

custody only for a total period of fifteen days, at any time during the initial forty or sixty days during the total detention period of sixty days or ninety days, as the case may be. Section 187(2) of the Sanhita enables the police to seek custody of the accused for a total period not exceeding fifteen days, at a single stretch or in segments, at any time during the initial forty days or sixty days of the total detention period of sixty days or ninety days, as the case may be. The total period of police custody, which could be granted either in whole or in parts, can never exceed fifteen days.

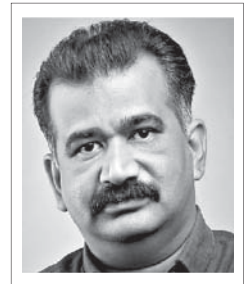
The provision contained in Section 187(2) of the Sanhita finds a solution to the question raised in *Vikas Mishra* and it also, to a certain extent, imbibes the spirit of the decision in the case of *Senthil Balaji*.

What is projected in this article is only a possible view on interpretation of a provision in a new Statute. Experts on the subject may be having other views, more erudite and legally sustainable. Exposition of such views by them would certainly help to clear the confusion created by the introduction of these new provisions on police custody in the Sanhita.

Amendment of pleadings a 'precious baby' with rigour

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The British took the word '*plee*' from French and turned it to '*plea*', better described in Merriam Webster as "formal, usually written allegations and counter allegations made alternatively by the parties in a legal action or proceedings". Blackstone inimitably says that "pleadings are the mutual altercations between the plaintiff and defendant, which at present are set down and delivered into the proper office in writing, though formerly they were put in by their counsel *ore tenas* or *viva voce*, in Court, and then minuted down by the chief clerks or prothonotaries, whence, in our old Law of French, the pleadings are frequently denominated the *parol*¹. Thus, '*plea*' or pleadings are statements in written format, drawn up and filed by each party to the litigation stating what his contentions will be for trial, giving all such necessary details for his opponent to meet, upholding the tenets of '*Principles of Natural Justice*'. Pleadings thus consist of *plaint* and *written statement*, the first stage where a party takes up his

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1. Balckstone, Commentaries on the Law of England (Vol.1 2011 ed. P.293).

stand in respect of the facts they plead². The object of pleadings, plaint of the plaintiff and written statement of the defendant, is to bring them both to a trial by concentrating their attention on the matter in dispute, so as to narrow the controversy to precise issues, and to give notice to the parties of the nature of testimony required on either side in support of their respective cases. Pleadings work in two-fold, one help the Court to ascertain the real *lis*/dispute between the parties to narrow down the conflict and the other help the parties from surprises, and thereby prevent miscarriage of justice. A relief not founded on the pleadings should not be granted, which asserts that decision of the Court cannot be based on grounds outside the pleadings³.

It is the substance and not the form of pleadings that Courts need look into. Intention of the parties to *lis* can be gathered primarily from the language of the pleadings if taken as a whole. Practice of piecemeal reading of the pleading would defeat doing justice to the parties and sticking too much on technicalities is always condemned by the highest Court. Pleadings should be liberally construed and relief should never be denied on statutory technicalities⁴, since the Courts are for doing justice. At the same time, “the litigants must observe total clarity and candour⁵ in their pleadings”.

To err is human and to correct it is divine. The party or his pleader might have missed a significant fact in his pleadings, either unintentionally or under misconception or on any other convincing reasons. If the Court is too strict to pay no heed to such a state of affairs, the parties have to suffer. The Code is a ‘Code’ in itself because it has got the answers to all such exigencies. Courts are for dispensation of justice; not to dispense with it. They cannot act as ‘school masters’ with canes. The Code provide for amendment of pleadings if required for proper and effective adjudication of the controversy between the parties and to avoid multiplicity of judicial proceedings. Effective adjudication of the *lis* and thereby avoidance of an array of further judicial proceedings is the pledge of law Courts⁶.

Amendment of Pleadings

The heroic Mahabharata takes us to the story of a ‘precious baby’ Pareekshit, killed by man and saved by ‘the God’, who later ruled ‘Bharatvarsh’, as he was destined to. Code of Civil Procedure, 1908 as amended up

