

AMENDMENT OF PLEADINGS

(Order 6, rule 17 CPC)

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1. **Order 6, rule 17 C.P.C. as amended w.e.f. 1.07.2002:** Order 6, rule 17 C.P.C. as amended w.e.f. 01.07.2002 reads as under:

“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.”

2. **Institution of suit must for applicability of Order 6, rule 17 C.P.C:** Before applying the provisions of Order 6, rule 17 C.P.C., there must be institution of the suit. Any application filed under the provisions of different statutes cannot be treated as a suit or plaint unless otherwise provided in the said Act. See: P.A. Ahammed Ibrahim vs. Food Corporation of India, AIR 1999 SC 3033
3. **Stage of seeking amendments u/o.6, rule 17 CPC:** An amendment application u/o. 6, rule 17 CPC can be moved at any stage of the proceedings, even before the Supreme Court, delay notwithstanding. See:

- (i) State of A.P. vs. M/s Poiner Builders, 2006 (65) ALR 630 (SC)
- (ii) Surinder Singh vs. Kapoor Singh, (2005) 5 SCC 142 (Three Judge Bench)

4. Necessary guidelines for allowing amendments in pleadings: The Allahabad High Court has issued following guidelines for allowing amendments in pleadings:

- (1)**All amendments will be generally permissible when they are necessary for determination of the real controversy in the suit.
- (2)**In general, the amendments should not cause prejudice to the other side which cannot be compensated in terms of costs.
- (3)**The substitution of one cause of action or nature of the claim for another in the original plaint or change of the subject-matter of or controversy in the suit is not permissible.
- (4)**Introduction by amendment of inconsistent or contradictory allegations in negation of the admitted position on facts or mutually destructive allegations of facts are also impermissible.
- (5)**Amendment of claim or relief which is barred by limitation when the amendment is sought to be made should not be allowed to defeat a legal right accrued except when such consideration is outweighed by the special circumstances of the case.
- (6)**The principles applicable to the amendment of plaints equally apply to the amendment of the written statement. See: Munni Lal Sahu vs. District Judge, Jhansi, 1991 (18) ALR 626 (All)

5. Truth & merits of the proposed amendments not to be considered at the time of disposal of amendment application: Truth & merits of the proposed amendments cannot be considered at the time of disposal of the amendment application u/o. 6, rule 17 CPC. See: Rajesh Kumar Aggarwal vs. K.K. Modi, (2006) 4 SCC 385

- 6. Amendment in pleading when to be allowed:** Amendment in pleadings can be allowed u/o.6, rule 17 C.P.C. if
- (1) It is necessary to decide the real controversy between the parties.
 - (2) It does not alter the original cause of action or introduces new cause of action. See:
 - (i) Vidyabai vs. Padmalatha, 2009 (1) Supreme 238
 - (ii) B.K.N. Pillai vs. P. Pillai, (2000) 1 SCC 712
- 7. Grounds for rejection of amendment application u/o.6, rule 17 CPC:** An analysis of different judicial pronouncements on O.6, rule 17 CPC makes it clear that an amendment application moved u/o. 6, rule 17 CPC can be rejected by the court when the proposed amendment:
- (i) is not necessary to decide the real controversy in dispute in between the parties
 - (ii) is malafide or afterthought. See: Chandra Kanta Bansal vs. Rajinder Singh, (2008) 5 SCC 117
 - (iii) introduces a new cause of action
 - (iv) changes the nature of the suit. See: Ram Sahai vs. Ramanand,(2004) 13 SCC 40
 - (v) withdraws an admission of fact which prejudicially affects the other side
 - (vi) adds a time-barred relief without any satisfactory explanation for the delay
- 8.1. An amendment introducing a new case in plaint not to be allowed:** An amendment application moved under Order 6, rule 17 CPC introducing a new case in plaint should not be allowed. See: The Municipal Corporation of Greater Bombay Vs. Lala Pancham, AIR 1965 SC 1008 (Five-Judge Bench).

