

(1982) 04 OHC CK 0007

In the Orissa High Court

Case No : Civil Revision No. 562 of 1979

Madhu Sethi (after him) Pade Sethi and Another	APPELLANT
Vs	
Bishnu Sethi (after him) Digdhan Sethi and Others	RESPONDENT

Date of Decision : 19-04-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 18, 151 , 152
Criminal Procedure Code, 1973 (CrPC) — Section 145
Payment of Wages Act, 1936 — Section 15(2)

Citation : (1982) 53 CLT 590

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : S.C. Mohapatra, M.R. Mohanty and P.K. Ray, for the Appellant; H.B. Swain and S.S. Swain, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Patnaik, J.—This is a Plaintiffs revision directed against rejection of his application filed u/s 152 read with Section 151 of the CPC for correction of the judgment and decree.

2. The original Petitioner instituted Title Suit No. 70/89 of 1971-73 in the Court of the Subordinate Judge, Sonepur for declaration of title and that he was entitled to possess the suit property. During the pendency of the suit, a proceeding u/s 145 of the Code of Criminal Procedure terminated in favour of the original opposite party declaring the possession of the opposite party on the day of the preliminary decree. So, the original Petitioner was obliged to seek recovery of possession by way of amendment of the plaint. His prayer for amendment was allowed by order dated 2-7-1974 and the original Petitioner was directed to pay additional Court-fee on the relief of recovery of possession and he paid the additional Court-fee. On 27-2-1973 the suit was decreed.

3. It was discovered later on that though leave had been granted to amend the plaint, the Petitioner did not carry out the amendment and the decree that was

passed granted the reliefs as per the prayer in the original plaint, which did not contain the relief of recovery of possession (rightly so as the amendment had not been carried out). An application was filed on 18-6-1975 u/s 152, CPC for correction of the judgment and the decree by inserting the relief of "recovery of possession after evicting the Defendant". It was submitted that the amendment was not carried out due to clerical mistake. The learned Subordinate Judge rejected the application negating the Petitioner's contention by order dated 9-3-1976. This order was not questioned before the superior Court and was allowed to become final. A fresh application was filed on 10-5-1975 u/s 151, CPC for correction of the judgment and the decree which was registered as M.J.C. No. 20 of 1976. The said application was dismissed for default on 21-3-1977. An application for restoration registered as M.J.C. No. 8 of 1977 was rejected on 23-11-1977. On 19-7-1978, the Petitioner again filed an application u/s 152, CPC for correction of the judgment and the decree. By order dated 9-9-1979, the learned Subordinate Judge rejected the application holding that in view of the rejection of an earlier application for identical relief by order dated 9-3-1976, the present application for the selfsame relief was not maintainable especially when the order dated 9-3-1976 had been allowed to stand.

4. The learned Counsel for the Petitioners in this revision relied upon a decision of this Court in *Dandapani Goudo v. Khetrabasi Gouda and Ors.* 1972 (2) C.W.R. 1428, and submitted that the failure to amend was due to inadvertence and in the interest of justice, the trial Court should have allowed the prayer and corrected the judgment and decree. In *Dandapani's* case 1972 (2) C.W.R. 1428 though leave to amend had been granted, the amendment was not carded out within the prescribed time; but the appellate Court before which the suit was pending was moved for extension of time to carry out the amendment. As the suit was pending before the appellate Court, this Court in the facts and circumstances of the case accepted the prayer and granted the Plaintiff extension of time for carrying out the amendment. The- vital difference between facts of that case and the case on hand is that the suit was pending in *Dandapani's* case, albeit before the appellate Court and the appellate Court thought it proper to grant time for carrying out the amendment. In the present case, the suit had been disposed of and the provisions contained in Order 6, Rule 18 of the. CPC on the expiry of the period took its toll and the Plaintiff "shall not be permitted to amend". The counsel for the Petitioner further relied upon *Papu Khan Vs. Fatima Babi and Others*, . In this case, the final decree was not in conformity with the priliminary decree. So, the Plaintiffs application u/s 151, CPC for amendment of the final decree was directed to be treated as an application for review of the final decree and disposed of on merits. The ruling is not an apt one. There was no embargo like the one contained in Order 6, Rule 18 of the Code of Civil Procedure.

5. Mr. Sudhansu Sekhar Swain, learned Counsel for the opposite parties, submitted that the correction sought for was not a formal one. The amendment had far-reaching consequences so far as the Defendant was concerned. If the

amendment had been carried out, his client would have got an opportunity for filing additional written statement in which event, depending on the pleas taken in defence, certain additional/fresh issues might arise for adjudication. The correction of the judgment and the decree J would deprive his client of valuable right by skipping over the intermediate process as aforesaid. He further submitted that the application dated 19-7-1978 giving rise to the impugned order was the third in point of time and the dismissal of the first application on merits foreclosed the reopening of the question.

6. The aforesaid submission of Mr. Swain are formidable. He relied upon a decision of the Supreme Court in *Dilbagh Rai Jerry Vs. Union of India (UOI) and Others*, . That case arose out of an application filed by Jerry under the Payment of Wages Act. He claimed certain amount as his wages. He further claimed certain amount as travelling allowance. During the pendency of the application, he sought amendment of the application by replacing "travelling allowance" by "running allowance". The prayer was granted; but the same was not carried out and the prescribed authority did not allow running allowance. It was argued before the Supreme Court that the provisions contained in Order 6, Rule 18, CPC did not apply to proceedings under the Payment of Wages Act. So the failure to carry out the amendment could not deprive Jerry as leave to amend had been granted. In that context the Supreme Court observed:

The contention is untenable. While it is true that Rules 17 and 18 of Order 6 of the Code do not, in terms, apply to amendment of an application u/s 15(2), the Authority is competent to devise, consistently with the provisions of the Act and the Rules made thereunder, its own procedure based on general principles of justice, equity and good conscience. One of such principles is that delay defeats equity. The Authority found that the applicant was guilty of gross negligence. He took no steps whatever to carry out the amendment for several months after the order permitting the amendment, and thereafter, when the case was at the final stage, he suddenly woke up, as it were, from slumber and sought to amend his application. In the circumstances, the Authority rightly refused to put a premium on this delay and laxity on the part of the Appellant....

7. The rule laid down in *Arjun Singh v. Mohindra Kumar and Ors.*, precludes resuscitation of the selfsame issue (see paragraph 13). An application having already been rejected by order dated 9-3-1976, the selfsame application dated 19-7-1978 was not maintainable, ignoring the application filed on 10-5-1976, which was dismissed for default and the trial Court in his order dated 9-3-1976 rightly held that it was not a case of correcting arithmetical or clerical error. Right or wrong the order was allowed to stand and become final and binding. Hence, the application dated 19-7-1978 was not maintainable.

On 2-7-1974 leave to amend had been granted. For months no steps taken and the suit was disposed of in February, 1975. The party, it appears, has been grossly negligent and acceding to his request now would be putting a premium on his laxity.

In the result, the revision has no merit and is accordingly dismissed. In the circumstances, there would be no order as to costs.