitioner calls in question the legality and propriety of the order dated 14-10-2015 passed by learned Joint District Judge and Arbitration Court, Dhaka, allowing an application for amendment of the plaint of Money Suit no. 26 of 2013 under order VI Rule 17 of the Code.

2. Material facts leading to this Rule, are that on 23-05-2004 opposite party as plaintiff instituted Money Suit no. 32 of 2004 in the first Court of Joint District Judge, Dhaka, impleading the petitioner as defendant for realization of money for Tk.2,50,38,000.00 from the defendant.

3. The relieves claimed in suit reads as hereunder:

- a. A decree for damages against the defendant in favour of the plaintiff for Tk.2,50,38,000.00 only may kindly be passed with cost;
- b. Interest at the rate of 15% (fifteen percent);

- c. The defendant may be directed to pay the decreetal amount to the plaintiff or to deposit the same in court within a time to be specified by this honorable Court.
- d. In case of failure on the part of the defendant to satisfy the decree passed by the honorable Court the decreetal amount may be recovered by attachment and sale of moveable and immovable properties belonging to the defendant;
- e. The decreetal amount if recovered may be directed to be paid to the plaintiff;
- f. Such other relief or relieves this honorable court deems just and proper may be granted to the plaintiff.

4. In suit, the plaintiff by filing an application dated 12-11-2012 sought to amend the plaint under Order VI Rule 17 of the Code by incorporating some clarification of the statements already made in the plaint and some correction of error apparent from the face of the plaint. The defendant opposed the proposed amendment by filing written objection stating that the proposed amendment will change the nature and character of the suit which cannot be allowed.

5. After hearing the learned Judge of the Court below by the impugned order allowed the application for amendment.

6. Feeling aggrieved the defendant as petitioner filed the instant application and obtained the present Rule.

7. The learned Advocate appearing on behalf of the petitioner seeks to impeach the impugned order on two fold arguments:

**Firstly:** The plaintiff by identical application sought to amend the plaint earlier which was allowed by the Court below but the same was set aside by the High Court Division on 22-01-2014 in Civil Revision no.355 of 2013, wherein this Court directed the Court below to pass a proper judgment considering the amendment application with written objection in accordance with law. He adds that the impugned order is a non-speaking order which cannot be sustained in law.

**Secondly:** Later, another identical application was allowed without complying this Court's direction. So the impugned order cannot be sustained in the eye of law.

8. The learned Advocate appearing for the plaintiff opposite party opposes the Rule and candidly submits that the trial Court did not comply the direction of this Court. He, however submits that non-speaking impugned order itself is not the valid ground for interference by the High Court Division. He lastly submits that by such non speaking impugned order will not affect the merit of this case.

9. In support of his contention he refers the case of Abdul Motaleb Vs. Md. Ershad Ali and others 18 BLD (AD) 121 held:

***" Section -115)  
Non-Speaking Order-***

*Simply because the impugned order was not a speaking order, could not by itself be a valid ground for interference by the High Court Division unless it can be shown that the subordinate Court has committed any error of law "resulting in an error in the decision occasioning failure of justice.*

*The order of the subordinate Court may have been a bad order and improper one not having given any reasons but before interfering with the same the High Court Division is required to examine whether the same has resulted in an erroneous decision occasioning failure of justice.*

**Order VI Rule 17**

*Since all rules of the Court are intended to secure the proper administration of justice, it is essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment be enjoyed and as such it should always be liberally exercised. The only limitation in allowing an amendment of the plaint is that the proposed amendment should not change the fundamental character and nature of the suit. The settled law that amendment of pleadings may be allowed at any stage of the proceedings for the purpose of determining the real controversy between the parties."*

10. In order to appreciate their submissions we have gone through the records and given our anxious considerations to their submissions.

11. The point for consideration whether the impugned order calls for interference by this Court.

12. On going to the materials on record it transpires that it is the definite case of plaintiff that proposed amendment are for clarification of some statements made in the plaint and will not change the nature and character of the suit.

13. For the convenience of understanding the Provisions of Order VI Rule 17 of the Code reads as hereunder:

*" 17- 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 question in controversy between the parties.*

14. Therefore, Order VI Rule 17 of the Code 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 term as may be just and necessary for the purpose of determining the real question in controversy between the parties. The proposed amendment would settle the question of disputes between the parties. This will end all pending controversies between the parties and will not amount to a change in the nature and character of the suit.

15. It transpires to us that proposed amendment will in no way change the nature and character of the suit rather the plaintiff wants to amend his plaint by proposed amendment for proper and complete adjudication of the suit which do not appear to be inconsistent, irrelevant, immaterial or contradictory of the facts of suit. We find that one of the fundamental principles governing the amendment of the pleadings is that all the controversies between the parties as far as possible should be included and multiplicity of the proceedings avoided.

16. Therefore, we hold that the proposed amendment is necessary for the purpose of determining the real questions in controversies between the parties and proper adjudication of the suit. Moreover, the respective party will prove their own case by adducing evidence and

other party has the ample opportunity to file additional written statement against such amendment and to prove their case at the time of hearing.

17. In the case of Abdul Mutaleb Vs. Ershad Ali 1998 BLD(AD)121=4 BLC(AD)150 held:

*“ Since all rules of the Court are intended to secure the proper administration of justice, it is essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment may be enjoyed and, as such, it should always be liberally exercised. The only limitation in allowing an amendment of the plaint is that the proposed amendment should not change the fundamental character and nature of the suit. The settled law is that amendment of pleadings may be allowed at any stage of the proceedings for the purpose of determining the real questions in controversies between the parties.”*

18. This view receives support in the case of Md. Khaledur Reza Chowdhury Vs. Saleha Begum and others 1997 BLD(AD) 86= 2 BLC(AD) 20, S.N. Roy Chowdhury Vs. A. Jabber and others 1994 BLD 229=46 DLR 273. Moyjuddin Mondol Vs. Bena Rani Das and others 45 DLR 154 and M. A. Jahangir and others Vs. Abdul Malek and others 41 DLR 389.

19. In the light of discussions made above and the preponderant judicial views emerging out of the authorities referred to above, we are of the view that the Court below rightly allowed the application for amendment. We find that earlier in Civil Revision no. 355 of 2013 there was a direction by this Court dated 22-01-2014 to the effect that the trial Court should pass a proper judgment on considering the amendment application itself but such direction was not complied by the Court below we highly disapprove such act of the learned Judge. Therefore, she is cautioned not to do such act in future failing which she should be dealt in accordance with law.

20. In view of foregoing narrative, the Rule is discharged without any order asto cost. The order of stay granted earlier stands vacated.

21. The office is directed to communicate the order at once.

22. Let a copy of judgment and order be served upon Mrs. Monowara Begum, Joint District Judge, Arbitration Court, Dhaka.