- 8.2. Subsequent events to be allowed through amendment in pleadings:** To shorten the litigation, subsequent events which took place during the pendency of the suit should be allowed to be incorporated in the pleadings u/o. 6, rule 17 CPC. See:
- (i) Rajesh Kumar Aggarwal vs. K.K. Modi, (2006) 4 SCC 385
 - (ii) O.P.Gupta vs. Ranbir, 2002 (47) ALR 203(SC)
 - (iii) Allah Bux vs. District Judge, Bijnore, 1997 (30) ALR 362(All)
- 9. Extent of power & discretion of court in allowing amendment of pleadings u/o. 6, rule 17 CPC:** An unfettered discretion and wide power has been conferred on the courts u/o 6, rule 17 CPC to allow amendment of pleadings in such manner and on such terms as it appears to the court to be just and proper. See: Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498
- 10. Courts to adopt liberal approach in allowing amendments of pleadings:** An amendment in pleadings u/o.6, rule 17 C.P.C. cannot be claimed as a matter of right. But the Courts ought not to adopt hyper technical approach while deciding the amendment applications. The approach of the court should be liberal particularly when the prejudice to be suffered by the other side due to the amendments in pleadings can be compensated by costs. See:
- (i) South Konkan Distilleries vs. Prabhakar Gajanan Naik, AIR 2009 SC 1177
 - (ii) B.K.N.Pillai vs. P. Pillai, (2000) 1 SCC 712
 - (iii) Haridas Aildas Thadani vs. Godrej Rustom Kermani, AIR 1982 SC 221
- 11. Order 6, rule 17 C.P.C. more liberally applicable to amendments in W.S. than in plaints:** An amendment of plaint and amendment of written statement are not necessarily governed by exactly the same principle. It is true that some general principles are common to both. The courts are to be more liberal in allowing amendments in W.S. than in plaints. Principles

and provisions of O.6, rule 17 C.P.C. though equally apply to amendments of plaints as well as written statements but as prejudice is less likely to arise in case of amendments of written statements in comparison to plaints, Courts should be more liberal in permitting amendments in W.S. See:

- (i) Usha Bala Shaheb Swami vs. Kiran Appaso Swami, 2007 (3) Supreme Today 582
- (ii) Baldev Singh vs. Manohar Singh, (2006) 6, SCC 498
- (iii) B.K.N. Pillai vs. P. Pillai, (2000)1 SCC 712

12. Only one defendant out of many cannot amend W.S. : Where W.S. was jointly filed by more than one defendants and only one defendant had sought amendments in the W.S. u/o 6, rule 17 C.P.C., it has been held that the W.S. could not have been amended at the behest of only one defendant when the remaining defendants had not joined him. See: Narendra Singh vs. Bhartendra Singh, 2000 A.L.J. 2339(All)

13. Consequential amendments to be limited to answer to the amended pleading: The consequential amendments must be limited to answer to the amended plea. See:

- (i) Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003
- (ii) Bikram Singh vs. Ram Baboo, AIR 1981 SC 2036

14. Amendments in original pleadings to be highlighted or underlined in red: Amendments or changes permitted to be made or incorporated in original pleadings should be highlighted or underlined in red. See: Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003

15. Observance of Rule 37, G.R. Civil: (i) An application for amendment made under O.1, rule 10, O. 6, rule 17 or O.22 of CPC shall also contain a prayer for all consequential amendments. The presiding officer shall reject the application if it is not in accordance with law or these rules. (ii) When a party dies pendente lite a note to that effect shall be added against the

name of the party and necessary consequential amendment in the body of the petition or pleading shall also be made as prayed for. (iii) When the heirs of a deceased party are substituted for him, they shall be entered and numbered as follows. If the serial number of the deceased party was say “3” his heirs will be numbered as 3/1, 3/2, 3/3 and so on. If the party numbered as 3/1 dies, his heirs will be numbered as 3/1/1, 3/1/2, 3/1/3, and so on.

- 16. Party or his counsel to carry out the amendments (C.L. No. 6/VII-d-148, dated 11.01.1952)** Under O.6, rule 18 CPC parties are themselves responsible for making the necessary amendments in the pleadings within the time allowed by the court. It is no part of the duty of the office of the court to make the necessary amendments in the pleadings. The parties should themselves make the amendments in terms of the court’s order or get them made by their counsel, under their signature. After the amendments have been made they should be checked by the official concerned who should thereafter record a note on the pleading including the name of the person by whom the amendments were made and the fact that they were made under the orders of the court, giving a reference to the application on which such orders were passed and the date of such orders.
- 17. Amendment in plaint relates back to the date of institution of suit:** When an amendment in the plaint is incorporated, then it relates back to the date of institution of the suit. The court can, however, in appropriate cases direct that it will not relate back to the date of institution of the suit.
See:
(i) Prithi Pal Singh & Others Vs. Amrik Singh, (2013) 9 SCC 576
(ii) Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003
- 18. Amendment in plaint changing basis of suit not to be allowed:** An amendment in plaint by adding a new relief by changing basis of suit

should not be allowed u/o. 6, rule 17 C.P.C. See: Vishwambhar vs. Laxminarayana, AIR 2001 SC 2607

