
(1999) 08 P&H CK 0047

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal from Order No. 35 of 1985

Ahir College Society and Others

APPELLANT

Vs

M.C. Rander and Others

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

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

Citation : (2000) 2 CivCC 221 : (2000) 124 PLR 337 : (2000) 2 RCR(Civil) 184

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Gopi Chand, for the Appellant;

Final Decision : Allowed

Judgement

R.L. Anand, J.—Nobody has given the appearance on behalf of the respondents. Proceeded ex-parte.

2. This is a second appeal against the judgment dated 23rd January, 1985 passed by Additional District Judge, Narnaul who while endorsing the view of the trial Court that the suit of the plaintiffs was not maintainable in the present form also gave the following opinions:-

" However, I am of the opinion that instead of dismissing the suit, the trial court should have afforded an opportunity to the plaintiff-appellants to amend their plaint so as to bring it in the four corners of the law and since it was not done, therefore, while affirming the findings recorded by the trial Court, I set aside the judgment and decree and sent the case back to the trial Court for deciding in accordance with law after affording opportunity to the plaintiff to amend the plaint. The parties through their counsel are directed to appear before the trial Court on 15th February, 1985."

3. The brief facts of the case are that M.C. Rander and nine others filed a suit for declaration to the effect that they are in service of the defendants and are entitled to all the emoluments and allowances as per law and that the order

passed by the Principal on 16th July, 1979 is illegal and has no effect on the rights of the plaintiffs with the prayer for perpetual injunction requiring the defendants to let the plaintiff work as per their posts of Lecturers. The suit was contested by the defendants and the preliminary objection was raised that the suit of the plaintiffs was not legally maintainable. Several issues were framed and issue No. 6 to the above effect was treated as preliminary. The trial Court vide judgment dated 16th December, 1981 decided issue No. 6 against the plaintiffs and in favour of the management and dismissed the suit by holding that it is not maintainable in the present form. Aggrieved by the judgment and decree of the trial Court, the unsuccessful plaintiffs filed the appeal before the Court of Additional District Judge, Narnaul who did not think proper to interfere in the impugned judgment. Its legality was maintained by, holding that the suit of the plaintiffs was not maintainable but certain observations were made by the learned Additional District Judge, Narnaul, quoted above. Aggrieved by those observations, the management has come in the present appeal which I am disposing of with the assistance rendered by the learned counsel for the appellant.

4. The grouse of the appellants is that the observations made by the learned Additional District Judge, Narnaul are contrary to the law. In fact, it has allowed the amendment of the suit even in the absence of any formal application made by the plaintiffs. Even the oral request was not made by the plaintiffs and the amendment has been allowed without giving any opportunity to the present appellants i.e. management. In support of his contention, the learned counsel for the appellants, relies upon Jagidsh Chander and Anr. v. Bakshi Chatarpal Singh and Ors. (1975) 77 P.L.R. 92 (Delhi Section) which lays down that the power under Order 6 Rule 17 cannot be exercised by the Court suo motu. Such power can be exercised only u/s 153 of the CPC read with Order 6 Rule 17 of the Code. It has even been held by Delhi High Court that under the guise of inherent powers of a Court it cannot over ride the express provisions of law. The learned counsel also invites my attention to Pritam Singh Gill v. State of Punjab and Anr. (1979)1 S.L.R. 858 and para No. 5 of the judgment lays down as follows:-

"5. Shri Mohinderjit Singh Sethi, the learned counsel for the appellant has tried to argue that the learned Single Judge erred in not allowing him Rs. 39,306.05 as difference of the pay he had actually drawn and to which he was entitled on account of his promotion, after upholding his right for that claim. He referred to para 22 of the petition to urge that he had mentioned therein that he was entitled to salary and allowance from 1st November, 1956 to 24th October, 1969. No argument was addressed to this effect before the learned Single Judge, as is apparent from the judgment under appeal and the order dated 5th August, 1976 in the petition for review. The only amount which was claimed was Rs. 11,423.15, as is contained in (b) of the prayer clause. Unless the amount which was claimed or the argument was raised about it, the learned Single Judge could not consider it. At the time of reply to the arguments of the counsel for the respondents. Shri Mohinderjit Singh Sethi, learned counsel for the appellant,

made an oral prayer for amendment of his writ petition to include the sum of Rs. 39,306.05 now claimed by him. Sub-rule (2) of rule 17 of Order 6, Civil Procedure Code, added by the Punjab and Haryana High Court insists for an application in writing for such an amendment in which amendments sought are to be incorporated. In the light of this sub-rule an oral application for amendment cannot be considered. There is yet another reason for which such a prayer for amendment cannot be allowed and that is that a relief to claim money only cannot be the basis for filing the writ petition. We do not feel inclined to entertain an oral application for the amendment of the writ as stated by Shri Sethi for a relief, which cannot be granted by this Court."

5. In this view of the matter, the present appeal stands allowed. The order of the learned Additional District Judge stands modified and the observations are hereby deleted from the judgment of the learned Additional District Judge, Narnaul.