

CIVIL REVISION

Present:

The Hon'ble Justice Md. Abdul Ghani

Judgment on 03.09.2010

C.O. NO. 2020 OF 2008

SK. ABDUL RAZZAQUE

VS.

SIKHA CHAKRABORTY & ORS.

Points:

Amendment - Amendment of written statement without changing the nature and character of the suit and necessary for proper and effective disposal of the suit can be allowed- Code of Civil Procedure, 1908 –O 6 R 17

Facts:

In a suit for declaration of title and permanent injunction defendant filed written statement. Three months thereafter defendant filed an application for amendment of written statement which was rejected by the trial court on the ground of delay without assigning any other reason.

Held:

The learned trial Judge while considering the application under Order 6 Rule 17 CPC misdirected himself and rejected the petition without giving any specific findings thereto. the Court should always be reasonably liberal in granting the application for amendment for the sake of avoiding multiplicity of the suit and also for the sake of effective adjudication of the controversy between the parties.

Para 7

The proposed amendment does not bring about any change as to nature and character of the suit, the cause of action etc. and the proposed amendment will be helpful for avoiding multiplicity of the suit and also for proper

adjudication of the real controversy between the parties and that the so called counter-claim does not include the prayer for declaration of title of the suit in question, learned Court below while disposing of the application under Order 6 Rule 17 of the CPC committed mistake causing serious prejudice to the petitioner-defendant. Para 10

The defendant-petitioner approached the learned Court below for certain amendment of the written statement within three months from the date of filing of the written statement. This being the position, it is quite conspicuous that the petitioner-defendant took attempt for amendment of the written statement within reasonable time and long prior to commencement of the trial of the suit. Para 10

Cases cited:

AIR 2008 SC 2303 (Rajkumar Gurawara (Dead) Thr. L.Rs. Vs. M/s. S.K. Sarwagi & Co. Pvt. Ltd. & Anr.), AIR 2007 SC 1663 (Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.), (2006) 4 SCC 385 (Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors.), (2008) 14 SCC 364 (Rajkumar Gurawara (Dead) Through L.Rs. Vs. M/s. S.K. Sarwagi & Co. Pvt. Ltd. & Anr.) and AIR 2009 SC 2544 (Sushil Kumar Jain Vs. Manoj Kumar & Anr.); 2008 SAR (Civil) 405 (SC) (Bollepanda P. Poonacha & Anr. Vs. K.M. Madapa)

Mr. Sibaprasad Ghosh.

... .. for the petitioner.

Mr. Pradip Kumar Dey.

... .. for the O.P.

The Court: In the present application under Article 227 of the Constitution of India the petitioner has sought for setting aside the order no. 22 dated 10.6.2008 passed by the learned Civil Judge (Senior Division), 1st Court at Barasat in Title Suit No. 37 of 2005.

2. After going through the impugned order and also having heard the submissions of the learned counsels for the parties concerned as well as considering some other important materials on record it could be detected that the learned trial Judge while disposing of the application under Order 6 Rule 17 of the Code of Civil Procedure (in short the CPC) filed on behalf of the present petitioner was pleased to reject the same.

3. Being aggrieved by and dissatisfied with the impugned order dated 10.6.2008 the petitioner has come up before this Court praying for this Court's interference and for setting aside the said order.

4. Mr. Sibaprasad Ghosh, the learned counsel appearing for the petitioner at the very outset of his submission drew this Court's attention to the impugned order dated 10.6.2008 as also some other important materials including the copy of the plaint of Title Suit No. 37 of 2005 as well as the written statement thereof and emphatically argued and submitted that the learned Court below by passing the impugned order caused serious injustice and prejudice to his client inasmuch as certain facts relating to the suit property which are required to be brought to the pleadings could not be allowed to be added as a part and parcel of the written statement without which the suit cannot be effectively and properly adjudicated in deciding the real controversy between the parties concerned. He has further drawing this Court's attention to the nature, character and circumstances of the suit as well as the pleadings of the parties already on record contended that had proposed amendment been allowed then nature and character of the suit

could not be said to have been changed. He has also contended that with a view to avoiding multiplicity of the suit the amendment sought for is necessary. In support of his submission he has relied upon the decisions reported in AIR 2008 SC 2303 (Rajkumar Gurawara (Dead) Thr. L.Rs. Vs. M/s. S.K. Sarwagi & Co. Pvt. Ltd. & Anr.), AIR 2007 SC 1663 (Usha Balashaheb Swami & Ors. Vs. Kiran Appaso Swami & Ors.), (2006) 4 SCC 385 (Rajesh Kumar Aggarwal & Ors. Vs. K.K. Modi & Ors.), (2008) 14 SCC 364 (Rajkumar Gurawara (Dead) Through L.Rs. Vs. M/s. S.K. Sarwagi & Co. Pvt. Ltd. & Anr.) and AIR 2009 SC 2544 (Sushil Kumar Jain Vs. Manoj Kumar & Anr.) and emphatically urged that in view of the principles laid down in the rulings referred to above, the amendment sought for ought to have been allowed by the learned trial Judge and accordingly the order impugned needs to be set aside.

