

(1990) 12 AHC CK 0002
In the Allahabad High Court
Case No : Civil Revision No. 109 of 1989

Balmukund

APPELLANT

Vs

Smt. Harpyari

RESPONDENT

Date of Decision : 12-12-1990

Acts Referred:

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

Citation : (1991) 1 AWC 264

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.L. Ganguly, J.—This revision is directed against the order passed by the learned Civil Judge, Etah, refusing to allow the application seeking amendment in the restoration application filed by the Plaintiff-Applicant. The revision was presented and the court was pleased to direct the applicant to serve the Respondent in the case, so that the revision itself may be finally disposed of at the admission stage itself. The Respondent filed their appearance and counter affidavit to the said application. The parties have agreed and consented that the revision itself may be finally heard and decided.

2. The Applicant/Plaintiff had filed a suit for specific performance against the opposite parties, which was dismissed in default on 7-8-1986. Or 8-8-1986, an application for restoration of the aforesaid suit was filed with an affidavit. In the affidavit and application, it was stated that on 6-8-1986, the applicant had fallen ill of dysentery and could not appear before the court on the said date nor sent witnesses or sent information about his illness to his counsel. In the circumstances, the suit was dismissed for default of the applicant. The applicant's counsel had also not been able to attend the court as he was busy in other cases. After recovery from the ailments on 8-8-1986, the applicant had filed an application for restoration of the suit. It is in the said application in which the Plaintiff/Applicant seeks amendment by introducing certain facts, namely, "on the

said date when the suit was dismissed for default, the applicant had come to the court inspite of his being ill and had called his witnesses, also. The applicant could not contact his lawyer in spite of his attempt to find him out from various court rooms. He learnt that his counsel was busy in number of other cases. As such, he had got the cases adjourned for being taken up after lunch. The applicant after lunch had gone to call his lawyer without informing the court. In the mean time, the case was called. The applicant remained with his lawyer as he had not till then got freed. When the applicant alongwith his lawyer reached the court, he learnt that his suit had been dismissed." The application for amendment with aforesaid new facts was opposed by the Defendants. It was objected that by the proposed amendments, the Plaintiff was seeking to set up a different case entirely than the case set up in the original application for restoration. The Defendants urged that a valuable right had accrued in his favour. In case the amendment sought was allowed the same would be contrary to provisions of Order 6, Rule 17, Code of Civil Procedure.

3. The learned Civil Judge after considering the applications and affidavits of the parties recorded clear finding to the effect that valuable rights had accrued in favour of the Defendant/Respondents. The case now sought to be introduced by amendment is entirely a different case which entirely changes the nature of defence. In case the amendment is allowed, it shall be highly prejudicial for the Respondent in whose favour valuable rights had already accrued. The court further held that any amount of compensation could not be sufficient to compensate the Respondent if the amendments sought is allowed. Before this Court, the learned Counsel for the applicant strenuously urged that there was no material change or variation in the defence set up in the application for restoration filed by the applicant. In the original application, it was stated that the applicant was lying ill due to dysentery and could not call his witness and attend the court, and when the case was called out. It was dismissed for default as his counsel had also not appeared before the court his being engaged in other courts. Now the perusal of the amendments sought mentioned in the above paragraphs, clearly shows that the applicant has completely changed the case in the amendment application which is not only just opposite and contrary to the earlier averments, appears to have been set up for a better pleading to secure restoration.

The court cannot be a party in permitting a Plaintiff or a Defendant to set up a false and improved version about his case only with a purpose to secure a desired result. It is abundantly clear that the amendments sought is an after-thought, line of action proposed after obtaining the expert advise. If it is examined that whether an amendment sought changes the nature of the defence or the case whether it is malafide and it amounts to depriving the other party of a valuable right which accrued in their favour If these tests are applied, it is clear that the applicant has set up a entirely new case which is contrary and which is opposite to the initial case set up. It also deprives the Respondent of the valuable right accrued to them. Any amount of cost is not sufficient to compensate the

Respondent to permit the Plaintiff to amend the application with the aforementioned proposed amendments.

4. The counsel for the applicant cited Kamal Ragani Sharma and Anr. v. Nepal Bank Ltd. and Ors. 1987 ALJ 349. This case is not helpful to the applicant. In the said case, a joint written statement was filed by the Defendants Later on, one of the Defendants wanted to take plea on distinct defence, contrary to the joint defence in the joint written statement. The said application for amendment was allowed. Further it is to be noted that there, was no opposition to the said amendment by the Defendants inter se. The court in: said case had found that the amendment was necessary for advancing substantive justice. It was also held that ordinarily the High Court would not interfere in revision unless there is error in exercising the discretion. The learned Counsel for the applicant further cited (Ganesh Trading Co. Vs. Moji Ram, where also the Supreme Court laid the law that amendment be allowed if it did not alter the cause of action or the character of the suit nor did the change the identity of the Plaintiff, who remained the same. The case cited is of no-assistance to the applicant. The other case cited in Rula Ram v. IV Addl. District Judge and Ors. 1985 2 All RC 428, where also this Court was pleased to hold that "amendment in original written statement by taking a new case by amendment should not be allowed." The court while deciding the case relied in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., . These Authorities were also placed before this Court, but these authorities do not support the applicant's case. In fact AIR 1977 SC. 68 supports the case of the Defendants and justifies the order of the Trial Court by which the amendment was refused.

5. After hearing the counsel for the parties and examining the record, I am of the opinion that this revision calls for no interference and is liable to be rejected.

The revision is dismissed accordingly. No orders as to cost.