

**(2009) 01 AHC CK 0072**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 11726 OF 2006

Daya Ram Budhrani

APPELLANT

Vs

Additional District Judge/Special Judge (Anti Dacoity), Jhansi  
& Ors.

RESPONDENT

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**Date of Decision :** 01-01-2009

**Acts Referred:**

**Citation :** (2009) 01 AHC CK 0072

**Hon'ble Judges :** Tarun Agarwala, J

**Final Decision :** Dismissed

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## **Judgement**

Tarun Agarwala, J.—Heard Shri V.C. Mishra, the learned Senior Counsel for the petitioner and Shri Prakash Gupta, the learned counsel for the opposite party.

2. The plaintiff filed a suit for ejectment of the defendant and for possession of the property. This suit was eventually dismissed by the trial court, against which, a civil appeal was filed. An application under Order 6, Rule 17 of the Code of Civil Procedure was filed by the defendants seeking permission of the court to amend its written statement and incorporate paragraphs 30A to 30J after paragraph 30 of the written statement.

3. The defendants contended that during the pendency of the appeal, the appellant filed two documents, Paper Nos. 41C and 50C, which indicate that a fraud was committed by the heirs of Khadim Ali, and that, the judgment given by the Supreme Court in Jafar Ali Shah, Dr. Vs. Assistant Custodian of Evacuee Property, Jhansi, AIR 1967 SC 106 was an outcome of fraud, and therefore, it becomes necessary and imperative to amend the written statement. This application was rejected by the lower appellate court, against which, the present writ petition has been filed.

4. Having heard the learned counsel for the parties, this Court is of the opinion that the present writ petition is not maintainable against an order passed by the lower appellate court. The appropriate remedy was to await the result of the

appeal and, if aggrieved by the appellate order, the defendant could have challenged the order rejecting the amendment application in an appropriate second appeal by taking a ground as provided under Section 105 CPC.

5. However, since the present writ petition was entertained and an interim order staying further proceedings in the appeal was passed, this Court is deciding the matter on merit. The Court finds that the petitioner is not entitled for any relief. The amendment sought is basically based on two documents, namely, Paper No. 41C and 50C, filed by the plaintiff-appellant. It is not clear as to whether these documents have been admitted and exhibited pursuant to an application under Order 41, Rule 27, or it has only been filed through a miscellaneous application. If these documents have been admitted and are exhibited, then it will have evidentiary value, otherwise, it is only a piece of paper, and no cognizance of it can be taken by the court below. If it has been exhibited, the defendant would have a remedy to lead evidence against those documents, or file such additional evidence, by way of rebuttal, to support his stand, but could not be permitted to amend the written statement.

6. Documents are filed to support the plaintiff case or the evidence of the petitioner in the written statement. Filing of documents cannot lead to amendment of the written statement. The defendant could only be permitted to lead additional evidence, if he so desires.

7. There is another aspect. Order 6, Rule 17 permits amendment of the pleadings at any stage of the proceedings, but also imposes an embargo, namely, that such an amendment should not be allowed where the trial had commenced, unless it was based on subsequent development and in spite of due diligence, the parties could not have raised the issue prior to the commencement of the trial. In the present case, the defendant contended that since the two documents were filed by the plaintiffs in appeal, it was only at that stage that he came to know about its existence, and therefore, contended that the amendment application was within time and should be allowed.

8. The lower appellate court rejected this contention holding that the Supreme Court had passed a judgment in Jafar Ali Shah, Dr. (Supra), of which the defendant had knowledge, and now, at this belated stage, cannot contend that the judgment of the Supreme Court was obtained by fraud by the heirs of Khadim Ali. The lower appellate court further opined that such amendment filed after the close of the argument and after filing of the written statement was only a device to delay the disposal of the appeal.

9. In my view, the findings given by the lower appellate court was justified and does not require any interference. The trial court had considered the judgment of the Supreme Court that had been relied upon by the defendant. It cannot, therefore, be said that the defendant had no knowledge of the judgment of the Supreme Court.

10. In view of the aforesaid, this Court is of the opinion that the amendment filed

by the defendant was only for the purpose of delaying the proceedings and the same was rightly rejected by the lower appellate court.

11. The writ petition is dismissed. Considering the facts and circumstances that the appeal is pending since 2003, I direct the lower appellate court to decide the appeal within six months from the date of the production of a certified copy of this order.