
(2012) 05 AHC CK 0044
In the Allahabad High Court
Case No : Civil Revision No. 182 of 2012

Amit Garg and Another

APPELLANT

Vs

Smt. Tabassum and Others

RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

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

Citation : (2012) 7 ADJ 652 : (2012) 5 AWC 5407

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Manu Saxena and Ajit Kumar for the Revisionists, for the Appellant; Ajay Kumar Singh, Ashish Kumar Singh, Krishna Shukla and S.C., for the Respondent

Judgement

Hon''ble Sudhir Agarwal, J.—Heard Sri Ajit Kumar, Advocate assisted by Sri Manu Saxena, learned counsels for the petitioners, Ari Ajay Kumar Singh and Sri Ashish Kumar Singh, learned counsels for contesting respondent No. 1 and Sri Krishna Shukla, who has put in appearance on behalf of respondent Nos. 2 to 4 and learned Standing Counsel for respondent Nos. 5 & 6. The petitioner's application seeking amendment/impleadment in original suit No. 274/2004 has been rejected by Court below i.e. the Court of Addl. District Judge, Court No. 14, Allahabad by order dated 23.3.2012 and this revision has been preferred assailing the said order. This case has come up before this Court by nomination of Hon''ble the Chief Justice by His Lordship's order dated 19.4.2012.

2. The original suit, admittedly, has been filed by the revisionists themselves impleading the following:

3. The relief sought by the revisionists in the above suit are as under:

4. For the purpose of considering validity of impugned order though the parties have sought to demonstrate that there is chequered history but, in my view, suffice it to mention that an amendment sought in the plaint by plaintiffs can be

rejected on the well established principles only. Normal principle is that an amendment can be made and allowed at any stage unless the principles negating such amendment are applicable.

5. The law in respect to amendment of pleadings is a bit liberal. The mere fact that application for amendment has been filed after a prolong delay would not justify its rejection where neither it changes the nature of the suit nor intends to add a claim which is barred by limitation nor takes away the claim of the other party nor amounts to a fresh cause of action nor otherwise prejudice the other side. Instead of adding several authorities on this aspect, I intend to refer to the decision of Apex Court in *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.,* , where the Court held:

Insofar 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 Vs. Kalgonda Shidgonda Patil and Others,* , 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 questions 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 Vs. Prabhakar Mohanlal Kalwar,*]

6. This has been followed in *Peethani Suryanarayana and Another Vs. Repaka Venkata Ramana Kishore and Others,* . To the same effect is the view taken in *Sushil Kumar Jain Vs. Manoj Kumar and Another,* .

7. The revisionists, who are also plaintiffs, filed amendment application stating that they have come across certain act of fraud and misrepresentation and collusion of the parties necessitating amendment in the pleadings so as to bring those factual pleadings on record. Also since the plea of mala fide has been raised against State Government officials, they are to be impleaded eo nomini. The amendment application is on record as Annexure 10 to the writ petition.

8. Sri Ajit Kumar, learned counsel for the revisionists submitted that the Court below has tried to mislead itself by referring to the orders of this Court whereby directions have been issued for expeditious disposal of suit and contended that such direction would not negate rights of the parties regarding amendment etc., if otherwise they are within their rights for making such request. He further contended that Court below has misdirected itself by referring to various proceedings here and there and to suggest that several amendments were already moved and therefore, the present amendment ought not be allowed without considering the fact that amendment sought by revisionists did not meet any of the contingency or principles on which an amendment can be disallowed

and since it was the suit of the revisionists themselves, there cannot be any presumption that revisionists would be interested in delaying its disposal and therefore, the Court below wholly illegally has failed to consider the matter and committed material illegality in passing the impugned order.

9. On the contrary Sri Singh, learned counsel for respondents submitted that amendment in question is nothing but an attempt to delay the proceedings in final disposal of suit and even otherwise it has rightly been rejected by the Court below. He also placed reliance on Apex Court decision in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), .

10. I have heard learned counsel for the parties and perused the record.

11. A perusal of amendment application would show that it is directly connected with the issue raised by the plaintiffs in original suit and in fact it intend to add certain paragraphs and grounds which are discernable from the facts stated in the amendment application, which if proved, may entitle the plaintiffs/revisionists grant of relief as sought in the original suit.

12. Learned counsel for the respondents could not dispute that these facts are not already on record or part of proceedings and are in the kind of repetition. The officials of Government were not already party to the suit in their individual capacity. They were not impleaded eo nomini and therefore, for the first time are sought to be so impleaded in view of the well established law that a plea of mala fide shall not be entertained and heard by the Court unless the person against whom mala fide is alleged is impleaded by name i.e. eo nomini.

13. A careful reading of entire amendment, which the plaintiffs/revisionists has sought also does not show that it would change the nature of the suit or something which can be said to be barred by limitation ex facie. The well established principles for denying an amendment I do not find exist in the present case and learned Counsel for the respondents have also failed to demonstrate the same. The Court below has therefore erred in law in rejecting application of plaintiffs-revisionists seeking amendment in the plaint.

14. Some other arguments have also been advanced by counsel for the parties on merits of the suit but I find that any discussion and observation by this Court at this stage would prejudice the original suit itself, which is pending since the Court below may find difficulty to form an opinion otherwise than the observation made by this Court and learned counsel for the parties fairly agree thereto. In these circumstances the issues raised otherwise on merits of the original suit ought not be discussed hereat. I proceed to do so.

15. In the result the impugned order in my view cannot sustain. The revision is allowed. The impugned order dated 23.3.2012 passed by Addl. District Judge, Court No. 14, Allahabad is hereby quashed. The amendment application of the plaintiffs/revisionists stands allowed. The necessary amendment shall be made in the plaint within 30 days from today. An opportunity shall also be granted by the

Court below to the opposite parties to file written statement/additional written statement, if any, in order to reply amended part of the plaint and thereafter it shall endeavour to decide the suit expeditiously, in accordance with law. There shall be no order as to costs.