2. *K. Laxmanan v. Thekkayil Padmini* [(2009) 1 SCC 354 : AIR 2009 SC 951 : 2008 KHC 6999].
3. *Ram Sarup v. Bishun Narain Inter College* [(1987) 2 SCC 555 : AIR 1987 SC 1242 : 1987 KHC 965]; *J. K. Iron and Steel Co. Ltd., Kanpur v. Iron and Steel Mazdoor Union, Kanpur* [AIR 1956 SC 231 : 1956 KHC 397]; *National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad* [(2011) 12 SCC 695 : AIR 2012 SC 264 : 2011 KHC 4811]; *State of Maharashtra v. Hindustan Construction Company Ltd.* [(2010) 4 SCC 518 / AIR 2010 SC 1299 : 2010 KHC 4223]; *Virendra Kashinath Ravat v. Vinayak N. Joshi* [(1999) 1 SCC 47 : AIR 1999 SC 162 : 1999 KHC 947]; *Ganesh Trading Co. v. Moji Ram* [(1978) 2 SCC 91 : AIR 1978 SC 484 : 1978 KHC 500]; *Kalyan Singh Chouhan v. C. P. Joshi* [(2011) 11 SCC 786 : AIR 2011 SC 1127 : 2011 KHC 4068 : 2011 (1) KHC SN 38]; *State of Orissa v. Mamata Mohanty* [(2011) 3 SCC 436 : 2011 KHC 4118].
4. *Radhey Shyam v. State of UP* [(2011) 5 SCC 553 : 2011 KHC 4387].
5. *Amar Singh v. Union of India* [(2011) 7 SCC 69 : 2011 KHC 4491].
6. *Thomson Press (India) Ltd. v. Nanak Builders* 2013 (3) SCALE 26 : 2013 KHC 4156; *J. Samuel v. Gattu Mahesh* [(2012) 2 SCC 300 : 2012 KHC 4030 : 2012 (1) KHC SN 14].

a to date also got a story to tell us on a 'precious baby' who was 'killed' in 1999 by Justice Malimath Committee Recommendations, but survived and "took rebirth" with a rider in 2002⁷ and now leads the role. Order 6 Rule 17 CPC was considered to be one of the main reasons for processual delay in civil litigation and the Committee recommended its deletion from the Statute book. Widespread agitations across the country impelled for its revival, but with rigour. The 'precious baby' is in effect, a costly affair for the system. Its operational scope, ambit, implication, outcome and repercussions reflected in the career of a civil litigation would tell us on the plenitude of the influence reserved in that solitary sentence. The proviso is the rider appended to since 2002.

b ".....the proviso, to some extent, curtails the absolute discretion to allow amendment at any stage. Now if application is filed after commencement of trial, it has to be shown that in spite of due diligence such an amendment could not have been sought earlier. The object is to prevent frivolous applications which are filed to delay the trial⁸". The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of the trial. To avoid surprises and the parties had sufficient knowledge of the other's 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 inspite 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 shut outs in entertaining of any late applications. The reason for adding the proviso is to curtail delay and expedite hearing of the cases⁹. The proviso added to the Rule is for promoting the ends of justice and not to defeat them¹⁰.

c Order 6 Rule 17 CPC claims one more speciality for those who are after the niceties in linguistics of law. One can see the effective dovetailing of both 'shall' and 'may' in the very same sentence to bring out the rigour and beauty in those fine tuned words.

d Order 6 Rule 17 CPC, though petite in form, is the most influential tool in the armoury of a civil lawyer and will do wonders in a suit's course. A clever lawyer uses it as a better bargain against his opponent; a missed lawyer takes refuge to salvage his client's case, an academicians lets him free on the shades of juridical processions on the point and a seasoned lawyer unfolds his skill with precision to do the needful and undo the follies.

e The spirit of the Code insists that the Court need to try the merits of the

7. *Usha Devi v. Rijwan Ahmad* [(2008) 3 SCC 717 : AIR 2008 SC 1147 : 2008 KHC 4081]; *Ramesh Kumar Agarwal v. Rajmala Exports Pvt. Ltd.* [AIR 2012 SC 1887 : 2012 KHC 4199 : 2012 (2) KHC SN 12].

8. *Salem Advocate Bar Assn. II v. Union of India* [(2005) 6 SCC 344 : AIR 2005 SC 3353 : 2005 KHC 1281]

9. *Chandra Kanta Bansal v. Rajinder Singh Anand* [(2008) 5 SCC 117 : AIR 2008 SC 2234 : 2008 KHC 4488].

10. *Vidyabai v. Padmalatha* [(2009) 2 SCC 409 : AIR 2009 SC 1433 : 2009 (1) KHC 560].

case comes before it and not too much to technicalities. Though material facts and necessary particulars must be stated in the pleadings, many a time party may find it necessary to amend his pleadings 'before or during the trial' of the suit. Court's power to permit amendment is not unbridled but circumscribed by limitations. 'Twin test' be passed by the applicant. Court has to satisfy itself that the proposed amendment is required for proper and effective adjudication of the *lis* and the allowing of the proposed amendment should not do injustice to the other side.

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure. The Courts always give leave to amend the pleadings of a 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 may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations¹¹. The rules of Code are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless, no power has yet been given to enable one distinct cause of action to be substituted for another nor to change, by means of amendment, the subject-matter of the suit¹².

In exercise of the powers under Rule 17, the Courts should try the merits of the case before them and should consequently allow all the amendments which are necessary for the determination of the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side¹³.

