

(2012) 07 JH CK 0118
Jharkhand High Court
Case No: Writ Petition (C) No. 1381 of 2012

Saroj Kumar Das

APPELLANT

Vs

M/s Tata Iron and
Steel Company and
Another

RESPONDENT

Date of Decision: July 10, 2012

Acts Referred:

- Civil Procedure Code Amendment Act, 1999 - Section 16
- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, Order 6 Rule 6, 151
- Specific Relief Act, 1963 - Section 16(c)

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: P.A.S. Pati, for the Appellant; G.M. Mishra and Umesh Mishra, for the Respondent

Final Decision: Dismissed

Judgement

Hon'ble Mr Justice P.P. Bhatt

1. Present writ petition has been filed for quashing the order dated 9.2.2012 passed by the court of learned Civil Judge (Jr. Division) II, Jamshedpur in Eviction Suit No. 31 of 2005 whereby the petition filed under Order VI Rule 17 read with Section 151 of the CPC has been dismissed by the learned court-below. Learned counsel for the petitioner, while referring the impugned order, submitted that the respondent No. 1 has filed suit for eviction of the property which belonging to him on the ground of personal necessity. The petitioner despite being necessary party being in occupation of the suit premises was not impleaded as party initially. Thereafter the petitioner was impleaded as party defendant by virtue of Hon'ble Courts order upon application preferred by him. It is further submitted that after filing of the written statement of the petitioner, the respondent No. 1 has filed a document which has

been marked as Ext.2. The said document issued by M/s Tata Steel which is an internal communication form and the same has not been authenticated from the Registrar of Companies, and the said document has been issued by the Manager, Estate/ Allotment. It is further submitted that since the aforesaid document was not available on record at the time of filing of the written statement as such the petitioner could not make its comments against the said document. The said document is forged, concocted and has been manufactured by the plaintiff/ respondent No. 1 for its own benefit to get a decree for eviction of the petitioner from the suit premises. It is further submitted that as such a petition under Order VI Rule 17 read with Section 151 of the CPC was filed in the learned court-below on 14.12.2011. It is further submitted that the order dated 9.2.2012 is wholly unsustainable in the eyes of law. It is further submitted that the learned court-below failed to appreciate that if the amendment as sought by the petitioner is not permitted the same shall cause prejudice to the petitioner and will amount to denial of fair opportunity of hearing. It is further submitted that court-below has failed to consider as to whether the amendment, as sought for, is necessary for determination of the real issue/controversy involved in the suit. It is further submitted that the learned court-below has rejected the petition filed by the present petitioner merely on the ground of delay and therefore, the impugned order is required to be set aside. In support of his argument, learned counsel for the petitioner has referred to and relied upon the decisions of the Hon"ble Supreme Court in the cases of [Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others](#), and [Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.](#), .

2. As against that, learned counsel for the respondents while supporting and justifying the order passed by the court-below submitted that court-below has not committed any illegality or irregularity while passing the said order. It is further submitted that there was sufficient opportunity available with the defendant to submit such application. In support of his argument, learned counsel for the respondents has referred to and relied upon the decision of the Hon"ble Supreme Court in the case of [J. Samuel and Others Vs. Gattu Mahesh and Others](#), . It is further submitted that this is the latest decision of the Hon"ble Apex Court on the point wherein the Hon"ble Apex Court has observed in paragraph-12 onwards that due diligence is required to be shown by the party seeking amendment. It is further submitted that court-below has properly considered the facts and circumstances of the application and decided the same in accordance with law; therefore, it cannot be said that the court-below has committed any irregularity or illegality while passing the order.

3. Considering the aforesaid rival submissions and on perusal of the order passed by the court-below, it appears that application was moved by the present petitioner (defendant No. 2) under Order VI Rule 17 read with Section 151 of the CPC on 14.12.2011 seeking amendment in the written statement in respect of document which has been submitted by the plaintiff. The said document was issued by the M/s

Tata Steel, which is an internal communication, which has been marked as Ext.-2. According to the petitioner, the said document is forged, concocted and manufactured by the plaintiff-Company for its own benefit to get a decree of eviction of the defendant from the suit quarter and the aforesaid document is not binding upon the defendant. In these facts and circumstances, according to the petitioner (defendant No. 2), it is necessary to amend the written statement by inserting the aforesaid amendment as it was necessary to decide the real controversy between the parties. On perusal of the order, it transpires that the suit has been instituted/filed by the plaintiff-Company on 26.7.2006 for eviction from quarter, as the plaintiff-Company requires the suit premises to provide the same to its employees for their accommodation. It appears that at the time of filing of the suit, certain documents were produced, which include Ext.2 also. It appears that written statement of defendant No. 2 has been filed in this case on 30.5.2008 i.e. after about two years of filing of Ext.2. Thus the contention raised by the learned counsel for the petitioner (defendant No. 2) that he could not properly comment in respect of Ext.2 in his written statement because the same was filed by the plaintiff after filing of written statement appears to be factually incorrect. On perusal of the order, it also transpires that defendant No. 2 got also chance for cross-examination of the plaintiff-witnesses thereafter and that is why the court-below has rightly observed in its order that the defendant No. 2 had sufficient opportunities for commenting or placing his objection- firstly, at the time of filing of written statement; secondly, at the time of marking of Ext.2 and thirdly, when P.W.-1 was cross examined by him. Thus it appears that the petitioner (defendant No. 2) has already availed sufficient opportunities for raising objection against Ext.2. Moreover, it also appears that the application for amendment in the written statement has been filed by the petitioner (defendant No. 2) when the final argument was in progress and that is why the court-below rejected the said application by rightly observing that attempt made by the petitioner (defendant No. 2) is nothing but a delaying tactics which is highly deprecated. On perusal of the order, it appears that the court-below has rejected the application filed by the petitioner (defendant No. 2) seeking amendment in the written statement after careful consideration of the facts, circumstances and law involved in the matter.