19.1. Delayed amendment to be allowed on cost: An amendment application u/o.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 because of limitation, an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. See:

- (i) Andhra Bank vs. ABN Amro Bank, (2007) 6 SCC 167
- (ii) Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498
- (iii) Pankaja vs. Yellappa, (2004) 6 SCC 415
- (iv) Ragu Thilak D. John vs. Rayappan, (2001) 2SCC 472
- (v) Estralla Rubber vs. Dass Estate (P) Ltd., (2001) 8 SCC 97
- (vi) B.K.N. Pillai vs. P. Pillai, AIR 2000 SC 614
- (vii) Harcharan vs. State of Haryana, AIR 1983 SC 43
- (viii) Dukhi Lal vs. XIV ADJ, 2000 ALJ 563 (All)
- (ix) Jai Jai Ram Manohar Lal vs. National Building Material Supply, Gurgaon, AIR 1969 SC 1267
- (x) Estralla Rubber vs. Dass Estate (P) Ltd., (2001) 8 SCC 97

19.2. Belated & afterthought amendment not to be allow u/o 6, rule 17 CPC: Where the amendment sought to be made in the plaint was not only belated one but also an afterthought, it has been held by the Hon'ble Supreme Court that belated & afterthought amendment cannot be allow u/o 6, rule 17CPC, more so when such amendment was not really required for determination issues in the suit. See:

- (i) Vijay Hathising Sah Vs. Gitaben Parshottamdas Mukhi, AIR 2019 SC 1119.
- (ii) Mehboob-Ur-Rehman Vs. Ahsanul Ghani, AIR 2019 SC 1178.
- (iii) Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka & Others, (2013) 9 SCC 485

19.3. A fact in the knowledge of party from very beginning and sought to be incorporated in his pleading at belated stage not to be allowed: A fact in the knowledge of party from very beginning and sought to be incorporated in his pleading at belated stage cannot be allowed under Order 6, rule 17 CPC. See: *Biraji Vs Surya Pratap*, AIR 2020 SC 5483 (Three-Judge Bench)

19.4. Amendment of plaint and amendment in decree u/s 152 CPC after passing of decree: Consult following rulings amendment of plaint and amendment in decree u/s 152 CPC after passing of decree:

- (i) *State of Punjab Vs. Darshan Singh*, (2004) 1 SCC 328
- (ii) *Dwarka Das Vs. State of MP*, (1999) 3 SCC 500
- (iii) *Jayalakshmi Coelho Vs. Oswal Joseph Coelho*, (2001) 4 SCC 181
- (iv) *Bijay Kumar Saraogi Vs. State of Jharkhan*, 2005 (3) SCJ 796
- (v) *Hari Prasad Bhuyan Vs. Durga Prasad Bhuyan*, 2008 (71) ALR 160(SC)
- (vi) *Ganesh Vs. Sri Ram Lalaji Maharaj Birajman Mandir*, AIR 1973 Allahabad 116 (Full Bench)
- (vii) *Jagat Narain Tiwari Vs. State of UP*, 1999 ALJ 2437 (All)
- (viii) *Peethani Suryanarayana Vs. Repaka Venkata Ramana*, 2009 (107) RD 277 (SC)

20. Delayed amendment application when judgment already reserved: After the judgment was reserved by court in a suit for specific performance of contract, grant of application for amendment of plaint u/o. 6, rule 17 CPC has been held proper. See: *Chheda Singh vs. District Judge, Fatehpur*, 1997(29) ARC 145(All)

21.1. New relief not changing basic structure of suit permissible to be added: The question whether it is permissible under Order 6, rule 17 CPC to convert through an amendment a suit filed for permanent prohibitory injunction into a suit for declaration of title and recovery of possession, it has been held by the Supreme Court that it was permissible as what was sought to be changed by way of amendment was the nature of relief

prayed for by the plaintiff and not the basic structure of the suit. See: Sampath Kumar Vs. Ayyakannu, AIR 2002 SC 3369.