Thus, the object of Order 6 Rule 17 of the Code 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 the Supreme 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 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

11. *State of Maharashtra v. Hindustan Construction Company Ltd.* [(2010) 4 SCC 518 : AIR 2010 SC 1299 : 2010 KHC 4223]; *Revajeetu Builders v. Narayanaswamy* [(2009) 10 SCC 84 : 2009 KHC 5102]; *Raminik Vallabhdas Madhvani v. Taraben Pravinlal Madhvani* [(2004) 1 SCC 497 : AIR 2004 SC 1084 : 2004 KHC 384].

12. *Suraj Prakash v. Raj Rani* [(1981) 3 SCC 652 : AIR 1981 SC 485 : 1981 KHC 666].

13. *Kailash v. Nanhku* [(2005) 4 SCC 480 : AIR 2005 SC 2441 : 2005 KHC 697].

between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation¹⁴.

Commencement of Trial

a Trial is deemed to commence when issues are settled and when the case is set down for recording of evidence¹⁵. The date on which the issues are framed is the date of first hearing. Provisions of the Code envisage taking of various steps at different stages of the proceedings. Filing of an affidavit *in lieu* of examination in chief of the witness, would amount to 'commencement of trial'¹⁶.
b 'Commencement of Trial' must be understood in the limited sense as meaning the final hearing of the suit, examination of witness, filing of documents and arguments¹⁷. The trial of a suit is said to have commenced when the Trial Court makes the chief-examination of the first witness in the suit presented in the form of an affidavit, after verification of the documents mentioned therein from the point of view of admissibility, and when such witness is available for cross-examination
c by the opposite party.

Principles governing amendment of pleadings

d Amendments of pleadings cannot be claimed by the party as a matter of right and cannot be denied by the Court arbitrarily. The discretion to be exercised by the Court is guided by the settled principles of law and on the facts and circumstances of each case¹⁸. Order 6 Rule 17 is intended to promote the ends of justice and not for defeating them. Thus, grant of an amendment application is the rule and reception is an exception. There is no straight jacketed formula in dealing with an application for amendment of pleadings. However, the Courts can take aid of the Statute, Judge made laws, analysis of the case in hand, and the circumstances prompted for filing of such an application. Court has to see whether
e any prejudice will be caused to the opposite party. The Courts are expected to balance the scales of justice and if a party can be compensated with costs, the amendment is to be allowed.

f Court can allow a party to amend the pleadings at any stage of the proceedings, even before the Supreme Court¹⁹. But no amendment can be allowed after the case is reserved for judgment²⁰. But, a recent view would say that, "amendment of pleadings cannot be granted on mere request

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- g 14. *Ajendraprasadji N. Pande v. Swami Keshavprakashdasji* [AIR 2007 SC 806 : 2007 KHC 3171]; *Usha Balasaheb Swami v. Kiran Appaso Swami* [(2007) 5 SCC 602 : AIR 2007 SC 1663 : 2007 KHC 3345]; *Surender Kumar Sharma v. Makhan Singh* [(2009) 10 SCC 626 : 2009 KHC 5196]; *Dhanpal Balu v. Adagouda Nemagouda Patil* [(2009) 7 SCC 457 : 2009 KHC 4739]; *Revajeetu Builders and Developers v. Narayanaswamy* [(2009) 10 SCC 84 : 2009 KHC 5102]; *Abdul Rehman v. Mohd. Ruldu* [(2012) 11 SCC 341 : 2012 KHC 4553].
15. *Ajendraprasadji N. Pande v. Swami Keshavprakashji N.* [AIR 2007 SC 806 : 2007 KHC 3171]
16. *Vidyabai v. Padmalatha* [AIR 2009 SC 1433 : 2009 (1) KHC 560].
17. *Baldev Singh v. Manohar Singh* [AIR 2006 SC 2832 : 2006 KHC 1060].
18. *B. K. N. Pillai v. P. Pillai* [(2000) 1 SCC 712 : 2000 KHC 54]; *Haridas Thadani v. Godrej Rustom Kermani*, AIR 1982 SC 221; *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498 : 2006 KHC 1060].
h 19. *Surinder Singh v. Kapoor Singh* [(2005) 5 SCC 142 : 2005 KHC 781] (3 Judges); *G. Nagamma and Another v. Siromanamma and Another* [(1996) 2 SCC 25 : 1995 KHC 3309]; *Ganesh Trading Co. v. Moji Ram* [AIR 1978 SC 484 : 1978 KHC 500].
20. *Arjun Singh v. Mohindra Kumar and Others* [AIR 1964 SC 993 : 1964 KHC 520].

J-40

Complete KERALA HIGH COURT CASES

2024 (2) KHC

through an application for amendment of written statement, especially at appellate stage, where, what is called in question is judgment and decree passed by Trial Court and, in other words, after adverse decree and without a genuine, sustainable reason It is allowable only in rarest of rare circumstances”²¹.

