Nair Service Society Limited Vs Rev. Fr. K.C. Alexander

Court: High Court Of Kerala

Date of Decision: Oct. 31, 1969

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 143, 148, 151

Citation: (1970) KLJ 73

Hon'ble Judges: M.U. Isaac, J; E.K. Moidu, J

Bench: Division Bench

Advocate: P.K. Kesavan Nair and K.N. Narayana Pillai, for the Appellant; T.P. Poulose and Annamma Abraham, for the Respondent

Final Decision: Allowed

Judgement

M.U. Isaac, J.
This is an appeal by the first defendant in O.S. No. 10 of 1958 on the file of the Sub-Court, Mavelikara from an order of

that court in I.A. No. 1921 of 1968. By that order, the court reviewed and set aside an earlier order, passed by it on 30-11-1968 and rejected an

amended written statement filed by the first defendant on 13-9-1968. The suit was instituted in 1942 for recovery of possession of 131.23 acres of

land in Survey Nos. 780/1 and 2 in Ranni Village, with past and future mesne profits. This property is marked as L (1) (a) and L (1) (b) in a map

prepared in the suit and marked Ex. L. The suit was contended on several grounds by the first defendant, who claimed possession of the whole

property. The trial court dismissed the suit against the first defendant, but decreed it against defendants 3 to 5 in respect of the property marked

L(1)(a). The plaintiff filed an appeal to this Court as A.S. No. 406 of 1961; and it was allowed. In 1948, the first defendant obtained from the

Government a Kuthakapattam, Ex. 1, for 256.13 acres of land; and according to the first defendant, Ex. 1 takes in the property marked L(1)(b).

At the hearing of the appeal, the first defendant sought to resist the plaintiff"s claim in respect of this property on the basis of its title obtained as per

Ex. 1; and it filed C.M.P. 8850 of 1965 for amending its written statement by incorporating such a plea. The application was made on the eve of

the judgment and it was dismissed by this Court. The first defendant filed Civil Appeal No. 1632 (N) of 1962 in the Supreme Court from the

decision of this Court. The Supreme Court confirmed the decision of this Court in respect of property marked L(1)(a). Regarding the property

L(1)(b), it set aside the decision of this Court, allowed the first defendant to amend the written statement by incorporating its plea based on Ex. 1,

and remitted the case to the trial court to try and dispose of the same on the basis of that amendment.

2. The judgment of the Supreme Court is dated 12th February 1968. The records of the case had been sent to that court for the purpose of the

appeal. After receiving back the records, the Subordinate Court posted the case for the appearance of the parties to 21-8-1968. On that date, the

case was adjourned to 13-9-1968 on the application of the first defendant for producing an amended written statement. Such a written statement

was filed on the adjourned date; and on that day, the case was posted to 19-10-1968 for the plaintiff to file replication. On this date, the plaintiff

filed an application to reject the amended written statement, on the ground that the amendment was beyond the scope of the permission granted by

the Supreme Court. On 30-11-1968, the trial court passed an order, upholding the plaintiff''s objection and rejecting the amended written

statement. It, however, directed the first defendant to file a fresh amended written statement, as allowed by the Supreme Court, and posted the

case to 11-12-1968 for that purpose. On 6-12-1968, the plaintiff filed I.A. No. 1921, praying to review the above order, and not to permit the

first defendant to file any amended written statement, as the time allowed by law for that purpose had expired. However, the first defendant filed an

emended written statement on 11-12-1968. The trial court, by its order dated 25-2-1969, upheld the plaintiff''s contention and rejected that

written statement. The present is appeal from that order.

3. The plea of limitation raised by the respondent (Plaintiff) against the acceptance of the amended written statement is based on Rule 18 of Order

VI of the Code of Civil Procedure; and the decision of this appeal depends solely on a correct interpretation of that provision. Before we take up

this question, we shall dispose of two preliminary points, one raised by the respondent''s counsel and the other by the appellant''s counsel. The

respondent''s learned counsel contended that the appeal is not maintainable, as the order appealed from does not fall under any of the clauses of

Order XLIII Rule 1 C.P.C. Clause (w) mentions ""an order under Rule 4 of Order XLVII granting an application for review""; but the learned

counsel submitted that this is not an order granting a review; it is an order rejecting an amended written statement. In express terms, I.A. 1921 of

1968 is an application to review and set aside the previous order of the court, by which it directed the appellant to file an amended written

statement as allowed by the Supreme Court. The order appealed from set aside the previous order, and rejected the amended written statement

filed by the appellant as directed by the said order. In form and in substance, the order appealed from is an order granting an application for

review; and we see no substance in the objection raised by the respondent"s learned counsel.

