

(2003) 03 KL CK 0015
In the High Court Of Kerala
Case No : C.R.P. No. 467 of 2003

Neelakandan Nair

APPELLANT

Vs

Parameswara Kurup

RESPONDENT

Date of Decision : 24-03-2003

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Section 7
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2003) 3 CivCC 169 : (2003) 3 ILR (Ker) 480 : (2003) 2 KLT 943 :
(2003) 4 RCR(Civil) 309

Hon'ble Judges : Pius C. Kuriakose, J

Bench : Single Bench

Advocate : N. Ashok Kumar, for the Appellant; M. Lalitha Nair, Govt. Pleader and
S. Muhammed Haneef, for the Respondent

Final Decision : Allowed

Judgement

Pius C. Kuriakose, J.—The revision petitioner is the plaintiff before the Court below and he is aggrieved by the order passed by the learned Munsiff on an application for amendment of the plaint under Order VI, Rule 17. The suit as instituted initially was one for injunction simpliciter. On the allegation that during the pendency of the suit, the defendants perpetrated trespass and therefore the proposed amendments were necessitated and the application for amendments was filed. The contention of the respondents/defendants was based on the proviso to Order VI, Rule 17 introduced by the CPC Amendment Act, 2002 under which the amendments will not be allowed after the commencement of the trial unless "the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial". The learned Munsiff had accepted this contention since he did not find any averment in the affidavit in support of the amendment application in the context of the proviso. The amendment application was filed admittedly before any of the parties or other witnesses were examined in the suit. According to the learned Munsiff, it is well-settled position that trial in a civil case commences with the

raising of issues.

2. Shri. N. Ashok Kumar, learned counsel for the petitioner assails the order of the learned Munsiff on two reasons: (1) According to the learned counsel, the proviso referred to by the learned Munsiff does not apply to the present case since the original pleadings in respect of which amendment was sought for was instituted prior to 1.6.2002 when Section 7 of Act 22 of 2000 as well as Section 16 of Act 46 of 1999 was put into force. The expression "trial" in the context of proviso to Order VI, Rule 17 according to the learned counsel, means actual trial meaning examination of witnesses or adducal of other evidence in the suit. Even though the learned counsel for the respondents supported the impugned order very much, I do not find any difficulty in accepting the submissions of the learned counsel for the revision petitioner. Section 16(2)(b) of the CPC Amendment Act, 2002 clearly shows that the provisions of Rule 17 of Order VI as amended by Section 16 of C.P.C. Amendment Act, 1999 or by Section 7 of the C.P.C. Amendment Act, 2002 will not apply in respect of a pleading filed before the commencement of Section 16 of the Amendment Act, 1999 and Section 9 of the Amendment Act, 2000. Thus the suit on hand will not be governed by Order VI Rule 17 as it stands now.

3. I am also of the view that the learned Munsiff is not correct in his view as to the point of time when trial commences for the purposes of the proviso to Order VI Rule 17 as amended by the Amendment Act of 2002. The expression "trial" is of very wide import. In its widest sense, trial will include all proceedings right from the stage of institution of a plaint in a civil case to the stage of its final determination by a judgment and decree of the Court. In a slightly narrower sense, trial connotes, as the learned Munsiff observes the stage from the formulation of issues till the final judgment. In a still narrower sense which in my opinion is the common parlance idea of trial it will mean only the stage of actual adducal of evidence - documentary or oral. The Supreme Court held in the context of summary suits under O.XXXVII as well as Section 10 of the C.P.C. that the meaning to be given to the expression "trial" will depend upon the nature and object of the provision and the context in which it is used and went on to hold that having regard to the scheme of the summary procedure provided by Order XXXVII, a stage of determination of the matter in issue arises only after the defendants obtain leave and therefore trial in that context will really begin only after the leave is granted to the defendants.

4. In *Indian Bank Vs. Maharashtra State Co-operative Marketing Federation Ltd.*, , their Lordships of the Supreme Court were only following an earlier decision by a Bench of 4 Judges of the Supreme Court in *Harish Chandra Bajpai Vs. Triloki Singh*, wherein it was held that in a limited sense "trial" means only the final hearing of the petition consisting of examination of witnesses, filing of documents and addressing of arguments. But that expression can connote the entire proceedings before an Election Tribunal from the time when the election petition was transferred to it u/s 86 of the Representation of People Act till it

pronounces the award. Their Lordships were interpreting the word "trial" of election petitions in the context of 86(4) of the Representation of People Act as well as Section 92 of the C.P.C. A Division Bench of the Allahabad High Court held interpreting the word "trial" u/s 540 Cr. P.C. that the Legislature has assigned different meanings to the expression "trial" in various provisions of the Code and that the meaning of the term has to be in the context and intendment of each individual provision Ram Jeet and Others Vs. The State, .

5. A closer scrutiny of Section 7 of the Amendment Act of 2002 under which Rule 17 of Order 6 is re-introduced after its omission under the Amendment Act of 1999 will reveal that Rule 17 subject to newly introduced proviso has been brought back in its original form. Thus under Rule 17 as it stands now and as it stood before its omission by Act 46 of 1999 at any stage of the proceedings all amendments necessary for the purpose of determining the real question in controversy can be allowed. The proviso only introduces a check for grant of amendment applications after the commencement of trial and even in the proviso the legislative intendment of granting necessary amendments at any stage is discernible since the Court can allow amendment even after the commencement of the trial to a party who is diligent. Having regard to the easily discernible intendment of the Legislature behind the reintroduction of Order VI, Rule 17, I have no difficulty to hold that the expression "trial" has been employed in the proviso to Rule 17 only in what the Supreme Court described as the narrow sense of examination of witnesses, production of documents in evidence and all stage subsequent to the same. Under the special list system which is being followed by our subordinate courts for trial of civil cases what is done is that issues are settled under Order XIV after a hearing and thereafter opportunity is given for the parties to take what is commonly described as pre-trial steps and then only suits are special listed for trial. Trial, therefore, in the context of Order VI, Rule 17 means the commencement of actual trial or adducal of evidence. In my view, the Legislature wanted to have a check on the grant of the amendment applications after commencement of the trial since the same is likely to cause prejudice to parties who had already adduced evidence and may necessitates recalling of witnesses who have already been examined.

The result of the above discussion is that the revision succeeds. The impugned order is set aside and the amendment application (I.A. 12/03) is allowed on condition that the revision petitioner pays a sum of Rs. 500/- to the respondents through their counsel appearing in this Court within two weeks from today. If the payment is not made as aforesaid, the impugned order will stand confirmed and the C.R.P. will stand dismissed.