Court has to primarily decide, whether amendment is necessary for determining controversy²². An application under Order 6 Rule 17 CPC can be rejected by the Court, when the proposed amendment is *mala fide* as an afterthought or it changes the very nature of the suit itself²³. An amendment application introducing a new case in the plaint should not be allowed²⁴.

Parties to a civil suit cannot seek amendments to their pleadings without narrating and justifying sufficient foundation to get amendment applications allowed. They have to convince the Court regarding the necessity for the amendment. It is not permissible to allow amendments without justifying the same in the affidavit filed in support of the amendment application, and after the commencement of trial, without complying satisfaction mandated by proviso to Order 6 Rule 17 CPC²⁵. An earlier view of the Supreme Court was bit liberal, though on another perspective. The Hon'ble Court opined that “a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a 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 may not be compensated for by an order of costs. However, negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. There is no rule that unless in an application for amendment of the plaint, it is expressly averred that the error, omission or misdescription is due to a *bona fide* mistake, the Court has no power to grant leave to amend the plaint²⁶.

Rajasthan High Court summarized all the then available guidelines on the point and said that;

(i) That the amendment of pleadings should ordinarily be allowed by the Court, once it is satisfied that the amendment is necessary for the just and proper decision of the controversy between the parties;

(ii) The amendment of pleadings should not ordinarily be declined only on the ground of delay on the part of the appellant in seeking leave of the Court

21. *Shivshankara v. HP Vedavyasa Char* [2023 SCC OnLine SC 358 : AIR 2023 SC 1780 : 2023 KHC 6340 : 2023 KHC OnLine 6340].

22. *Rajesh Kumar Aggrawal v. K. K. Modi* [AIR 2006 SC 1647 : 2006 KHC 593].

23. *Chandra Kantha Bansal v. Rajinder Singh* [(2008) 5 SCC 117 : 2008 KHC 4488]; *Ram Shai v. Ramand* [(2004) 13 SCC 40 : 2004 KHC 4419].

24. *The Municipal Corpn. of Greater Bombay v. Lala Pancham* [AIR 1965 SC 1008 : 1965 KHC 594] (5 Judges)

25. *Gireeshkumar v. Sanal Kumar* [2023 (3) KHC 51 : 2022 KHC OnLine 1059]; *Gurdial Singh v. Raj Kumar Aneja* [(2002) 2 SCC 445 : 2002 KHC 1801].

26. *Jai Jai Ram Manohar Lal v. National Building Material Supply* [(1969) 1 SCC 869 : AIR 1969 SC 1267 : 1969 KHC 239].

to amend the pleadings, if the opposite party can suitably be compensated by means of costs etc. Even inconsistent pleas can be allowed to be raised by amendment in the pleadings;

a (iii) However, amendment of pleadings cannot be allowed so as to completely alter the nature of the Suit,

(iv) Amendment of the pleadings must not be allowed when amendment is not necessary for the purpose of determining the real question(s) in the controversy between the parties;

b (v) The amendment should be refused where the plaintiff's Suit would be wholly displaced by the proposed amendment;

(vi) Where the effect of the amendment would be to take away from the defendant a legal right which has accrued to him by lapse of time or by operation of some law;

c (vii) The amendment in the pleadings should not be allowed where the Court finds that amendment sought for has not been made in good faith or suffers from lack of *bona fides*, and

(viii) Ordinarily, the amendment must not be allowed where a party wants to withdraw from the admission made by it in the original pleadings²⁷."

d Indiscriminate filing of applications for amendment of pleadings is one of the main causes of delay in disposal of civil cases; and the Courts have to appraise that,

(i) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(ii) Whether the application for amendment is *bona fide* or *malafides*?

e (iii) the amendment should not cause such prejudice to the otherwise, which cannot be compensated adequately in terms of money;

(iv) refusing amendment would infact lead to injustice or lead to multiplicity of litigation;

(v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case in hand; and

f (vi) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation of the date of the application²⁸.

g By way of an amendment of plaint, the party cannot seek to alter the basic structure of the suit²⁹. Leave to amend the pleadings under Order 6 Rule 17 of the Code will ordinarily be refused when the effect of the proposed amendment would be to take away from a party a legal right which had accrued to him by lapse of time. Such a refusal is valid where either fresh allegation is added or fresh reliefs are sought for by way of amendment.

h Inconsistent and contradictory allegations in negation to admitted position

27. *Hanuwant Singh Rawat v. M/s. Rajputana Automobiles, Ajmer*, (1993) 1 WLC 625 (Raj.)

28. *Revajeetu Builders and Developers v. Narayanaswamy* [(2009) 10 SCC 84 : 2009 KHC 5102].

