

(2016) 02 AHC CK 0027

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

Case No: Misc. Single No. 7573 of 2015

Jagroop Singh (U/A
227)

APPELLANT

Vs

Distt. Judge Hardoi &
Ors.

RESPONDENT

Date of Decision: Feb. 16, 2016

Acts Referred:

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

Citation: (2016) 161 AIC 938 : (2016) 115 ALR 847 : (2016) 1 ARC 630 : (2016) 131 RD 699

Hon'ble Judges: Anil Kumar, J.

Bench: Single Bench

Final Decision: Dismissed

Judgement

Anil Kumar, J. - Heard Sri Bhagwandeem Sharma, learned counsel for the petitioner and perused the record.

2. Facts, in brief, of the present case are that respondent no.3-Krishan Lal Gupta/plaintiff filed a Regular Suit No.1048 of 2008 (Krishan Lal v. Jagroop) in the Court of Civil Judge(S.D.) Hardoi. In the said matter petitioner Jagroop Singh/defendant filed written statement thereafter an evidence on behalf of the plaintiff was also closed. At this stage, on behalf of petitioner/defendant an application for amendment in written statement has been filed on 28.2.2014 to which plaintiff/respondent has filed objection. The trial court/Civil Judge (S.D.) Hardoi by order dated 10.7.2014 rejected the application under Order 6, Rule 17 CPC moved on behalf of petitioner on the ground that plaintiff cannot resile from the admission which has made in the written statement. The order dated 10.7.2014 was challenged by the petitioner by filing Revision No. 43 of 2014(Jagroop Singh v. Krishan Lal Gupta). The District Judge Hardoi by order dated 23.7.2015 rejected the same.

3. Learned counsel for the petitioner while challenging the impugned order submits that the impugned order passed by opposite parties thereby rejecting the case of the petitioner for amendment is contrary to the provisions of law, liable to be set aside.

4. In support of his arguments, he has placed reliance on the judgment given by Hon'ble Apex Court in the case of Shushil Kumar Jain v. Manoj Kumar and another, 2009(27) LCD 1096.

5. The provisions of amendment of pleading provided under Order 6, Rule 17 CPC as exists today can be summarised and crystallized as under:-

" Order 6, Rule 17 of the Code deals with amendment of pleadings. By Amendment Act 46 of 1999, this provision was deleted. It has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The proviso, to some extent, curtails absolute discretion to allow amendment to any stage. Now, if application is filed after commencement of trial, it has to be shown that in spite of the due diligence, such amendment could not have been sought earlier. The object is to prevent frivolous application which are filed to delay the trial. There is no illegality in the provision."

6. Thus, object of Order 6, Rule 17 primarily is that if because of certain facts not being pleaded or because of deficiencies in the pleadings, the question involved between the parties cannot be finally determined and unless it is finally determined, there is likelihood of multiplicity of proceedings. Order 6, Rule 17 empowers the Court to permit such amendments which are necessary for final determination of the issues in dispute or real point in dispute between the parties. Expression "new case" has been the subject matter of discussion and that expression has been defined to mean a new claim based on altogether new facts and new ideas. New case does not mean and include in itself where there is an additional approach to the same facts already in the pleadings as an alternative approach. So, in the context of the amendment application, an additional approach to same facts cannot amount to making out a new case.

7. The principles established by judicial decisions in respect of amendment of plaint are :

(i) All amendments will be generally permissible when they are necessary for determination of the real controversy in the suit;

(ii) All the same, substitution of one cause of action or the 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;

(iii) 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 though inconsistent pleas on the admitted position can be introduced by way of amendment;

(iv) In general, the amendments should not cause prejudice to the other side which cannot be compensated in costs; and

(v) Amendment of a 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 out-weighed by the special circumstances of the case.

8. Amendment can be refused in the following circumstances :

(i) where it is not necessary for the purpose of determining the real question in controversy between the parties;

(ii) where the plaintiff's suit would be wholly displaced by the proposed amendment;

(iii) where the effect of amendment would take away from the defendant a legal right which has accrued to him by lapse of time;

(iv) where the amendment would introduce totally different, new and inconsistent case and the application is made at a late stage to the proceeding; and

(v) where the application for amendment is not made in good faith.

9. Accordingly, in brief, it can be held that all amendments should be allowed which satisfy the following 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. They should be refused only when the other party cannot be placed in the same position as if the pleading had originally been correct but the amendment would cause him an injury which cannot be compensated by costs.

10. Further in the case of North Eastern Railway Administration, Gorakhpur v. Bhawan Das (d) By L.Rs.2008 (3) ARC 911, wherein Hon"ble Supreme Court has held as under:-

"In so far as the principles which govern the question of granting or disallowing amendments under Order 6, Rule 17 C.P.C, (as it stood at the relevant time) are concerned, these are also well settled. Order 6, Rule 17 C.P.C. Postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgaonda Shidgonda Patil and others, AIR 1957 SC 363, which still holds the

field, it was held that all amendments ought to be allowed 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. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.(Also see: Gajanan Jaikishan Joshi v. Prabhakar Mohanlal Kalwar, (1990) 1 SCC 166: 1990 SCFBRC 134)".

11. Hon"ble the Apex Court in the case of vide judgment dated 22.03.2006, passed in Appeal (Civil) No. 5350-5361 of 2002 (Rajesh Kumar Aggarwal and Ors. v. K.K. Modi and Ors.), while considering the scope of amendment, held as under (relevant paragraph):-

"In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

While considering whether an application"

12. In the instant matter from the perusal of the judgment and order passed by the court below, the admitted position which emerge out is that petitioner"s application for amendment in written statement has been rejected on the ground that petitioner cannot resile from the admission made by him earlier in the written statement. Keeping in view the above said fact as well as settled proposition of law, defendant cannot be allowed from reciling rather taking U turn from the earlier statement made by him in the written statement in the garb of amendment that will prejudice the case of the plaintiff and it will cause injustice to him.

13. So far the law laid down by Hon"ble the Apex Court in the case of Sushil Kumar Jain (Supra) is concerned, Lordship of Hon"ble Supreme Court in the said case has held in para -9 which on reproduction reads as under:-

"That apart a careful reading of the application for amendment of the written statement, we are of the view that the appellant seeks to only elaborate and clarify the earlier inadvertence and confusion made in his written statement. Even assuming that there was admission made by the appellant in his original written statement, then also, such admission can be explained by amendment of his written statement even by taking inconsistent pleas or substituting or altering his evidence."

14. The said position does not exists in the present case so the petitioner cannot derive any benefit of law as laid down by Hon"ble Apex Court in the case of Sushil Kumar Jain (Supra) rather the same is not applicable in the fact and circumstances

of the case.

15. For the foregoing reasons, writ petition lacks merit and is dismissed.