4. The learned counsel for the appellant contended that the trial court had no jurisdiction to pass the order under appeal, as there were no valid

grounds to review its previous order, and that this appeal should be allowed on that short ground. He invited our attention to Order XLVII Rule 1

C.P.C., and submitted that the case does not fall within its ambit. The contention that the trial court had no jurisdiction to accept the amended

written statement, as the amendment was made after the period allowed by Order VI Rule 18 C.P.C., was not raised by the respondent, when the

amended written statement was first filed. Apparently, that provision was then overlooked. The fact that the court allowed an amended written

statement to be filed does not preclude the opposite party from contending that the amendment is not admissible or that the issues sought to be

raised thereby are not triable. At any rate, if such a contention happens to be disallowed by the trial court, it is open for the defeated party to raise

that point in appeal. In these circumstances, the trial court is bound to consider and decide that question, when it is raised. The decision of the

Federal Court in AIR 1949 106 (Federal Court) is an authority for the position that an omission on the part of the court to consider a clear

provision of law, when the original judgment was passed, is sufficient ground for review of its judgment. The Court said:-

That a decision is erroneous in law is certainly no ground for ordering review. If the court has decided a point and decided it erroneously, the error

could not be one apparent on the face of the record; or even analogous tort. When, however, the court disposes of a case without adverting to or

applying its mind to a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case

within the purview of O.47 R. 1 C.P.C.

This decision was followed by the Supreme Court in M.M.B. Catholicos v. M.P. Athenasius. AIR 1954 S.C. 526. We, therefore, overrule the

contention that the trial court acted illegally in reviewing its previous order.

5. We shall now proceed to consider the main question arising in this appeal, namely whether the amended written statement can be accepted in

view of the period of limitation provided in Order VI Rule 18 C.P.C. This rule is supplementary to Rule 17; and it is necessary to read both of

them for tackling this question:

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.

18. Failure to amend after order:--If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for

that 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.

According to the learned counsel for the respondent, leave to amend the written statement was granted by the Supreme Court by its judgment

dated 13-2-1968. It did not limit the time to make the amendment. So under the second part of Rule 18, if the appellant does not make the

amendment within fourteen days of the order, it shall not be permitted to amend after the expiry of the said period, unless the time is extended by

the Court. In other words, it is contended that the amendment should have been made on or before 20-2-1968.

6. It is now necessary to consider how an amendment of the pleading is or can be effected under the above rules. First, leave of the court is

necessary; and the order granting the leave must indicate the manner in which, and the terms, if any, on which, the amendment is allowed.

Secondly, the amendment may be allowed at any stage of the proceedings; it may be allowed by any appellate Court or by a court of revision.

Thirdly, the court may limit a time for making the amendment. Fourthly, the party, who has obtained the leave to amend his pleading, must do so

within the time limit allowed by the Court; and if no time is fixed in that respect, within fourteen days from the date of the order. Lastly, if the party

does not do so within the aforesaid time, he shall not be permitted to amend his pleading, unless the time is extended by the court. The practice has

been, and is for a party, who seeks the leave of the court to amend his pleading, to apply to the court for that purpose, stating the manner in which

the pleading is sought to be amended and the reasons for the same. The order of the Court granting the leave would indicate the manner or extent

of the amendment allowed. The procedure thereafter had been different in different parts of the State. In the Travancore area, the party who has

obtained the leave would file a fresh plaint or written statement, as the case may be incorporating the amendment and altering the original pleading

to that extent. In the Cochin area, the amendment to the extent allowed by the court would be incorporated in red ink in the Original Pleading by

an officer of the court. In the area of the erstwhile Malabar District, the party, who has obtained the leave, is to make the amendment in the original

pleading under the supervision of the chief ministerial officer of the court. There was also a practice in some courts in that area of returning the

original pleading to the party to make the amendment and represent it within a time fixed by the court for that purpose. Now a uniform practice has

been prescribed by the High Court by Circular No. C/1966 dated 30-3-1966. This circular reads as follows:-

IN THE HIGH COURT OF KERALA

No. D1-41463/65

Ernakulam,

Dated: 30-3-1966.