29. *Alkapuri Co-Op. Housing Society Ltd. v. Jayanthibhai Nagin Bhai* [AIR 2009 SC 1948 : 2009 (1) KHC 797].

of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment of pleadings³⁰.

Amendment of pleadings can be allowed, (i) if it is necessary to decide the real controversy between the parties, and (ii) it does not alter the original cause of action or introduces new cause of action³¹.

Delayed applications

All application for amendment of pleadings should be allowed liberally which are necessary for the determination of real questions in controversy in the suit, provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original *lis* was raised and defence taken³². In the interest of justice and to avoid further litigation, even a belated amendment application can be allowed³³. An amendment application under Order 6 Rule 17 CPC cannot be rejected merely on the ground of delay when the opposite party can be compensated by costs and no serious prejudice is caused to the other side. There is no absolute rule that in every case where a relief is barred by limitation, an amendment should not be allowed. Discretion in such cases depends on the facts and in the circumstances of the case. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the amendment should be allowed³⁴. Delay in filing the application is no ground to disallow the amendment³⁵. But a time barred relief cannot be allowed to be added in the plaint by amendment under Order 6 Rule 17 CPC, when the amendment sought to be made is likely to take away a right accrued to the opposite party due to the bar of limitation, such amendments cannot be allowed³⁶. Likewise, belated and after thought

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30. *Ganesh Prasad v. Rajeshwar Prasad* [2023 (4) KLT 706 (SC) : 2023 KHC 6254 : 2023 KHC OnLine 6254]. But pls see *Modi Spg. And Weaving Mills Co. Ltd v. Ladha Ram and Co.* [(1976) 4 SCC 320 : 1977 KHC 736], where it was observed that, inconsistent pleadings are admissible; but not alternate pleadings.
 31. *Vidyabai Padmalatha* [2009 (1) Supreme 238 : 2009 (1) KHC 560]; *B. K. N. Pillai v. P. Pillai* [(2000) 1 SCC 712 : 2000 KHC 54].
 32. *Ganesh Prasad v. Rakjeshwar Prasad* [2023 (4) KLT 706 (SC) : 2023 KHC 6254 : 2023 KHC OnLine 6254].
 33. *Pankaja v. Yellappa* [AIR 2004 SC 4102 : 2004 KHC 1297]; *L. J. Leach and Co. Ltd. M/s. Jaidine Skinner and Co.* [AIR 1957 SC 357 : 1957 KHC 368]; *Charan Das v. Amir Khan* [AIR 1921 PC 50 : 1921 KHC 24]; *Nichhalbhai Vallabhai v. Jaswantlal Zinabhai* [AIR 1966 SC 997 : 1966 KHC 544]; *M/s. Ganesh Trading Co. v. Moji Ram* [AIR 1978 SC 484 : 1978 KHC 500].
 34. *Andra Bank v. ABN Amro Bank* [(2007) 6 SCC 167 : 2007 KHC 3649]; *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498 : 2006 KHC 1060]; *Pankaja v. Yellappa* [(2004) 6 SCC 415 : 2004 KHC 1297]; *Ragu Tilak D. John v. Rayappan* [(2001) 2 SCC 472 : 2001 KHC 1029]; *Estralla Rubber v. Dass Estate (P) Ltd.* [(2001) 8 SCC 97 : 2002 KHC 1398]; *Harcharan v. State of Haryana* [AIR 1983 SC 43 : 1982 KHC 508]; *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* [AIR 1969 SC 1267 : 1969 KHC 239].
 35. *Surendra Kumar Sharma v. Makhan Singh* [(2009) 10 SCC 626 : 2009 KHC 5196].
 36. *South Konkan Distilleries v. Prabhakar Gajanan Naik* [AIR 2009 SC 1177 : 2008 (4) KHC 258]; *Chandra Kanta Bansal v. Rajinder Sigh Anand* [(2008) 5 SCC 117 : 2008 KHC 4488]; *Shiv Gopal Shah v. Siata Ram Sarangi* [AIR 2007 SC 1478 : 2007 KHC 4328]; *Raj Kumar v. Dipender Kaur Sethi* [(2005) 9 SCC 304 : 2005 KHC 197]; *T. N. Alloy Foundry Company Ltd. v. T. N. EB* [(2004) 3 SCC 392 : 2004 KHC 490]; *D. Narayana Reddy v. Venkatanarayana Reddy* [(2001) 8 SCC 115 : 2001 KHC 1172]; *T. L. Muddukrishna v. Lalitha Ramachandra Rao* [AIR 1997 SC 772 : 1997 KHC 730]; *Munni Lal v. The Oriental Fire and General Ins. Co. Ltd* [AIR 1996 SC 642 : 1996 KHC 600]; *K. Raheja Constructions Ltd. v. Alliance Ministries* [AIR 1995 SC 1768 : 1995 KHC 633].

