
(2013) 05 MP CK 0035

In the Madhya Pradesh High Court

Case No : Writ Petition No: 97 of 2013

Dr. Baba Saheb Ambedkar Grih Nirman Sahakari Samity Ltd.	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 13-05-2013

Acts Referred:

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

Citation : (2013) 05 MP CK 0035

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : L.M. Tripathi, for the Appellant; R.K. Nanhorya, learned counsel, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—Challenging an interlocutory order dated 20.12.2012 passed by the learned trial court dismissing an application for amendment filed by petitioner/plaintiff, this writ petition has been filed. Petitioner is plaintiff and has filed the suit in question for declaration and injunction in the year 2012. The suit is pending for more than 11 years, evidence of the petitioner/plaintiff have been closed and after a period of 9 years an application for amendment under Order 6 Rule 17 CPC was filed and it was pointed out in the amendment application that certain events have taken place during pendency of suit and, therefore, amendment be allowed.

2. The amendment application have been rejected by the court below on two counts. The first ground is that, the suit is pending for more than 10 years. The application for amendment have been filed after a period of more than 9 years, during which period the case was listed for evidence and further it is held that while filing the application for amendment under Order VI Rule 17 CPC the requirement of the first proviso to order VI Rule 17 CPC has not been met and, therefore, the application is rejected.

3. Having heard learned counsel for the parties, I see no reason to interfere into the matter. As indicated hereinabove, the suit is pending since 2002, the matter was lingering on for more than 9 years without recording the evidence of petitioner/plaintiff and after a period of 9 years the amendment is prayed for and the amendment only incorporates certain events which took place more than 5 years back. The first proviso to order VI Rule 17 CPC contemplates that, no application for amendment shall be allowed after the trial has commenced, unless the Court came to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

4. In the present case, the statutory requirement, as contemplated in aforesaid proviso, has not been complied with by the petitioner, he has miserably failed to demonstrate before this Court as to why the amendment could not be met for more than 9 years, whether any due diligence was exercised in the matter and the delay has not been properly explained. In view of above, if the learned court has dismissed the application for amendment, no error is committed by the court below warranting interference into the matter at this stage in a petition under Article 227 of the Constitution. Accordingly, finding no ground for interference, the petition is dismissed.