

Present  
**Mr. Justice Md. Salim.**

**CIVIL REVISION NO.5397 OF 2023**

Md. Mojibur Rahman and others  
.....The defendant-Petitioners.

**-VERSUS-**

Abul Hossain Majhi and others  
.....The plaintiff-opposite parties.

Mr. Md. Abul Kasem, Advocate  
..... For the petitioners.

Mr. A.K.M. Shamshad, Advocate  
..... For the opposite parties.

**The 28<sup>th</sup>, November,2024.**

By this Rule, the opposite parties were called upon to show cause as to why the impugned judgment and order dated 24.05.2023 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Munshiganj in Title Appeal No.140 of 2013, allowing the application under Order VI Rule 17 of the Code of Civil Procedure for amendment of plaint.

Facts leading to this Rule are that the opposite parties 1-22 as plaintiffs instituted Title Suit 13 of 2011 before the Senior Assistant Judge, Tongibari, Munshiganj, for declaration of title.

Defendants 1-8 contested the suit by filing a joint written statement.

The learned Senior Assistant Judge, Tongibari, Munshiganj, framed necessary issues during the trial.

Subsequently, the learned Senior Assistant Judge, Tongibari, Munshiganj, dismissed the suit by judgment and decree dated 28.03.2013.

Being aggrieved, the plaintiffs preferred Title Appeal No.140 of 2013 before the District Judge, Munshiganj, and on transfer, the appeal is pending for disposal before the Additional District Judge, 2<sup>nd</sup> Court, Munshiganj.

During the pendency of the appeal, the plaintiff opposite parties 1-22 applied for amendment of plaint Order VI Rule 17 of the Code of Civil Procedure. Upon hearing the application, the learned Additional District Judge, 2<sup>nd</sup> Court, Munshiganj, by the judgment and order dated 24.05.2023, allowed the application to amend the plaint.

Being aggrieved, the defendant-respondent as petitioners moved this revision before this Court and obtained the instant Rule and an order of stay.

Mr. Md. Abul Kasem, the learned Counsel appearing on behalf of the petitioners, submits that the appellate Court below committed an error of law resulting in an error in the decision, occasioning failure of justice in not considered that the applicant applied to an amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure after judgment and decree because, after commencement of trial, there is no scope to allow the same unless the Court is satisfied that despite due

diligence, the party could not have raised the matter before the commencement of trial, moreover the above amendment of the plaint changed the nature and character of the original suit and as such the impugned order of the appellant court is liable to be set aside.

Mr. A.K.M. Shamshad, the learned Counsel appearing on behalf of the opposite parties, submits that as per Order VI Rule 17 of the Code of Civil Procedure, the Court has ample power to amend the application at any stage of the suit so the appellate Court justifiedly allowed the amendment application.

I have anxiously considered the submission of the learned advocate for both parties pursued the impugned judgment and order, amendment application, and the other materials on record. It appears that the appellate Court below saying that there is no chance of changing the nature and character of the suit. So, the application for amendment under Order VI Rule 17 is allowed.

Notably, the law relating to the amendment of a plaint is envisaged in Order VI Rule 17 of the Code of Civil Procedure which runs as follows:

“The court may at any stage of the proceeding 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.”

It reveals that if any material facts and necessary particulars are omitted during the drafting of a plaint, such particulars can be added to the pleadings at any stage of the proceedings; there should be some foundation and basis for such amendment. All amendments that may be necessary for determining the real question in controversy between the parties may be allowed, provided it does not cause injustice or prejudice to the other side. Ultimately, courts exist for the purpose of doing justice between the parties and not for punishing them, and they are empowered to grant amendments in the more significant interest of doing complete justice to the parties. Provisions for the amendment of pleadings are intended to promote the ends of justice and not defeat them.

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. If the error or mistake is not fraudulent or is not intended to overreach, the Court ought to correct it if it cannot do injustice to the other side. Courts do not exist for the sake of discipline but to decide matters in controversy. I do not regard such an amendment as a matter of favor or grace. It seems that the amendment will

help determine the fundamental controversy. It is as much a matter of right for the plaintiffs to have the plaint correct by this amendment.

The Rule confers a very wide discretion on courts in the matter of amendment of pleadings. As a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised in pleadings, where the amendment will occasion no injury to the opposite party and can be sufficiently compensated for by costs or other terms to be imposed by the order. In the case of *Kishandas Rupchand and another Vs. Rachappa Vithoba Shilwant and others* reported in (1909) 33 Bom 644) Batchelo, J observed that-

“All amendments ought to be allowed, at any of the proceedings, which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real question in controversy between the parties.”

Therefore, the main points to be considered before a party is allowed to amend his pleadings are, firstly, whether the amendment is necessary to determine the real question in controversy, and secondly, can the amendment be allowed without injustice to the other side? The first condition that must be satisfied before the Court can allow the amendment is whether such an amendment

is necessary to determine real questions in controversy. If that condition is not satisfied, the amendment should not be allowed. On the other hand, if the amendment is necessary to decide the “real controversy” between the parties, the amendment should be allowed even though the Court may think that the party seeking the amendment will not be able to prove the amended plea. This basic test governs the Courts’ unchartered powers of amendment, which should be allowed when it does not satisfy this cardinal test. Thus, it has been held that where the amendment is sought to avoid multiplicity of suits, or where the parties in the plaint are wrongly described, or where some facts are omitted from the plaint by inadvertence, or where there is a mistake in the statement of the case of action, or a bonafide omission in making the necessary averments in the plaint, or a suit is brought under a wrong Act. The amendment should be allowed. The second condition is also equally important, according to which no amendment will be allowed, which will cause injustice to the opposite party. It is a settled law that the amendment can be allowed if it can be without injustice to the other side.

It appears that in an application for amendment after the commencement of trial, the applicant and the Court must write the cogent reason. However, the plain reading of the application under Order VI Rule 17 of the

instant case manifests that the proposed amendment admittedly changed the suit's nature and character. Moreover, the reasons for the delay in the amendment application have not been adequately explained, and the appellate Court allowed the application without giving any cogent reasons.

So, I believe that the Appeal Court committed an error of law, resulting in an error in the decision, occasioning a failure of justice in allowing the application for amendment of the plaint resulted in an error in the decision, occasioning a failure of justice. As such, the impugned judgment and order require interference by this Court.

Resultantly, the Rule is made absolute without any order as to the costs. The impugned judgment and order dated 24.05.2023 passed by the learned Additional District Judge, 2<sup>nd</sup> Court, Munshiganj in Title Appeal No.140 of 2013 is hereby set aside.

The order of stay passed at the time of issuance of the Rule is hereby vacated.

Communicate the judgment at once.

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**(Md. Salim, J).**