amendments cannot be allowed under Order 6 Rule 17 CPC, more so when such amendments were not really required for the determination of the issues in the suit³⁷.

a Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial³⁸. In a situation where, not even the issues are settled, documents have filed, evidence not yet adduced, then, the proviso to Order 6 Rule 17 CPC has no application³⁹.

b It is neither in doubt nor in dispute that the Court's jurisdiction to consider an application for amendment of pleading is wide in nature, but when by reason of an amendment, a third party is sought to be impleaded not only the provisions of Order 6 Rule 17 CPC, but also the provisions of Order 1 Rule 10 CPC, would come into play. When a new party is sought to be added, keeping in view the provisions of sub-rule (5) of Rule 10 of Order 1 Rule 10 CPC, the question of invoking the period of limitation would come in⁴⁰.

c In a matter, where the amendment was sought after a period of 31 years, Hon'ble Supreme Court laid down certain guiding principles for application in dealing with amendment applications. The Court concluded that the latter part of Order 6 Rule 17 CPC was the word "shall", which is mandatory. All the 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. d A prayer for amendment of pleadings can be allowed:—

- (i) if the amendment is required for effective and proper adjudication of the controversy between the parties;
- (ii) to avoid multiplicity of proceedings; provided
 - e (a) the amendment does not result in injustice to the other sides,
 - (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).
- (iii) A prayer for amendment is generally required to be allowed, unless:—
 - f (a) 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;

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- 37. *Vijay Hathisingh Sah v. Gitaben Purushotamdas Mukhi* [AIR 2019 SC 1119 : 2019 KHC 6224]; *Mehboob-ur-Rahman v. Ahsanul Ghani* [AIR 2019 SC 1178 : 2019 KHC 6180]; *Mashyak Grihnirman Sahakari Sanstha Maryadit v. Usman Habib Dhuka and Others* [(2013) 9 SCC 485 : 2013 KHC 4323].
 - 38. *State of Bihar v. Modern Tent House* [(2017) 8 SCC 567 : AIR 2017 SC 4966 : 2017 KHC 6589]; *Rajkumar Gurawara, dead by LRs v. M/s. S. K. Sarwagi and Co. Ltd* [AIR 2008 SC 2303 at 2305 : 2008 (2) KHC 977]; *Baldev Singh and Others v. Manohar Singh and Another* [(2006) 6 SCC 498 : AIR 2006 SC 2832 : 2006 KHC 1060].
 - 39. *Sushil Kumar Jain v. Manoj Kumar and Another* [(2009) 14 SCC 38 : AIR 2009 SC 2544 : 2009 KHC 4428].
 - 40. *Alkapuri Co-op. Housing Society Ltd. v. Jayanthibhai Naginbhai, dead by LRs* [(2009) 3 SCC 467 : AIR 2009 SC 1948 : 2009 (1) KHC 797]

- (b) The amendment changes the nature of the suit
- (c) The prayer for amendment is *mala fide*
- (d) By the amendment, the other side loses a valid defence;
- (e) 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; a
- (f) 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, b
- (g) Where the amendment merely sought to introduce an additional or new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation;
- (h) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint; c
- (i) 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; d
- (j) 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 the facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed; e
- (k) 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 the 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 allowed⁴¹. f
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Amendment seeking reliefs of declaration of title and recovery of possession can be ordered in a suit for injunction. On the mere ground of delay, amendment is not to be refused. An amendment relates back to the date of the suit, unless the Court directs otherwise in an appropriate case⁴². While dealing h

41. *LIC v. Sanjeev Builders (P) Ltd and Another* [2022 SCC OnLine SC 1128 : 2022 KHC 6882 : 2022 (6) KHC SN 7 : 2022 KHC OnLine 6882].

42. *Sampath Kumar v. Ayyakkannu* [AIR 2002 SC 3369 : 2002 KHC 1366].

a with a delayed application, the Court has to see that, a right accrued in favour of a party by lapse of time cannot be permitted to be taken away by way of an amendment. Introduction of an entirely new case, displacing admissions by a party is not permissible⁴³. A fact in the knowledge of party from the very beginning and sought to be incorporated in his pleadings at a later stage cannot be allowed⁴⁴.

b Inherent power of the Court cannot be exercised under Section 151 CPC for amendments of pleadings, especially when the amendment seeks to introduce totally a new cause of action and thereby a change in the nature of the suit⁴⁵.

c Court, while allowing delayed amendments, must award heavy costs⁴⁶.

