
(2014) 02 MP CK 0115
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1560 of 2013

Banwari

APPELLANT

Vs

Rajaram

RESPONDENT

Date of Decision : 13-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 18
Constitution of India, 1950 — Article 227

Citation : (2014) 02 MP CK 0115

Hon'ble Judges : Sheel Nagu, J

Bench : Single Bench

Advocate : B.S. Dhakad, for the Appellant; Anand Bharadwaj, for the Respondent

Final Decision : Dismissed

Judgement

Sheel Nagu, J.—This petition under Article 227 of the Constitution of India assails the interlocutory order dated 8.2.2013 (Annexure P-1) whereby an application under Order 6 Rule 18 CPC preferred by defendant No. 1 Banwari has been rejected. Learned counsel for rival parties are heard.

2. Defendant No. 1 has preferred an application under Order 6 Rule 18 CPC objecting grant of further time to the plaintiff to pursue repeat application under Order 6 Rule 17 CPC preferred before the trial court despite the earlier one having been allowed by the appellate court while remanding the matter to the trial Court for reconsideration.

3. Learned counsel for the petitioner contends that though amendment application under Order 6 Rule 17 CPC preferred by the plaintiff before the appellate court was allowed while passing of the judgment and decree on 7.9.2012 where the parties were directed to appear before the trial Court for reconsideration of the matter on 14.9.2012. It is contended that as per provisions of Order 6 Rule 17 CPC since no time limit was fixed by the appellate court to carry out the amendment while remanding the matter after allowing the

amendment application of the plaintiff, the plaintiff was obliged to carry out the amendment within a period of 15 days from the passing of the order dated 7.9.2012. It is contended that the plaintiff did not file any application for extension of time for carrying out the amendment before the trial Court and therefore fresh amendment application filed before the trial Court under Order 6 Rule 17 CPC for carrying out the same amendment in the plaint as allowed by the appellate court, can neither be considered nor allowed. In this background the defendant No. 1/petitioner preferred an application under Order 6 Rule 18 CPC which has been rejected by the trial Court and the case by the impugned order has been fixed for hearing on the application for amendment filed by the plaintiff.

4. Per contra, the learned counsel for the respondent/plaintiff contends that by judgment and decree dated 7.9.2012 an order of remand was passed after allowing amendment sought by the plaintiff and fixing 14.9.2012 as the date for rival parties to appear before the trial court. It is contended that the matter was though listed before the trial Court on 14.9.2012 but the record was not received by the trial Court from the appellate court. On receipt of the record the case was listed for the first time before the trial Court on 19.12.2012. Moreover, it is contended that the defendant/petitioner herein did not object to the absence of the plaintiff on 14.9.2012 before the trial Court. It is lastly contended that the application for amendment under Order 6 Rule 17 CPC preferred before the trial Court has not yet been allowed. The case is yet to be heard on the said application. The trial Court has merely in the given facts and circumstances of the case where the record from the appellate court was received late, has rejected the prayer of the defendant No. 1/petitioner that the plaintiff should not be allowed from preferring and prosecuting the repeat amendment application before the trial Court due to efflux of time.

5. Perusal of the impugned order and the reasoning contained therein, it is evident that though the time period of 15 days expired since the passing of the order of amendment contained in the judgment and decree dated 7.9.2012 but looking to the fact that since the record was not received by the trial Court from the appellate court, the amendment so directed could not possibly be carried out by the plaintiff. Thus, as a measure of added precaution the plaintiff preferred application under Order 6 Rule 17 CPC.

6. It is no body's case that the amendment was disallowed. The amendment has already been allowed by the appellate court. It is only a matter of incorporating the amendment in the plaint. Thus when the basic order of allowing of amendment dated 7.9.2012 has not been assailed by the defendant/petitioner herein there is no reason why the plaintiff should be restrained from carrying out the amendment due to mere technicalities and for reasons beyond the control of defendant No. 1.

7. In view of the above, this Court finds that the trial Court has not transgressed any of its jurisdictional limits prescribed by law while passing the impugned order.

8. Accordingly, no case for interference in the limited supervisory jurisdiction under Article 227 of the Constitution of India is made out. Resultantly, this petition deserves to be and is therefore rejected sans cost.