21.2. Time-barred relief not to be allowed to be added by amendment: A time-barred relief cannot be allowed to be added in plaint by amendment application moved u/o. 6 rule 17 C.P.C. 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 amendment cannot be permitted. See:

- (i) South Konkan Distilleries vs. Prabhakar Gajanan Naik, AIR 2009 SC 1177
- (ii) Chandra Kanta Bansal vs. Rajinder Singh Anand, (2008) 5 SCC 117
- (iii) Shiv Gopal Shah vs. Sita Ram Saraugi, AIR 2007 SC 1478
- (iv) Raj Kumar vs. Dipender Kaur Sethi, (2005) 9 SCC 304
- (v) T.N. Alloy Foundry Company Ltd. vs. T.N. Electricity Board, (2004) 3 SCC 392
- (vi) Dondapati Narayanan Reddy vs. Duggireddy Venkatanarayanan Reddy, (2001) 8 SCC 115
- (vii) T.L. Muddukrishna vs. Lalitha Ramchandra Rao, AIR 1997 SC 772
- (viii) Radhika Devi vs. Bajarangi Singh, 1997(1) ARC 295(SC)
- (ix) Munni Lal vs. The Oriental Fire & General Insurance Company Ltd., AIR 1996 SC 642
- (x) K. Raheja Constructions Ltd. vs. Alliance Ministries, AIR 1995 SC 1768

22. Amendment to add new party against whom claim has become time-barred: An amendment u/o. 6, rule 17 C.P.C. to add a new party against whom limitation had already run out and the claim had become timebarred cannot be allowed. See: Kisan Co-operative Sugar Factory Ltd., vs. M/s. Rajendra Paper Mills, AIR 1984 All 143

23.1. Sec. 151 C.P.C. & amendment of pleading thereunder: Inherent power of court cannot be exercised u/s. 151 C.P.C. for amendment of pleadings specially when the amendments seek to introduce totally new cause of action and changes the nature of suit. See: P.A. Ahammed Ibrahim vs. Food Corporation of India, AIR 1999 SC 3033.

23.2. Amendment changing nature and character of suit cannot be allowed:

Where the suit for partition was posted for final arguments and then amendments under Order 6, Rule 17 CPC were sought to the effect that prior partition had taken place between the parties, the Supreme Court held that the said amendment was not only raised at the belated stage but the same would also change the nature and character of the suit and could not be allowed. See: M. Revanna Vs. Anjanamma, AIR 2019 SC 940.

24.1. Admission made in pleadings cannot be permitted to be withdrawn by amendment but can be permitted to be explained and clarified:

An admission made in pleadings cannot be permitted to be withdrawn by way of amendments under Order 6, rule 17 CPC but application may be made for explaining/clarifying the admissions. See: Ram Niranjana Kajaria Vs Sheo Prakash Kajaria, (2015) 10 SCC 203 (Three-Judge Bench).

24.2. Withdrawal of admission by amendment: An admission made by a party may be withdrawn or explained away u/o.6, rule 17 C.P.C if the same is necessary for effective adjudication of the dispute between the party. See:

- (i) Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498
- (ii) Estralla Rubber vs. Dass Estate (p) Ltd., (2001) 8SCC 97
- (iii) Panchdeo Narain Srivastava vs. Km. Jyoti Sahay, AIR 1983 SC 462

25. Admission of fact in pleadings when cannot be withdrawn by amendment:

If the withdrawal of admission of fact made by the party (defendant) in his pleading seeks to withdraw some right (u/s 58 of the Evidence Act) that has accrued in favour of the opposite party and causes him irretrievable prejudice, then the same cannot be permitted u/o. 6, rule 17 CPC. See:

- (i) Steel Authority Of India Ltd. Vs. Union Of India, AIR, 2006 SC 3229
- (ii) Chhanne vs. Shobhnath, 2006 (5) ALJ (NOC) 21 (All)
- (iii) Heeralal vs. Kalyan Mal, (1998) 1SCC 278