Amendment of plaint and amendment of written statement

c Addition of a new ground of defense or substituting or altering a defense 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. 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.

d A prayer for the 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 far as to alter materially or substitute the cause of action or the nature of the claim applies to amendments to plaint. It has no counterpart in the principles relating to amendments of the written statement⁴⁷. An amendment in the plaint by adding a new relief by changing the basis of suit should not be allowed⁴⁸.

e An application under Order 6 Rule 17 CPC presupposes institution of a suit. Any application filed under the provisions of different Statutes cannot be treated as a suit or plaint, unless otherwise provided in the said Act⁴⁹. But recently, the Hon'ble High Court extended the power to amend the pleadings in rent control proceedings also. It was observed that, "power to amend pleadings is an inherent power and Rent Control Court has power to amend pleadings

g 43. *Pirgonda Hongonda Patil v. Kalgonda Shigonda Patil and Others* [AIR 1957 SC 363 : 1957 KHC 600]; *NY Laxminarasaiiah and Others v. Sri Agatheswaraswamivaru* [AIR 1960 SC 622 : 1960 KHC 639]; *Modi Spinning and Weaving Co. Ltd. m/s Latha Ram and Co.* [AIR 1977 SC 680 : 1977 KHC 736]; *Ishwardas v. State of MP* [AIR 1979 SC 551 : 1979 KHC 665]; *Mulk Raj Batra v. District Judge, Dehradun* [AIR 1982 SC 24 : 1982 KHC 521].

44. *Biraji v. Surya Pratap* [AIR 2020 SC 5483 : 2021 (1) KHC 214 : 2020 KHC OnLine 6626] **(3 Judges)**

45. *P. A. Ahammed Ibrahim v. FCI* [AIR 1999 SC 3033 : 1999 KHC 569].

46. *Suraj Prakash Bhasin v. Raj Rani Bhasin* [(1981) 3 SCC 652 : AIR 1981 SC 485 : 1981 KHC 666].

h 47. *Usha Balasaheb Swami and Others v. Kiran Appaso Swami and Others* [AIR 2007 SC 1663 : 2007 KHC 3345]; *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498 : 2006 KHC 1060]. *Sushil Kumar Jain v. Manoj Kumar* [(2009) 14 SCC 38 : AIR 2009 SC 2544 : 2009 KHC 4428]. But please see, *B. K. Narayana Pillai v. Parameshwaran Pillai* [(2000) 1 SCC 712 : AIR 2000 SC 614 : 2000 KHC 54], wherein it was observed that the principles for amendment of pleadings apply equally to plaint and written statement (on facts).

48. *Vishwambhar v. Laxminarayan* [AIR 2001 SC 2607 : 2001 KHC 1131].

49. *P. A. Ahammed Ibrahim v. FCL* [AIR 1999 SC 3033 : 1999 KHC 569].

unless it is not specifically excluded. There shall always be an inherent power to any Tribunal or Court to make or allow such amendment in tune with the cause of action⁵⁰.

Truth and merits of the proposed amendments cannot be considered at the time of disposal of the application under Order 6 Rule 17 CPC⁵¹. Grant of amendment is not dependent on whether the case which is proposed to be set up will eventually succeed at the trial⁵².

An amendment sought in a plaint filed for Specific Performance may be allowed to be amended without abandoning the said relief but adding a prayer seeking relief of damages for breach of contract. Court may allow the conversion of the nature of the suit, provided it does not give rise to an entire new cause of action⁵³. Plaintiff cannot be allowed to make fresh allegation of facts by way of amendment at a belated stage⁵⁴. In other words, by way of an amendment of plaint, the party cannot seek to alter the basic structure of the suit⁵⁵. But, in order to shorten the litigation, subsequent events, which took place during the pendency of the suit, should be allowed to be incorporated in the pleadings by an amendment⁵⁶.

Admission and amendment

An admission cannot be withdrawn by an amendment of pleadings, but it can be explained away or clarified⁵⁷. By way of an amendment, the admission in the original pleadings cannot be sought to be get rid of⁵⁸. By an amendment of written statement, an admission made in the original written statement can be explained even by taking inconsistent pleas or altering the defense⁵⁹. A defendant cannot resile from an admission made in a written statement by taking recourse to Order 8 Rule 9 or Order 6 Rule 16 CPC by seeking to file a fresh written statement⁶⁰. Mere denial of plaint averments is not a categorized or unequivocal admission. By way of an amendment in the written statement, it can be denied⁶¹. One cause of action cannot be substituted for another, by