CIRCULAR NO. 6/1966

Sub: Amendment of pleadings--Order VI Rule 17 and 18 C.P.C. Procedure followed--directions issued.

It is found that no uniform procedure is being followed by the courts in carrying out amendments of pleadings, Rules 17 and 18 of Order VI

C.P.C. clearly indicate that the amendments are to be carried out by the party and not by the Court. For the purpose of carrying out the

amendments the original pleadings should not be returned to the party. The amendments should be carried out by the party in the office under the

supervision of the chief Ministerial officer. If this is found impracticable for any reason, the amendments should be supplied by the party written and

duly authenticated on separate slips of paper which should be pasted or otherwise attached to the original pleadings at the proper places. The

substituted portion if any, of the original pleadings should be scored out and the same authenticated. In all cases, except where the amendments are

of a formal nature, a clean copy of the pleadings as amended should be filed into court (for the purpose of easy reference only and not as

constituting the actual pleading) and copies of the same served at the same time on the other parties.

(By Order)

Sd/- Registrar

The procedure prescribed by the above circular is in strict compliance with the provisions of Rules 17 and 18 of Order VI C.P.C. This position

was conceded by the learned counsel for both parties. In the instant case, this procedure was not followed; instead, a fresh written statement,

incorporating the amendment in the original pleading was filed by the appellant in accordance with the practice prevalent in the Travancore area. In

fact, this was what the trial court directed the appellant to do.

7. The learned counsel for the respondent contended that leave under Order VI Rule 17 C.P.C. to amend the written statement was granted to the

appellant by the Supreme Court by its judgment dated 12-2-1968, that the period of limitation mentioned in Rule 18 for making the amendment

was mandatory, and that the court, which granted the leave, alone was competent to extend the said period. In this case, the Supreme Court did

not fix any time for making the amendment; and so it should have been made within 14 days of its judgment. According to the learned counsel, it

was irrelevant in which court the pleadings are during the relevant period. The pleadings in this case happened to be in the Supreme Court during

the above period. Whether the Supreme Court intended that the amendment allowed by it may be effected in that court itself, or whether its rules

permit it, is also not relevant according to the learned counsel. He submitted that the court, which allows the amendment, may allow it on such

terms as may be just, and it can also fix any reasonable period for making the amendment. The learned counsel contended that it was for the

appellant to have obtained the necessary directions from the Supreme Court in that respect, and that it was even now open for him to move the

Supreme Court for extending the period fixed by Rule 18 of Order VI C.P.C. for amending the pleading.

8. In support of his contention that the court, which granted leave to amend, alone has got the power to extend the time mentioned in Order VI

Rule 18, the learned counsel first cited a decision of the Pepsu High Court in Gurmit Singh v. Labhu Ram AIR 1952 Pepsu 42. That case arose

out of a suit for declaration of the plaintiff"s possession of a property. The suit was dismissed by the trial court, holding that the plaintiff was not in

possession. This finding was confirmed by the District Judge in appeal. He, however, allowed the plaintiff to amend the plaint by adding a prayer

for possession, and also fixed a date for filling the amended plaint. The plaintiff took the matter in appeal to the High Court, and then to the Privy

Council without success. After the records came back to the trial court, it directed the plaintiff to file the amended plaint before a certain date. The

plaintiff filed it within the appointed time; and the suit was finally decreed. The defendant then filed an appeal in the District Court, and contended

that the amended plaint should not have been received by the trial court, as it was not filed within the time fixed by the District Court. That

contention was accepted; and the appeal was allowed. The plaintiff then filed an appeal to the High Court, which held that the District Court,

instead of dismissing the suit, should have extended the time allowed by it for filing the amended plaint u/s 148 C.P.C. Dealing with the contention

that the trial court was competent to extend the time fixed by the appellate court for amending the plaint, the court said:-

It is contended by Shri Daya Sarup, the learned Counsel for the respondent, that since the time had been originally fixed by the District Judge, it

could not be extended by the sub-Judge and the contention appears to be correct. Order 6, Rule 18 C.P.C. makes it clear that the amendment has

to be made within the time fixed or extended by the Court that allows amendment. It is also the general rule that directions contained in the

mandate of the appellate Court are beyond the judicial discretion of the lower Court and hence must be implicitly followed. Where time to do a

certain thing is fixed by an appellate Court in its order or decree, it is not competent to a subordinate Court to extend that time.

