
(2006) 08 AHC CK 0218

Allahabad High Court

Case No: None

Anjum Kausar Khan

APPELLANT

Vs

Rashidan

RESPONDENT

Date of Decision: Aug. 29, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17

Citation: (2007) 2 AWC 1537

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rakesh Tiwari, J.

Heard counsel for the parties and perused the record.

2. S.C.C. Suit No. 4 of 2004 was filed by the respondent in the Court of Judge Small Cause Court, Bijnor on 27.1.2004. Written statement was filed by the petitioner in the aforesaid suit on 27.5.2004. The cross-examination of P.W. 1 Sayeed Ahmad was recorded on 20.12.2004. Thereafter, the respondent filed an amendment application dated 30.3.2005 vide paper No. 42-Ga by which following amendment was sought in the plaint by adding paragraph 6 (a).

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3. The petitioner is said to have submitted objection dated 30.3.2005 to the aforesaid amendment inter alia, that the amendment has been filed with inordinate delay. The trial court vide order dated 3.5.2005 allowed the amendment application.

4. Aggrieved by the aforesaid order dated 3.5.2005 the petitioner filed Revision No. 12 of 2005 before the District Judge, Bijnor on 16.5.2005. The revisional court also dismissed the revision of the petitioner by order dated 26.7.2006 holding that it was not maintainable and confirmed the order dated 3.5.2005 passed by the trial court. It further directed that the parties shall appear before the trial court on 18.8.2006 and the original record of the trial court was directed to be sent back for proceeding further in the case.

5. The counsel for the petitioner contends that amendment was not maintainable in view of proviso of Order VI, Rule 17 of the CPC which 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 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 inspite of due diligence, the party could not have raised the matter before the commencement of trial.

Order VI, Rule 17 of the C.P.C. was amended by Amendment Act, 2002 with effect from 1.7.2002.

6. The counsel for the petitioner contends that the revisional court has illegally held that the revision was not maintainable and that in fact it was maintainable in view of paragraph 6 of the judgment by this Court in [Gaurishankar Vs. Sita Ram and Another](#), in which it has been held that deciding an application for amendment of pleadings is deciding proceedings finally as such revision against order allowing amendment would be maintainable. The Court has held that:

6. In view of what has been stated above, it is clear that deciding an application for amendment is deciding the proceedings finally, therefore, I am not in agreement with the submission made by learned Counsel for the petitioner that revision is not maintainable. My aforesaid view is supported by the decision of the Apex Court in [Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others](#), In view of the law laid down by the Apex Court in the case of Shiv Shakti (supra), this writ petition has no force and is accordingly dismissed.

7. The counsel for the petitioner further submits that the amendment application filed by the respondent was not accompanied by an affidavit as such it was not maintainable. In support of his contention he has relied upon paragraphs 4 and 26 of the judgment in [Salem Advocate Bar Association, Tamil Nadu Vs. Union of India \(UOI\)](#), and [Prabhu Niwas alias Kapil Deo and Another Vs. Laxmi Narain and Others](#),

8. From perusal of the aforesaid rulings cited by the counsel for the petitioner it is apparent that moving of amendment application is not totally barred under Order VI, Rule 17 of the C.P.C. and Court can pass appropriate orders if it satisfied that the

party seeking amendment, despite exercise of due diligence, could have not raised the issue in amendment earlier before commencement of trial.

9. In Salem's case (supra), it has been held by the Apex Court that affidavit in support of pleadings (and on amendment thereof) is not illegal and unnecessary as it has effect of fixing additional responsibility on the deponent as to truth of facts stated in the pleadings. It is being made clear that such an affidavit would not be evidence for the purpose of the trial. Further, on amendment of the pleadings, a fresh affidavit shall have to be filed in consonance thereof. The object and the scope of Order VI, Rule 17, C.P.C. and its proviso as Inserted by Act No. 22 of 2002 w.e.f. 1.7.2002 is curtailment of absolute discretion of Court to allow amendment of pleadings at any stage. For amendments now sought after commencement of trial it has to be shown that inspite of due diligence amendment sought could not have been sought earlier. Thus, the object is to prevent frivolous applications filed to delay trial.

10. It appears from the order dated 3.5.2005 passed by the trial court on the amendment application that the Court was of the view that the defendant-petitioner had denied the title of the landlord-plaintiff in the written statement and by the amendment the nature of suit could not be changed but the multiplicity of proceedings of the suit could be avoided. The application for amendment of the plaint was therefore, allowed on payment of Rs. 100 costs against which a revision has been filed as stated earlier.

11. In so far as the question of decision by the revisional court regarding maintainability of the revision is concerned, it appears to be incorrect in view of the judgment in Gaurishankar v. Sita Ram and Anr.

12. In view of the aforesaid discussions, I am of the view that no useful purpose would be served by keeping this writ petition pending at this stage as the petitioner has come against an order passed on the amendment application. In view of Salem's case the petitioner may file a fresh affidavit before the trial court in support of his application so that it has the effect of fixing additional responsibility on the applicant as to the truth of the facts stated in the pleadings.

13. In so far as the case of Prabhu Nath (supra) is concerned, it was held that facts sought to be introduced by amendment were within the knowledge of the petitioner from much earlier, hence this case has no application to the facts of the instant case.

14. The facts in the amendment application could not be taken earlier because the petitioner had denied the title of the landlord for the first time in his written statement as such filing of amendment became necessary and the plea of denial of title could not be in the knowledge of the petitioner earlier particularly in view of the question that goes to the very root of the dispute.

15. The Court is satisfied that despite exercise of due diligence the party could not have raised the matter before the commencement of trial.

16. For the reasons stated above, this writ petition is partly allowed and the order of the revisional court dated 26.7.2006 is quashed. However, the order dated 3.5.2005 passed by the trial court is upheld. As directed above, the affidavit shall be filed by the landlord in support of his amendment application, which has already been allowed on payment of Rs. 100 cost. The parties may, if they so desire, file W.S. to the amendment application and may give additional evidence before the trial court. It is directed that as much delay has already occurred in disposal of the case, the parties shall cooperate in the trial and the trial shall be concluded within a period of three months from today.

17. No order as to costs