- 26. Admission contained in rejected amendment application:** Where the amendment proposed in pleadings contained an admission of the party seeking amendment and the amendment application was rejected on the opposition of the opposite party and the amendment did not come on record as part of the pleadings, it has been held that the averments in the amendment applications cannot be allowed to be relied on by the opposite party as admission. See: Smt. Rajeshwari Devi vs. Laxmi Devi, 1998(16) LCD 799(All)
- 27.1. Amendment of plaint after return u/o. 7, rule 10 CPC:** If the Plaintiff makes alterations in plaint after return of the same u/o. 7, rule 10-A C.P.C., the said plaint can be treated as fresh plaint. Such plaint cannot be dismissed on the ground that it contains averments not made in the original plaint. It is not always necessary to seek amendment of plaint u/o. 6, rule 17 C.P.C. in such matters. See: Hanamanthappa vs. Chandrashekharappa, AIR 1997 SC 1307
- 27.2. Failure to amend the pleading after order (O. 6, rule 18 CPC w.e.f. 1.7.2002):** If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for the purpose by the order, or if no time is thereby limited then within **fourteen days** from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.
- 28.1. Amendment of Plaint During Execution Proceedings:** Where the boundaries of the suit property were inadvertently wrongly stated in plaint but the suit was decreed and execution of decree was pending, it has been held that amendment in plaint in relation to the boundaries of the suit property could have been allowed u/s. 152 C.P.C. See:

- (i) Jagat Narain Tiwari vs. State of U.P., 1999 ALJ 2437 (All)
- (ii) Ganesh vs. Sri Ram Lalaji Maharaj Birajman Mandir, AIR 1973 All 116 (FB)

28.2. Amendment in plaint after passing of decree: Where the number of land that was subject matter of suit had changed after the final decree was passed, amendment in plaint to substitute the new number after the passing of the decree has been held proper by the Supreme Court. See: Peethani Suryanarayana vs. Repaka Venkata Ramana, 2009(107) RD 277(SC)

29. Amendment of pleading in appeal to correctly describe the suit property: Where after preliminary decree in partition suit, an appeal was preferred and the appellant sought to correctly describe the suit property which could not be fully and correctly described in the plaint due to ignorance, it has been held that the amendment could have been allowed u/o.6, rule 17 C.P.C. and the suit should have been remanded to trial court for fresh disposal. See: C.M. Vereekutty vs. C.M. Mathukutty, AIR 1981 SC 1533

30. Amendment of pleading at appellate stage: No amendment of pleadings u/o.6, rule 17 C.P.C. should be allowed in appeal which raises fresh factual questions. See:

- (i) Ramashankar Dixit vs. The VIIth Additional District Judge, AIR 1995 All 293
- (ii) Rajesh Kumar Agarwal vs. Virendra Kumar Agarwal, AIR 1994 All 135

31. Distinction between material facts, material particulars & vagueness of pleadings: Distinction between material facts and Material particulars is that material facts are primary facts disclosing some cause of action and such facts have to be specifically pleaded and failure to do so will result in rejection of the plaint (election petition). But defect in material particulars

can be cured at a later stage by amendment and the petition cannot be dismissed in limine on the ground of such defect. Pleadings cannot be dismissed merely on the ground of vagueness in pleadings. See: V.S. Achuthanandan vs. P.J. Francis, (1999)3 SCC 737

- 32. Alternative pleas in defence by amendment when can be taken:** A defendant has right to take alternative pleas in defense by way of amendment subject to following qualifications:
- (i) The Proposed amendment should not result into injustice to other side
 - (ii) Any admission made in favour of plaintiff should not be withdrawn
 - (iii) Inconsistent and contradictory allegations which negate admitted facts should not be raised. See: B.K.N. Pillai vs. P. Pillai, (2000)1 SCC 712
- 33. Second amendment application not to be allowed after the rejection of first one:** Once an application for amendment of pleading u/o.6 , rule 17 C.P.C. is disallowed, deviation from original pleadings cannot be permitted. See: Ayyappally Mohd. Haji vs. M.M. Abdulsalam, (2001) 2 SCC 428
- 34. Mutually destructive pleadings not to be allowed by amendment:** Mutually destructive pleadings should not be allowed to be incorporated (in W.S.) by amendment u/o.6, rule 17 C.P.C. See: Shriomoni Gurdwara Committee vs. Jaswant Singh, (1996) 11 SCC 690
- 35. Additional pleas & elaboration of the defence plea to be allowed u/o. 6, rule 17 C.P.C. :** Court has power u/o. 6, rule 17 CPC to permit amendment in pleadings seeking clarificatory amendments and to elaborate or provide more details in respect of facts already brought on record. Amendments in W.S. taking additional defence pleas or elaborating or explaining the defence pleas already taken can be allowed. See:

- (i) Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498
- (ii) Ram Sahai vs. Ramanand, (2004) 13 SCC 40
- (iii) Estralla Rubber vs. Dass Estate (P) Ltd., vs. (2001) 8 SCC 97
- (iv) Punjab National Bank vs. Indian Bank, (2003) 6 SCC 79