We respectfully agree with the latter part of the above statement of law; but it does not help the learned counsel for the appellant. We are here

concerned with a case in which the appellate court did not fix any time for amendment.

9. Reference was also made by the respondent''s learned counsel to a decision of the Nagpur High Court in S.A. Buty v. Shriram Mari AIR 1954

Nag 65. That case related to a suit for specific performance of a contract; and it was dismissed by the trial court on the ground that the plaintiff had

not pleaded that the contract entered into by the defendant as manager of his family was for necessity. The plaintiff filed an appeal in the District

Court, and applied for amendment of the plaint by adding such a plea. The District Court allowed the amendment, framed the necessary issue on

its basis and directed the trial court to record its findings thereon. The defendant then filed a written statement in the trial court in answer to the

amendment; and the trial court submitted its findings to the appellate court, after taking the necessary evidence. It happened that the amendment

allowed by the District Court was not incorporated in the plaint. When this was noticed the plaintiff applied to the District Court u/s 143 C.P.C. to

extend the time for amending his pleading, as soon as the findings were received by that court. The application was allowed; and the plaint was

amended. The appellate court also decreed the suit; and the defendant filed an appeal in the High Court. It was contended by the defendant,

among, other things, that the District Court had no jurisdiction to extend the time for making the amendment. This contention was summarily

rejected by the High Court. This decision is no authority for the proposition canvassed by the respondent''s learned counsel in the instant case to

the effect that a court which granted leave to amend the pleadings alone has got jurisdiction to extend the time mentioned in Order VI Rule 18 for

effecting the amendment.

10. Lastly the learned counsel for the respondent referred us to the decision of the Andhra Pradesh High Court in Ramulu Patrudu v. Narayana

Raju AIR 1962 AP 527. In that case, the trial court rejected the application of the plaintiff to amend the plaint; but it was allowed by the High

Court in revision. It did not fix any time to-carry out the amendment. The plaintiff then applied to the trial court for carrying out the amendment. It

was allowed; and accordingly the amendment was carried out. But this was done more than eight months, after the High Court allowed the

amendment. The defendant raised an objection that the amended plaint should not be entertained, as the amendment was not carried out within the

permitted period. Then the plaintiff moved the High Court for extending the time for effecting the amendment apparently on the assumption that in a

case where leave to amend is granted by an appellate or revisional court, the trial court has no jurisdiction to allow it to be made, after the expiry of

the time mentioned in Order VI Rule 18. Dealing with the contention that the court which granted the leave to amend, alone has got the power to

extend the, time to make the amendment, the court said:-

The word ""Court"" therefore has, in my view, to be understood for the purpose of this Rule in the context. It is not unknown that trial Courts also

allow amendments and when the trial Courts refuse, the appellate or revisional courts interfere and allow amendments. Such cases not being

unknown, it is all the more reasonable that the word "Court" should, therefore, be a matter for understanding according to the context.

The High Court, however, held that, though the trial court was wrong in allowing the amendment to be carried out after the period mentioned in

Rule 18, it was necessary that the said error should be condoned in the interest of justice by exercise of the inherent powers vested in the High

Court u/s 151 C.P.C This case lends some support to the, contention of the respondent"s learned counsel; but the ultimate decision is against him.

If the exercise of inherent powers in the interest of justice is called for, this is a pre-eminently fit case to invoke that jurisdiction. When the

amendment was, allowed by the Supreme Court, the records of the suit were in that court; The Supreme Court did not fix any time to carry out the

amendment; and there was no question of carrying it out in that court. After the records were received back in the trial court, it posted the case for

the appearance of the parties; and the appellant filed an amended written statement within the time permitted by the trial court. Therefore, the

appellant is not at fault in any manner in not carrying out the amendment within the time that it should have been done as contended for by the

respondent. Leave to amend the written statement and to contest the respondent"s suit on the amended plea are substantial reliefs which the

appellant obtained from the Supreme Court at considerable cost. It should not be frustrated, and the directions given by the Supreme Court for a

retrial of the suit on that basis cannot be allowed to be defeated on more technical grounds.