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50. *Tomy J. Cherkkott v. Abdul Sathar* [2023 (1) KLT 192 : 2023 (1) KHC 110 (DB)] - *Abdul Kareem M. v. P. Muhammed Shafi* (2017 (2) KLT 645 : 2017 (2) KHC 820 was held not good law)
 51. *Rajesh Kumar Aggarwal v. K. K. Modi* [(2006) 4 SCC 385 : 2006 KHC 593].
 52. *Raj Kumar Bhatia v. Subhash Chander Bhatia* [(2018) 2 SCC 87 : 2017 KHC 6874 : 2018 (1) KHC SN 5].
 53. *Jagadish Singh v. Nathu Singh* [AIR 1992 SC 1604 : 1992 KHC 775].
 54. *Gauri Shankar v. M/s Hindusthan Trust (P) Ltd.* [AIR 1972 SC 2091 : 1973 KHC 538].
 55. *Alkapuri Co-op. Housing Society Ltd. v. Jayanthibhai Naginbhai* [AIR 2009 SC 1948 : 2009 (1) KHC 797].
 56. *Rajeshkumar Aggarwal v. K. K. Modi* [(2006) 4 SCC 385 : 2006 KHC 593]; *NSS Ltd. v. K. C. Alexander* [AIR 1968 SC 1165 : 1968 KLT 182 : 1968 KHC 280]; *Paragon Rubber Industries v. Pragathi Rubber Mills* [(2014) 14 SCC 762 : 2013 KHC 4932]; *Vineet Kumar v. Mangal Sain Wadhwa* [(1984) 3 SCC 352 : 1984 KHC 686]; *Shikharchand Jain v. Digamber Jain Praband Karini Sabha* [(1974) 1 SCC 675 : AIR 1974 SC 1178 : 1974 KHC 424] (Guidelines given); *Sampath Kumar v. Ayyakkannu* [(2002) 7 SCC 559 : 2002 KHC 1366]; *Anand Kumar Jain v. Union of India* [AIR 1986 SC 1125 : 1986 KHC 884].
 57. *Heeralal v. Kalyanlal* [(1998) 1 SCC 278 : 1998 KHC 652].
 58. *Gautam Sarup v. Leela Jetly* [(2008) 7 SCC 85 : 2008 KHC 4481].
 59. *Sashikumar Jain v. Manoj Kumar* [AIR 2009 SC 2544 : 2009 KHC 4428].
 60. *S. Malla Reddy v. M/s Future Builders Co.op Housing Society and Others* [AIR 2013 SC 3693 : 2013 KHC 4325].
 61. *Sumesh Sungh v. Phoolan Devi* [AIR 2009 SC 2831 : 2009 KHC 5018].

way of amendment. Similarly, the effect of admission cannot be taken away. Defendant can elaborate his defense or can take additional pleas in support of his case⁶².

Procedure on amendment of pleadings

a An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed⁶³.

b Amendments or changes permitted to be made or incorporated in original pleadings should be highlighted or underlined in Red ink⁶⁴. Since 2002 Amendment, the party must file a fresh affidavit in support of his amended pleadings. In view of Section 26(2) read with Order 6 Rule 15(4) CPC, affidavit must be filed in support of pleading, but such affidavit would not be read as evidence for the purpose of trial⁶⁵. Consequential amendments must be limited to answer to the amended plea and not further⁶⁶. Inability to carry out amendment within the time of 14 days or within the time prescribed by the Court, the Plaintiff should not be deprived of the benefit of the amendment. The inconvenience caused to the defendant may be compensated by awarding suitable costs. The procedure under Rule 18 of Order 6 should not be applied so rigorously and with hyper-technical stress that it breaks the strings of substantial justice⁶⁷.

Appeal or revision?

e Revision under Section 115 CPC is not maintainable when an amendment application has been allowed by the Court. Order allowing amendment would not even remotely cause failure of justice or irreparable injury to any party (on facts). The opposite party will get opportunity to object and raise all his points of defence. He would also get a chance to take up points decided against him in a regular appeal against the verdict⁶⁸. On rejection or dismissal of the application seeking amendment, the dismissal can be challenged in revision⁶⁹.

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62. *Bollepanda P. Poonachao v. K. M. Mandappa* [AIR 2008 SC 2003 : 2008 KHC 4448].
63. *Sampath Kumar v. Ayyakannu* [(2002) 7 SCC 559 : 2002 KHC 1366].
64. *Gurdial Singh v. Raj Kumar Aneja* [AIR 2002 SC 1003 : 2002 KHC 1801].
65. *Salem Advocates Bar Assn. II v. UOI* [(2005) 6 SCC 344 : 2005 KHC 1281] (3 Judges)
h 66. *Gurdial Singh v. Raj Kumar Aneja* [AIR 2002 SC 1003 : 2002 KHC 1801]; *Bikram Singh v. Ram Baboo* [AIR 1981 SC 2036 : 1981 KHC 897].
67. *Salmona Villa Cooperative Housing Society Ltd. v. Mary Fernandez and Others* [AIR 1997 Bom. 208 : 1997 KHC 1919].
68. *Prem Bakshi and Others v. Dharam Dev and Others* [AIR 2002 SC 559 : 2002 KHC 1119].
69. *Sambhavnath Digambar Jain v. Mohanlal* [(2003) 9 SCC 219 : 2000 KHC 4419].