
(1991) 01 KAR CK 0067
In the Karnataka High Court
Case No : C.R.P. No. 3258/1990

H.K. Thammaiah

APPELLANT

Vs

Management of Bhel and Another

RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

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

Citation : (1991) 1 KarLJ 277

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

Chandrakantaraj Urs, J.-This matter coming up for orders on I.A. I by consent of the learned counsel for the parties is taken up for final disposal and disposed of by the following order.

The plaintiff filed a suit against the defendant B.H.E.L. seeking the relief that his date of birth as found in the employment register of the defendant should be altered as he was born on 15-6-1931 and as such he would be entitled to serve the Company till he attained 58 years of age.

Admittedly he had been retired on 24-7-1984 itself having regard to the age of retirement in the Company. Therefore, the amendment sought by the plaintiff in I.A. VI filed under Order 6, Rule 17 of the CPC was to claim damages from the date of retirement to the prospective date of retirement in the event the suit for declaration of date of birth succeeded. In other words a new cause of action was introduced by seeking that amendment in the pending suit, that is claiming damages even before that right had been declared in favour of the plaintiff. It was in that circumstance, the Court came to uphold the objections raised on behalf of the defendant-B.H.E.L. and dismissed the application for amendment.

I do not find any error or illegality in the order amounting to an error of jurisdiction. In that view of the matter, this revision is not maintainable and is rejected.

It is always open to the plaintiff if he succeeds in the pending suit to file a suit

for damages based on the result of his success in the suit.

Subject to the above observation, the revision petition is dismissed.

Petition dismissed.