11. In our view, the contention that the appellant should not be permitted to carry out the amendment allowed by the Supreme Court after the

expiry of fourteen days from the date of its judgment, unless the time is extended by that court, is based on a wrong understanding of that

judgment. Under Rule 17 of Order VI C.P.C., a party may be allowed to amend his pleading at any stage of the proceedings; it may be even at

the stage of appeal or revision. An appellate or revisional court may grant leave to amend the pleading in that court itself, or to amend it in the

Court to which the case is remitted for trial or any other further proceeding in the light of the amendment allowed to be made. In both these cases,

it is open for the appellate or revisional court, as the case may be, to fix a time within which the amendment is to be carried out. And if any such

time is fixed, it can be extended under Order VI Rule 18 only by that court. But if no time is fixed, and the case is remitted to a subordinate court

for carrying out the amendment and proceeding further with the suit, the court which has jurisdiction to extend the time for carrying out the

amendment is that subordinate court, to which the case has been remitted for that purpose. In a case where leave to amend was wrongly refused

by a subordinate court, an appellate or revisional court may remit the case to any subordinate court directing that court to allow the amendment

and proceed further with the trial of the suit. Then the Subordinate Court has to grant the leave to amend; and the party obtaining the leave has to

carry out the amendment accordingly. In such a case, the subordinate court may fix a time for carrying out the amendment; or it may not do so. If it

does not fix a time, the amendment has to be carried out within fourteen days of obtaining the leave to amend from that court. In either case, the

court which has got the power under Rule 18 to extend the time is the court in which the amendment has to be carried out. The fact that leave was

originally refused by the Subordinate court, and it was subsequently granted by it as directed by the appellate or revisional court, as the case may

be, does not affect the position. In other words, the court which has got the power to extend the time under Order VI Rule 18 C.P.C. to carry out

an amendment is the court, which has fixed a time for that purpose; and if no time has been fixed, it is the court in which the amendment has to be

carried out.

12. We have to examine the judgment of the Supreme Court in the light of the above position. The appellant''s contention in the Supreme Court

was that the High Court should have allowed it to amend the written statement as prayed for in C.M.P. No. 8850 of 1965. It is obvious from the

following sentence appearing in the judgment of the Supreme Court.

This brings us to the question whether the High Court should have allowed the amendment sought in 1965.

Then the judgment proceeds to deal with the facts and circumstances of the case, and to state the legal principles applicable in the matter of

granting leave to amend. After that, the court concludes as follows:-

We are, therefore, of opinion that we should allow the amendment. Of course, the plaintiff will be at liberty to file a written statement in answer to

the new plea, put he will not be allowed to raise new pleas of his own having no relation to the grant of the second kuthakapattom.

The following sentences in the concluding part of the judgment of the Supreme Court are also relevant:

In the result, we dismiss the appeal as to portion L(1)(a) both in regard to possession and mesne profits and improvements. As regards L(1)(b),

the amendment based on the second Kuthakapattom will be allowed and the parties will go to trial on that amendment.

The case was remitted to the trial court for the above purpose. There can be no dispute that by the above judgment, the Supreme Court did not

intend that the amendment should be carried out in that court. It is also clear that it has to be carried out in the trial court, to which the case was

remitted. The Supreme Court did not fix the time to carry out the amendment, obviously for the reason that it was unnecessary and the trial court

had the power to extend the time provided in Order VI Rule 18 for that purpose. It is impossible on the facts of the case to carry out the

amendment within fourteen days of the judgment of the Supreme Court. Because at that time, the records of the suit were in the Supreme Court;

and they reached the trial court only a few months after that judgment. In these circumstances, it is the duty for the trial court to fix a time for

carrying out the amendment as allowed by the Supreme Court; and the trial court, after receiving back the records of the case, acted rightly in

posting the case for the appearance of the parties, to fix a date for carrying out the amendment. But it went wrong in not observing the instructions

contained in the circular issued from this court regarding the manner in which amendment of pleadings has to be carried out, and in not fixing a date

for carrying out the amendment accordingly. The subsequent order passed by the lower court that the amendment will not be permitted to be

carried out, as it was not done within fourteen days of the judgment of the Supreme Court is clearly wrong.

In the result we set aside the order of the lower court and allow this appeal. The trial court will fix a reasonable time for the appellant to carry out

the amendment of its written statement, as allowed by the Supreme Court; and it shall be carried out in accordance with law, as pointed out in the

aforesaid circular issued by this court. In the, circumstances of the case, we make no order as to costs.