
(2006) 09 PAT CK 0004

In the Patna High Court

Case No : Civil Revision No. 1376 of 2005

Bihar State Financial Corporation and Others

APPELLANT

Vs

M/s Hotel M.D. and Others

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2007) 1 PLJR 220

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Advocate : Y.V. Giri, for the Appellant; R.C. Bharti and A. Kumar For the State, M/s S.S. Dwivedi and Pramod Mishra For Pvt. O.Ps., for the Respondent

Final Decision : Dismissed

Judgement

Mridula Mishra, J.—Heard the parties. Defendants No. 1, 2 and 3 of Title Suit No. 135 of 1992 (M/s Hotel M.D. & Ors. vs. Bihar State Financial Corporation & Ors.) are petitioners, who have filed this civil revision application for setting aside the order, dated 13.4.2005, passed by the Subordinate Judge, IV, Begusarai, allowing the amendment petition of the plaintiffs opposite parties first set.

2. Title Suit No. 135 of 1992 was filed by the opposite parties first set for preliminary decree for accounting to ascertain the real amount of dues payable and further to declare that the unit of the plaintiffs became sick and non-functioning due to laches of the defendants-petitioners. Further prayer of the plaintiffs was to declare that the defendants, Bihar State Financial Corporation is not entitled to release the loan amount from the plaintiffs. Another prayer was to restrain the defendant Corporation from auctioning the unit or to take possession of the unit by any means. Plaintiffs' prayer was also to direct the defendant Corporation for providing loan for re-establishment of the unit and to restrain the back margin. The Bihar State Financial Corporation appeared and filed written statement. It was defendants' case that plaintiffs' prayer for fresh accounting is not maintainable as the amount of loan due with the plaintiffs has already been

ascertained. The plaintiffs are defaulters and the suit has been filed to put obstacle in the recovery of amount. The plaintiffs filed injunction petition, which was dismissed by the Court below. After thirteen years delay the plaintiffs filed amendment petition under Order 6 Rule 17 read with Section 151 of the CPC for amendment in the plaint. The amendment in the plaint which was sought for by the plaintiffs was that due to wilful negligence of the Corporation the unit became sick and, hence, they are entitled to realise the loss of profit from the defendant Corporation.

3. The defendant Corporation/petitioner filed rejoinder to the petition filed by the plaintiffs for amendment of plaint. The defendants contested this amendment petition specifically for the reason that the plaintiffs have brought this amendment for recovery of the loan from the defendant Corporation instead of repaying Corporation's dues, which is wholly misconceived and after such a long delay the plaintiffs' prayer for amendment cannot be allowed. The defendants also objected the amendment on the ground that the amendment will change the nature of the suit as well as it is barred by limitation.

4. The trial Court, by the impugned order, has allowed the amendment petition of the plaintiffs with a finding that the nature of the suit will not change by allowing the amendment. It has also been observed that since the law of amendment is very liberal so there appears no impediment in allowing the proposed amendment.

5. Counsel for the petitioners has submitted that after thirteen years of the filing of the suit this amendment has been sought for by the plaintiffs in which the plaintiffs have prayed for compensation from defendant Corporation besides the fact that the nature of the suit will completely change, it is also barred by limitation.

6. On the other hand, the counsel for opposite parties, opposing the contention of the counsel for the petitioners, has submitted that there is no question of limitation as non-payment of compensation by the defendants to the plaintiffs is recurring and it is not barred by any limitation. So far the Court's jurisdiction to allow the amendment petition is concerned, the Court can allow applications for amendment in spite of delay. Reliance has been placed on a decision reported in *Pankaja and Another Vs. Yellappa (D) by Lrs. and Others*, . It has also been submitted that the dominant purpose of allowing the amendment is to minimize the litigation. In the plaint itself there is statement that the unit became sick as the defendant Corporation did not release the loan amount at appropriate time there being such statement in the plaint the amendment which has been sought is not alien to the pleadings. The hearing of the suit has not yet started, as such, it cannot be said that any right has accrued to any of the parties which is going to be affected by such amendment.

7. Another decision which have been relied on by the opposite parties are *Prem Bakshi and Others Vs. Dharam Dev and Others*, . *Pankaja and Another Vs.*

Yellappa (D) by Lrs. and Others, . These decisions fully cover the submissions made by the counsel for the opposite parties.

8. After considering the arguments of the counsel for the parties and after perusal of the materials on records, it is quite apparent that although the suit is of the year 1992, the hearing the suit has not started. It further transpires, on perusal of the plaint, that there is statement regarding non-release of fund by the defendant Corporation due to which the unit became sick. The finding recorded by the Apex Court in Prem Bakshi and Others Vs. Dharam Dev and Others, is the answer to this question that such amendment will neither cause failure of justice or irreparable injury to the petitioners. Paragraph 6 of this judgment is as follows:

"6. Now the question is whether the order in question has caused failure of justice or irreparable injury to respondent No. 1. It is almost inconceivable how mere amendments of pleadings could possibly cause failure of justice or irreparable injury to any party. Perhaps the converse is possible i.e. refusal to permit the amendment sought for could in certain situations result in miscarriage of justice. After all amendments of the pleadings would not amount to decisions on the issue involved. They only would served advance notice to the other side as to the plea, which a party might take up. Hence, we cannot envisage a situation whether amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party."

9. I find that no injury will be caused to the defendants-petitioners. Accordingly, this application is dismissed.