4. I have perused the judgment of the Hon"ble Supreme Court referred to and relied upon by the learned counsel for the petitioner, reported in [Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others](#), and [Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.](#), . Decision cited by the learned counsel for the respondents appears to be the latest decision on this issue, which is reported in [J. Samuel and Others Vs. Gattu Mahesh and Others](#), . Relevant abstract of the judgment is quoted hereinbelow:

11. Before considering the acceptability or otherwise of the reasoning of the High Court, it is useful to refer to Order 6 Rule 17 CPC:

17. Amendment of pleadings.- 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.

The said provision was omitted by the CPC (Amendment) Act, 1999.

12. Section 16 of the Amendment Act reads as under:

16. Amendment of Order 6.- In the First Schedule, in Order 6,-

(i)-(ii)***

(iii) Rules 17 and 18 shall be omitted.

13. After stiff resistance by the litigants and the members of the Bar, again Order 6 Rule 17 was reintroduced with provision appended therein. As per the said proviso, no application for amendment shall be allowed after the trial has commenced. However, there is an exception to the said Rule i.e. if the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial, such application for amendment may be allowed.

15. In this legal background, we have to once again recapitulate the factual details. In the case on hand, Suit OS No. 9 of 2004 after prolonged trial came to an end in September 2010. The application for amendment under Order 6 Rule 17 CPC was filed on 24-9-2010, that is, after the arguments were concluded on 22-9-2010 and the matter was posted for judgment on 4-10-2010. We have already mentioned that Section 16(c) of the Specific Relief Act contemplates that specific averments have to be made in the plaint that he has performed and has always been willing to perform the essential terms of the Act (sic contract) which have to be performed by him. This is an essential ingredient of Section 16(c) and the form prescribes for the due performance. The provision inserted in Rule 17 clearly states that no amendment shall be allowed after the trial has commenced except when the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.

16. As stated earlier, in the present case, the amendment application itself was filed only on 24-9-2010 after the arguments were completed and the matter was posted for judgment on 4-10-2010. On proper interpretation of the proviso to Rule 17 or Order 6, the party has to satisfy the court that it could not have discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the

proceedings. However, the proviso restricts that power once the trial has commenced. Unless the court satisfies (sic itself) that there is a reasonable cause for allowing the amendment, normally the court has to reject such a request.

18. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their pleadings. The court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However, to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states 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.

(emphasis supplied)

19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of party's constructive knowledge, claim and is very critical to the outcome of the suit.

21. In the given facts, there is a clear lack of "due diligence" and the mistake committed certainly does not come within the preview of a typographical error. The term "typographical error" is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

22. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.

23. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order 6 Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order 6 Rule 17 introduced in 2001 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications.[Vide Aniglase Yohannan v. Ramlatha, Ajendraprasadji N. Pandey v. Swami Keshavprakeshdasji N. Chander Kanta Bansal v. Rajinder Singh Anand, Rajkumar Gurawara v. S.K. Sarwagi and Co. (P) Ltd, Vidyabai v. Padmalatha and Man Kaur v. Hartar Singh Sangha.

24. In the light of the above discussion, we are in entire agreement with the conclusion arrived at by the trial court and unable to accept the reasoning of the High Court. Accordingly, the order dated 8-2-2011 passed in Civil Revision Petition No. 5162 is set aside.

On perusal of the said judgment, it appears that the court-below has not committed any error while appreciating the material on record as well as arguments advanced before it and reaching to the conclusion that there is no merit in the application for amendment preferred by the petitioner (defendant). On perusal of the order, it appears that the court-below has properly considered the facts and circumstances and thereby observed that there was ample opportunity available with the defendant to comment upon the document Ext.2. The amendment in written statement is sought for at belated stage when the evidence of the parties have been closed and the matter is kept for arguments. The term "due diligence" is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after commencement of trial. A party requesting a relief steaming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with as held by the Hon'ble Apex Court in [J. Samuel and Others Vs. Gattu Mahesh and Others](#), the order passed by the court-below appears to be legal and valid as in the given facts there is lack of "due diligence". In light of above discussion, this Court is in entire agreement

with the conclusion arrived at by the court-below and unable to accept the submission made by the learned counsel for the petitioner. So far decisions cited by the learned counsel for the petitioner are concerned, the same are not applicable to the facts and circumstances of the present case and it do not help the case of petitioner. In view of above discussion, this Court is of the view that the court-below has not committed any error while rejecting the application for amendment in written statement and therefore, intervention of this Court is not called for. Accordingly, this writ petition stands dismissed.