
(2016) 05 GAU CK 0037
In the Gauhati High Court
Case No : CRP. No. 164 of 2016

Jashkaran Ghorawat

APPELLANT

Vs

Dulal Mandal

RESPONDENT

Date of Decision : 11-05-2016

Acts Referred:

Citation : (2016) 3 GauLT 815 : (2016) 4 NEJ 560

Hon'ble Judges : Mr. N. Chaudhury, J.

Bench : Single Bench

Advocate : Mr. O.P. Bhati, Advocate, for the Appellant; Mr. S.P. Roy, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. N. Chaudhury, J. (Oral) - Heard Mr. O.P. Bhati, learned counsel for the petitioner and Mr. S. P. Roy, learned counsel for the opposite parties.

2. The petitioner herein as plaintiff instituted Title Suit No.492/2012 in the court of learned Munsiff No.2, Kamrup at Guwahati praying for a decree of permanent injunction restraining the defendants from disconnecting of electricity and water to the tenanted premises along with other reliefs. The defendant landlord on being summoned appeared and filed written statement along with a counter-claim. The paragraph IX of the counter-claim was as follows :-

"IX. That the suit for declaration is valued at Rs.10,000/- and recovery of arrear electricity charges at Rs.3,663/- for the purpose of jurisdiction and Court fee and on both counts the separate ad valorem Court fee is paid."

In the counter-claim the landlord prayed for a declaration that plaintiff is a defaulter in paying rent and that the tenanted premises was required bona fide by the defendants and so prayed for a decree of eviction of the plaintiff from the tenanted premises along with a prayer for realisation of arrear electricity charges to the tune of Rs.3663/-.

3. The learned trial court accordingly framed issues both on the suit as well as counter-claim and both parties adduced evidence. At the stage when the suit and the counter-claim were fixed for argument, the defendants-counter claimants filed an application praying for amendment of the aforesaid paragraph IX of the counter-claim as it came to light in the meantime that the counter-claimant did not make payment of proper and ad valorem court fee. The plaintiff contested the matter tooth and nail and thereafter the learned trial court allowed the amendment. By the proposed amendment the counter-claimant wanted to substitute earlier paragraph IX with the following paragraph IX :-

"That the counter-claim of the defendants is valued at Rs.52,335/- for the purpose of jurisdiction and for the purpose of ejectment, ad-valorem court fee of Rs.2,286.10 is paid on Rs.48,672/- being the 12 months" rent @ Rs.4056/- per month and for recovery of arrear electricity charges of Rs.3,663/- ad-valorem Court Fee of Rs.355.60 is paid. Total Court fee of Rs.2641.70 is paid herewith."

4. Aggrieved, the plaintiff approached this Court challenging the aforesaid amendment of the written statement whereby the defendant was only permitted to make payment of deficit court fee. This Court after hearing the parties passed a judgment and order on 05.04.2016 upholding the order passed by the learned trial court thereby permitting the defendants to make amendment of the counter-claim. The plaintiff thereafter appears to have filed an application before the learned trial court praying for time after the court fee was paid for keeping further proceedings of the case in abeyance at least for one month so as to produce necessary orders from the Hon"ble Supreme Court as the plaintiff was going to file an SLP. The learned trial court by impugned order dated 22.04.2016 refused to stay further proceedings of the suit and fixed the matter for argument on 16.05.2016. The learned Munsiff also did not allow the defendant to file an additional written statement in view of the fact that the deficit court fee had already been deposited by the counter-claimant and the amendment was only in the nature of payment of court fee. This order has been challenged in the present revision proceeding under Article 227 of the Constitution of India.

5. The learned trial court allowed amendment of the counter-claim only to the extent of court fee and that order was upheld by this Court holding that there was no material change in the averments made in the counter-claim. Only difference that was made is on the basis of the objection raised by the plaintiff in his written statement against the counter-claim that there was necessity for payment of court fee by the counter-claimant. This Court observing that court fee is a matter between the parties and the court and with this proposition did not find any fault with the order passed by the learned trial court. Having noticed the previous paragraph IX which has been substituted by the new paragraph IX by way of amendment it does not appear that the learned trial court has committed any error of jurisdiction in refusing to stay further proceedings of the suit or to permit the plaintiff to file any additional written statement. The amendment is only to the extent of calculation of court fee which the counter-

claimant was required to pay in view of the objection raised by none other than the plaintiff himself. That being the position, allowing time to file written statement would be a mere formality and at best the plaintiff can say that even now the calculation has not been made properly. Allowing additional written statement will cause delay of the eviction matter and Mr. S. P. Roy, learned counsel for the opposite parties, submits that the defendant has been trying to delay the disposal of the suit by this or that means. Whatever may be the submission of the learned counsel, having noticed the nature of the proceeding and the order passed by the learned trial court, this Court could not find out any error of jurisdiction so as to invoke the provision of Article 227 of the Constitution of India.

6. Accordingly, the revision petition stands dismissed. No order as to cost.