5. On the other hand, Mr. Pradip Kumar Dey, the learned counsel appearing for the opposite party referring to the contents of the impugned order dated 10.6.2008 emphatically argued and submitted that the learned trial Judge while disposing of the amendment application under Order 6 Rule 17 CPC committed no mistake or error in rejecting the same inasmuch as the petitioner by filing the said application tried to introduce a new story containing counterclaim beyond the prescribed period of limitation. In support of his contention he has relied upon a ruling reported in 2008 SAR (Civil) 405 (SC) (Bollepanda P. Poonacha & Anr. Vs. K.M. Madapa) and contended that in view of the principles of the ruling referred to above the petitioner in order to obtain the relief is at liberty to file a suit or an application to amend the pleading to such extent which may be held to be permissible in law. In fine, learned counsel appearing for opposite party argued for rejection of the instant application.

6. Upon hearing the learned counsels for the parties concerned and also on scrutiny of the materials on record it could be gathered that the opposite party by filing T.S. No. 37 of 2005 in the Court below sought for declaration of title in respect of the suit property described in the schedule to the plaint and also for permanent injunction restraining the defendants, their men and agents as also their representatives from entering into the suit property and for dispossessing the plaintiff-opposite party from the suit property.

7. On examination of the impugned order dated 10.6.2008 it can be said that the learned trial Judge while considering the application under Order 6 Rule 17 CPC misdirected himself and rejected the petition without giving any specific findings thereto. In view of the principles of the rulings referred to and relied upon on behalf of the petitioner the Court should always be reasonably liberal in granting the application for amendment for the sake of avoiding multiplicity of the suit and also for the sake of effective adjudication of the controversy between the parties.

8. On scrutiny of the record it could be ascertained that the petitioner-defendant concerned has prayed for amendment over the self-same cause of action of the T.S. No. 37 of 2005 without changing nature and character of the suit as also without causing any unnecessary harassment and prejudice to the opposite party i.e. plaintiff of aforesaid suit no. 37 of 2005.

9. From the materials on record it would be explicit that the petitioner-defendant by filing the application under Order 6 Rule 17 of the CPC prayed before the learned trial Judge for certain amendment in respect of written statement already filed by him. It is whispered from the materials on record that the petitioner-defendant by approaching the learned trial Court sought for direction upon the present opposite party, the plaintiff of the suit to file before the learned trial Court copies of some documents

including the deed of conveyance concerning the suit property relied upon by the plaintiff but to no effect. It has been indicated in the impugned order that the petitioner-defendant was late in filing the amendment application disclosing certain counter-claim and as such the learned trial Judge relying upon the ruling reported in 2008 SAR (Civil) 405 (SC) (Bollepanda P. Poonacha & Anr. Vs. K.M. Madapa) rejected the amendment application without making any observation and giving any finding thereto.

10. In my conscious judicious consideration since the proposed amendment does not bring about any change as to nature and character of the suit, the cause of action etc. and since in my considered view the proposed amendment will be helpful for avoiding multiplicity of the suit and also for proper adjudication of the real controversy between the parties and that the so called counter-claim does not include the prayer for declaration of title of the suit in question, I am persuaded to hold that learned Court below while disposing of the application under Order 6 Rule 17 of the CPC committed mistake causing serious prejudice to the petitioner-defendant. It is true, that the defendant-petitioner approached the learned Court below for certain amendment of the written statement within three months from the date of filing of the written statement. This being the position, it is quite conspicuous that the petitioner-defendant took attempt for amendment of the written statement within reasonable time and long prior to commencement of the trial of the suit. In the circumstances, the ruling relied upon on behalf of the opposite party cannot be said to be supporting the submission made on behalf of the opposite party.

11. Therefore, having heard the learned counsels for the parties concerned and also giving due regard to the principles of the rulings relied upon on behalf of both the parties I am of opinion that learned Court below ought to

have allowed the amendment application under Order 6 Rule 17 CPC for the sake of avoiding inconveniences and problems between the parties as well as for proper adjudication of the suit.

12. In the existing circumstances of the case I am persuaded to understand and believe that the submission made on behalf of the petitioner is having sufficient force and merit and accordingly the impugned order dated 10.6.2008 cannot be sustained in the eye and estimation of law and as such the same is set aside. Resultantly, the amendment application under Order 6 Rule 17 CPC stands allowed but subject to the payment of a cost of Rs.1000/- (rupees one thousand only) to the plaintiff/opposite party within two weeks from the date of communication of this order to the learned Court below.

13. In view of the circumstances indicated above, the learned trial Judge to record the amendment and adhere to the decision of this Court and will proceed with the suit without being influenced by the observation, if any, by this Court, strictly in accordance with law. The opposite party/plaintiff is at liberty to act according to law. Learned Registrar General of the Hon'ble High Court is directed to communicate this order to the learned Court below as expeditiously as possible and preferably within a period of seven days from date.

14. Urgent xerox certified copy be given to the parties expeditiously, if applied for.

(Md. Abdul Ghani, J.)

