

(1969) 01 DEL CK 0011

In the Delhi High Court

Case No : Civil Revision Appeal No. 1 of 1970

Nahan Foundary Limited Nahan

APPELLANT

Vs

Ram Kishan Kulwant Rai

RESPONDENT

Date of Decision : 01-01-1969

Acts Referred:

Citation : (1969) 5 DLT 545

Hon'ble Judges : Hardayal Hardy, J

Bench : Single Bench

Advocate : C.L. Kapila and A.C. Sud, for the Appellant;

Judgement

Hardayal Hardy, J.

(1) This civil revision is directed against the order passed by the Senior Subordinate Judge, Sirmur District, Nahan, on 31-12-1969 dismissing the petitioner's application for amendment of its Written-statement. The petitioner is Nahan Foundry Limited Nahan which is Government undertaking while the respondents are M/s Ram Kishan Kulwant Rai, a partnership firm doing business in Punjab Delhi and other places. The plaintiffs had filed on 25-9-1967 a suit against the defendant-petitioner for rendition of accounts on the allegations that they had acted as distributors for the sale of electric motors and pumps manufactured by the defendant petitioner as per terms and conditions contained in an agreement dated 20-3-1962 for the States of Uttar Pradesh and Punjab including Delhi. and that the agreement was initially for a period of one year but had been extended by mutual agreement until it stood expired on 19-3-1965.

(2) The defendant in its written statement admitted the allegations that the plaintiff were its distri

(3) The plaintiffs claim was allowed by a judgment dated 30-8-1968 and a preliminary decree for rendition of accounts was passed in favor of the plaintiffs and against the defendant. Pursuant to the decree a local commissioner was appointed to go into the relevant accounts of the defendant and submit his

report. The local commissioner, however made a reference to the Court that there was some dispute between the parties as to the period for which the accounts had to be gone into. He therefore ,sought clarification on that point. By its order dated 13-6-1969 the learned Senior Subordinate Judge, who had passed the preliminary decree, held that the defendant was liable to render accounts upto 19-3-1965.

(4) After the above order was made, the defendant filed the application for amendment of its written-statement which has given rise to the present revision. In the said application the defendant sought to include the following pleas which, it was alleged, were inadvertently left out when the original written-statement was filed

"1. That the suit is barred by the general as well as constructive rules of res judicata ", 2. That the plaintiffs firm being unregistered cannot sue against the present suit 3 That the plaintiffs failed to fulfill the terms of the contract with the defendants and as such their security was liable to be forfeited and that the agreement between the parties had been revoked by a competent officer of the defendants ;4. That the arrangements inter se the parties came to an end on 19-3-1963 and not on 19-3-1965 etc. etc."

(5) This application was opposed on behalf of the plaintiffs ground that it was mala fide and belated. The objection raised on behalf of the plaintiffs found favor with the learned Subordinate judge who dismissed the application and directed the commissioner to expedite the submission of his report.

(6) The defendant being aggrieved by the aforesaid decision has moved this Court in revision against the same.

(7) The main contention urged by the learned counsel for the petitioner is that the Court below is in error in refusing the petitioner's prayer for amendment on the ground of its being belated. It is contended that under Rule 17 of Order VI of the Code of Procedure a party can be allowed to alter or amend his pleadings stage of proceedings. In fact all such amendments have to be allowed as may be necessary for the purpose of determining the real questions in controversy between the parties. In the present case, the proposed amendment seeks to challenge the very maintainability of the respondents suit and their right to claim the relief sought by them, which indeed is the real question in controversy.

(8) Counsel for the respondents contends on the other hand that the petitioner's prayer for amendment is not only highly belated but also mala fide. The respondents filed their suit on 25 9-1967 while the petitioner's written-statement was filed on 27-12-1967. In that written-statement the petitioner admitted the respondents' allegation that they were its distributors for the period ending 19-3.1965. The only defense taken on its behalf was that it had disclosed all accounts and as such the respondents were not entitled to any decree for rendition of accounts. The case, thereupon, proceeded to trial and ended in a preliminary decree being passed in favor of the respondents on 30-8-1968. The

petitioner had a right to go in appeal against the decree but no such appeal was filed. It continued to appear before the Commissioner appointed by the Court and raised before him for the first time an objection relating to the respondents' right to ask for accounts till the end of 19-3-1965 on the ground that the agreement between the parties had been duly terminated on, 19-3-1963 by a competent officer of the petitioner. The dispute was referred by the Commissioner to the Court and its directions were sought in that behalf. By its order dated 13-6-1969, the Court upheld the respondents' claim and directed that the petitioner was liable to render accounts up to 19-3-1965. It is only then that the petitioner thought of coming forward with an entirely new case which if allowed to be raised, will not only enable the petitioner to go back on the admissions previously made by it in its original written-statement but will also render all previous proceedings nugatory.