36. Proviso to o.6, rule 17 CPC added w.e.f. 01.07.2002 & its meaning:

Clarifying the scope and limit of Proviso to O. 6, rule 17 CPC added w.e.f. 01.07.2002, the supreme court has held that the words “**trial has commenced**” used in o.6, rule 17 CPC must be understood in the limited sense as meaning “final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments” See: Baldev Singh vs. Manohar Singh, (2006) 6 SCC 498

37. Amendment after commencement of trial when to be allowed: Proviso

added to o.6, rule 17 CPC w.e.f. 01.07.2002 is mandatory. However, amendment can be allowed only if inspite of due diligence the party could not have raised the matter before the commencement of the trial and when the proposed amendment is necessary to decide the real dispute between the parties. No application for amendment moved u/o.6, rule 17 CPC should be allowed after the commencement of trial unless the court is satisfied that the party seeking amendment, despite exercise of due diligence, could not have raised the plea or amendment before the commencement of trial. See:

- (i) Vidyabai vs. Padmalatha, 2009 (1) Supreme 238
- (ii) Ajendra Prasad vs. Swami Keshav Prakash, AIR 2007 SC 513
- (iii) Prabhu Niwas vs. Laxmi Niwas, 2006 (63) ALR 23 (All)
- (iv) Salem Advocates Bar Association vs. Union of India, (2005) 6 SCC 344 (Three Judge Bench)
- (v) Pradeep Singhvi vs. Heero Dhankani, (2004) 13 SCC 432

38. Trial in a civil suit when commences? : The date of first hearing in a civil suit is the date fixed for framing issues, i.e., the date on which court applies its mind to the facts and controversies involved in the case. Any

date prior to such a date would not be a date of first hearing. Date for filing written statement is not the date for hearing of the suit. Trial in a civil suit commences on the date when the suit is taken up for framing of issues by the court after perusal of pleadings of the parties. But in a proceeding under the PSCC Act, 1887, any date fixed for hearing of the case would be the date of hearing as there is no provision under the PSCC Act, 1887 for framing of issues. See:

- (i) S.K. Gupta vs. B.K. Jain, 2007 (66) ALR 104 (All)
- (ii) Vidyabai vs. Padmalatha, 2009 (1) Supreme 239
- (iii) Mamchand Pal vs. Smt. Shanti Agarwal, 2002 (47) ALR 1 (SC)
- (iv) Ashok kumar vs. Rishi Ram, 2002 (48) ALR 401 (SC)
- (v) K.K. Gupta vs. ADJ, 2004 (57) ALR 776 (All)

- 39. Affidavit must in support of amended pleadings:** After the amendments in CPC w.e.f. 01.07.2002, the party must file a fresh affidavit in support of his amended pleadings. In view of the provisions u/s 26 (2) CPC r/w o. 6, rule 15(4) CPC, affidavit must be filed in support of the pleading but such affidavit would not be read as evidence for the purpose of trial. See: Salem Advocates Bar Association vs. Union Of India, (2005) 6SCC 344 (Three Judge Bench)
- 40. Amendment ousting jurisdiction of court:** A civil court u/o. 6, rule 17 CPC can allow the plaint to be so amended as to result in ousting its own jurisdiction in the matter and in case the amendment is allowed and carried out, the proper course to be followed is to return the amended plaint to the plaintiff for presentation to the proper court u/o. 7, rule 10 CPC. See: Benisham vs. Mahadeo, AIR 1985 Bombay 462 (D.B.)
- 41. Revision u/s 115 CPC against grant of application u/o 6, rule 17 CPC:** Revision u/s. 115 CPC is not maintainable when an amendment application has been allowed by the court u/o 6, r. 17 CPC. Order allowing amendment would not even remotely cause failure of justice or irreparable

injury to any party, as respondent would get opportunity to file a written statement and he would be able to raise all his defence and he would also have a chance to take up points decided against him before appellate court. See: Prem Bakshi & others vs. Dharam Dev & others, AIR 2002 SC 559

- 42. Revision u/s 115 CPC against rejection of application u/o 6, rule 17 CPC:** Revision against an order rejecting amendment application u/o 6, r. 17 CPC is maintainable. See: Mukhtar Ahmad vs. Sirajul Haq, 2006 (63) ALR 718 (All)
