

(2013) 07 AHC CK 0117

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39591 of 2013

Kailash Kumari and Another

APPELLANT

Vs

Hanumanji Maharaj Virajman Mandir and Another

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

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

Citation : (2013) 7 ADJ 331 : (2014) 2 ALJ 152 : (2013) 100 ALR 162 : (2014) 3 AWC 2319

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Dharm Vir Singh, for the Appellant;

Judgement

Rajes Kumar, J.—Heard learned counsel for the petitioner. The petitioner is a tenant of the shop in dispute owned by the respondent No. 1. By means of the present writ petition, the petitioner is challenging the order dated 15th May, 2013, passed by the Additional District Judge, Hathras, rejecting the revision filed by the petitioner against the order of the Civil Judge (Junior Division), Jaunpur, dated 27th March, 2009, by which he has rejected the amendment application filed by the petitioner seeking amendment in the written statement.

The respondent No. 1 filed a suit for eviction, inter alia, on the ground that the petitioner has sublet the shop in dispute; damaged the shop; and has not paid any rent. The suit was filed in the year 1992 and has been registered as SCC Suit No. 28 of 1992. The petitioner filed the written statement on 16.9.1993. It appears that the plaintiff-respondent moved an amendment application seeking an amendment in the plaint, which has been allowed. Amended, paragraph No. 1, is as follows

has been added by way of amendment and further paragraph 8-A has been inserted. The amendment application has been allowed after hearing the petitioner.

2. Learned counsel for the petitioner submitted that no reply has been filed to the amended plaint. Further on 10th February, 2009, after 16 years from filing of the written statement and after 14 years from the date of the amendment in the plaint, an amendment application has been moved by the petitioner seeking amendment in the written statement on the ground that by mistake of typing, some of the words have been left and some words have been wrongly typed. By the amendment application, following amendment has been sought:

3. The said amendment application has been rejected by the Civil Judge, Junior Division, Jaunpur by the order dated 27.3.2009 on the ground that no case has been made out that the fact which the petitioner-respondent wants to incorporate by way of amendment in the written statement was not within his knowledge earlier and he failed to show any ground why he could not be able to bring said amendment earlier. The case is at the last stage, therefore, the amendment application is being rejected. Being aggrieved by the order passed by the Civil Judge, Junior Division, the petitioner filed the revision, which has also been rejected by the impugned order dated 15th May, 2013 with the cost of Rs. 5,000/- The revisional Court has held that in the original written statement, it has not been stated that the plaintiff is not a trust. So far as the claim that the shop cannot be let out at the rent of Rs. 3,000/- per month is concerned, it is a matter of evidence. It has further been observed that the evidences of the plaintiff and the defendant are closed and the case is at the final stage, therefore, the amendment sought cannot be allowed.

4. Learned counsel for the petitioner submitted that it is true that the petitioner has not filed reply immediately after the amendment in the plaint in the year 1995, but in the interest of justice, it is necessary to permit the petitioner to make the amendment in the written statement, which is in the form of reply to the amendment made in the plaint. The amendment sought, neither amounts to resiling from any statement or any admission made in the written statement nor it will change nature of the case.

5. I do not find substance in the argument of learned counsel for the petitioner. Order VI, Rule 17 of the CPC reads as follows:

17. Amendment of pleadings.--The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as maybe just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of trial.

6. The petitioner has got fullest opportunity to file the reply to the amended plaint within a reasonable period, but he failed to do so. Perusal of the impugned

orders reveal that the evidences of both the sides have been closed and the case was ripe up for final hearing. The facts, which the petitioner wants to incorporate in the written statement were well within the knowledge of the petitioner earlier. No case has been made out by the petitioner that the facts were not in his knowledge prior to moving of the amendment application. The amendment application has been moved after 16 years from filing of the written statement and after 14 years from amendments made in the plaint, therefore, the amendment application of the petitioner was not bonafidely moved after such a long delay. In view of the above, I do not find any error in the impugned order, which requires interference by this Court. In the result, the writ petition, being devoid of merits, fails and is dismissed.