(9) There is a great deal of force in the contention urged by the respondent counsel. It is apparent that the stand which the petitioner now seeks take is wholly inconsistent with its previous stand. The respondents' averments in the plaint were that they were a partnership firm, that there was a written agreement between the parties whereby the respondents were appointed distributors for the petitioner's products on commission basis that the said agreement was subsequently renewed with the commission payable to the respondents being enhanced and the renewed agreement stood terminated on 19/03/1965. All these averments were admitted by the petitioner and the only defense set up by it was that the accounts had already been disclosed.

(10) The trial Court rejected the petitioner's defense and passed a preliminary decree for rendition of accounts. The apparent object of the present application is an attempt on the part of petitioner to revise its original pleadings and to set up pleas which are wholly contrary to those taken by it earlier.

(11) There can be no doubt that neither party to a dispute can be, allowed to stage such volte face. It is true that under Order VI, Rule 17, Civil Procedure Code, an amendment can be allowed at any stage of the proceedings and mere delay will not disentitle a litigant to alter or amend its pleadings. But no such relief can be granted when it is found that the prayer for amendment has been made mala fide and with the object of depriving the other party of a right which has already accrued to him with the lapse of time. In the present case the preliminary decree passed in favor of the respondents became final when no appeal was filed against it u/s 96, Civil Procedure Code. u/s 97 of the Code the correctness of that decree cannot be assailed even in an appeal which the parties may prefer from the final decree. A valuable right has thus accrued to the respondents. That right cannot be allowed to be defeated by the petitioner's prayer for amendment being allowed at this stage. The necessary consequence of allowing to the petitioner's prayer for amendment would be to reopen the preliminary decree which has already attained finality. It is well settled that the Court will not allow a party to achieve by indirect means what he cannot be

allowed to do directly .

(12) Counsel for the petitioner contends that the finality of a preliminary decree is no bar to the petitioner's right to ask for and obtain leave to amend its written-statement. Support for this argument is sought from the Judgment of the Judicial Committee of the Privy Council in *Jadhunath Roy v. Parameshwar Mullek* where it was held that a partition suit in which a preliminary decree had been passed was still a pending suit and the rights of the parties who were added after the preliminary decree had to be adjusted at the time of final decree. Reliance is also placed on a Division Bench Judgment of Andhra Pradesh High Court in *Somireddi Burrayya v. Somireddi Atchayamma* where the learned Judges following the decision of the Privy Council allowed the plaintiff to amend the schedule of properties in a partition suit on the ground of mistake after the preliminary decree was passed.

(13) It appeals to me that both the cases cited by the learned counsel are distinguishable on facts. Both these cases relate to partition suits which are a class by themselves. In the case before the Privy Council the question before their Lordships was whether the mortgagee of an undivided share should be allowed to attend and be heard at the stage at which the allotment of properties was going to be made among the several joint owners. It was held that although he was not a necessary party, it was for the benefit of all other persons interested in the joint property that such a mortgagee should be bound by the allotment. It was further held that in case he was not allowed to join the proceedings at the stage of allotment he might be prejudiced if his interest in the undivided share did not receive a proper allotment in severalty. It is obvious that there was no question in that case of the preliminary decree itself being altered and adversely affected in any manner in so far as the individual rights of the joint owners were concerned. The case before the High Court of Andhra Pradesh was a case of correction of mistake only. The plaintiff in that case had filed a suit for partition and separate possession of a one third share in the properties mentioned in the schedule attached to the plaint. After the Commissioner went to the spot for partitioning the properties, obstruction was offered in respect of one of the properties. The plaintiff thereafter filed an application for substitution of another property alleging that she had by mistake mentioned a wrong survey number as forming part of the joint family properties. The application was allowed. The opposite party relying upon Order 20, Rule-3; CPC contended that the Court was functus officio after the preliminary decree was passed. The contention was repelled. It was held that Order 20, Rule 3 had no bearing on the question whether a Court had jurisdiction to allow an amendment of the plaint schedule on the ground of mistake after preliminary decree is passed in a partition suit. The question is to be determined with reference to Section 153 and Order 6, Rule 17. The case is, therefore, no authority for deciding the present revision.

(14) Learned counsel has also referred me to several other cases: *Bai Galal Rameshi v. Vrajlal Ichhashahkar*, *Aintha Swain v. Nilakantha Biswal*, *Amolakchand*

Mohanlal v. Firm of Sadharam Tudaram and P.S.Kaicker v. Union of India None of these cases is however, directly in point .All of them lay dawn the general principle that amendment of pleadings should be allowed even at the stage of appeal if such amend