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(2001) 01 DEL CK 0111

Delhi High Court

Case No: Civil Revision 896 of 2000

Nirmala APPELLANT

Vs

Bimla Bharti and Others RESPONDENT

Date of Decision: Jan. 8, 2001

Acts Referred:

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

Citation: (2001) 5 AD 117 : (2001) 90 DLT 395

Hon'ble Judges: S.K. Mahajan, J

Bench: Single Bench

Advocate: J.S. Chauhan, Adv J.R. Mudgal, for the Appellant;

Final Decision: Allowed

Judgement

S.K. Mahajan, J.
Admit. With the consent of the parties the matter has been heard finally.

The plaintiff filed a suit for mandatory injunction against the defendant which is pending before the Trial Court. Defendants 1 to 3 filed written statement in that suit. Defendants 1 to 3 who are the statutory authorities filed written statement. In the suit seniority of defendant No. 4 was challenged. No separate written statement was filed by this defendant. However, a statement was made in Court that this defendant will adopt the written statement filed by defendants 1 to 3 and he would not like to file a separate written statement. Subsequently, an application under Order 6 Rule 17 of CPC was filed by defendant No. 4. By way of the application defendant NO. 4 sought to take three legal objections in the written statement to the effect that suit was not within time, suit was bad for mis-joinder of parties inasmuch as defendant No. 4 was not a necessary party in the suit and the plaint does not disclose cause of action and no suit could be filed against him without service of notice which was mandatory in law.

2. By the impugned order the application of the said defendant was dismissed by the Trial Court and it has held that the plea of limitation an be taken up at any time and there was no requirement of the defendants subsequently taking that plea in the written statement. It is also held by the Trial Court there was an inherent contradiction in the stand taken by defendant No. 4 inasmuch as at one place it is stated by her that suit was bad for mis-joinder of parties on account of her name having been included in the list of defendants and at another place she has sated that she should have been served with a notice. According to the learned Trial Court both these pleas were contradictory and the amendment proposed in the application cannot be allowed. Being aggrieved by this order, the present revision petition was filed.

3. I have heard learned Counsel for the parties and have also perused the record filed by the petitioner. It is no doubt true that a plea about limitation can be taken at any time, however, in case a defendant seeks to amend his written statement so as to take this plea in the written statement, in my opinion, there cannot be any objection to permit the defendant to take that plea. I also do not find any contradiction in the stand taken by defendant No. 4 in her application whereby she is proposing to amend the written statement. The plea that the suit is bad for misguide of parties and the plea that even if she was imp leaded as a party it could not be done without service of notice are not contradictory. The objections sought to be taken in the written statement by defendant No. 4 are legal. The suit is at its preliminary stages. In my opinion, Therefore, no prejudice would be caused to the plaintiff in case defendant No. 4 are legal. The suit is at its preliminary stages. In my opinion, Therefore, no prejudice would be caused to the plaintiff in case defendant No. 4 is permitted to amend the written statement. It is now well settled that the Courts should get at and try the merits of the case that comes before them and all amendments that may be necessary for deciding the real matter in controversy between the parties without causing injustice to the other side should be allowed. Object of the Courts is to decide the rights of the parties and not to punish them for their mistakes made in the conduct of the case. The amendments sought to be made by the petitioner are relevant and necessary for deciding the matter in controversy between the parties. I, accordingly, allow this petition and consequently also allow the application of the petitioner under Order 6 Rule 17 for amendment of the written statement subject to the payment of Rs. 1,000/- as costs to be paid to the plaintiff. The petition stands disposed of.

4. Petition allowed with costs.