
(2014) 10 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 10473/2013

Prem Kishan Garg

APPELLANT

Vs

Vijay Singh Mitha Lal Kirana Merchant and Others

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 6 Rule 16, Order 6 Rule 17, 151

Constitution of India, 1950 — Article 227

Citation : (2015) 1 WLN 456

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Manoj Bhandari, Advocates for the Appellant; Sandeep Saruparia, Advocates for the Respondent

Judgement

Sangeet Lodha, J.—This writ petition is directed against orders dt. 7.5.13 and 18.7.13 passed by the Additional Civil Judge (J.D.), No. 2, Bhilwara. By order dt. 7.5.13, an application preferred by the respondents-defendants under Sec. 151 CPC has been allowed and vide order dt. 18.7.13, an application preferred by the petitioner-plaintiff under Order XLVII Rule 1 CPC seeking review of the aforesaid order dt. 7.5.13, stands rejected. The relevant facts are that in the year 1976, the petitioner-plaintiff preferred a suit for eviction of the respondents-defendants from the suit premises. The eviction is sought inter alia on the ground of default in payment of rent and therefore, the amount of rent due was determined by the trial Court provisionally vide order dt. 31.1.78 in terms of Section 13(3) of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 ("the Act"). On account of failure of the respondents-defendants in depositing the arrear of rent and monthly rent in terms of order dt. 13.1.78, their defence against the eviction was struck out by the trial Court vide order dt. 25.5.78. The appeal preferred by the petitioner against the said order was dismissed by the Appellate Court and thereafter, the revision petition preferred was dismissed by this Court vide order dt. 16.10.80. Thus, the order passed by the trial Court striking out the defence of

the respondents-defendants against the eviction has attained finality.

2. During the pendency of the petition, the respondents-defendants preferred an application under Order VI Rule 17 CPC on 19.4.01 seeking leave to amend the written statement. The application preferred was rejected by the Court below vide order dt. 13.07.2001. Aggrieved thereby, the respondents-defendants preferred a revision petition before this Court which was found to be not maintainable. Thereafter, the respondents-defendants preferred a writ petition being No. 6964/03, which was allowed by this Court vide order dt. 23.07.2010, observing that the order passed by the Court below rejecting the application preferred under Order VI Rule 17 suffers from the vice of total non application of mind by the Presiding Officer of the Court. Accordingly, the trial Court was directed to decide the application preferred by the respondents-defendants as aforesaid afresh.

3. After due consideration, the application preferred seeking amendment as aforesaid, was allowed by the trial Court vide order dt. 31.7.12 and the respondents-defendants were permitted to incorporate para No. 26 in the written statement as proposed and submit the amended written statement in terms of Rule 34 of General Rules (Civil), 1986 within the stipulated period.

4. In the meantime, the petitioner-plaintiff had amended the plaint in the year 2004 after leave of the Court and the respondents filed their amended written statement. In the amended written statement filed, the respondents added three paras i.e. para No. 5, 6A & 26, containing new averments. In these circumstances, the petitioner-plaintiff preferred an application under Order VI Rule 16 for striking out the pleadings which was already declined by the Court while rejecting the application preferred seeking leave to amend the written statement. The application preferred by the petitioner-plaintiff as aforesaid was allowed by the trial Court vide order dt. 10.3.05. The order passed by the Court was not challenged by the respondents-defendants and the same attained finality.

5. However, pursuant to order dt. 31.07.2012, the respondents-defendants filed amended written statement wherein instead of incorporating para No. 26 as proposed by way of application preferred under Order VI Rule 17 CPC, para No. 26 was incorporated containing additional averments. That apart, existing para No. 5 was substituted by incorporating additional averments and one more para i.e. para No. 6A was added. In these circumstances, the petitioner preferred an application under Order VI Rule 16 for striking out the pleadings in respect whereof the amendment was neither sought for nor allowed by the Court.

6. The application preferred by the petitioner-plaintiff under Order VI Rule 16 CPC, was allowed by the Court below vide order dt. 29.09.2012. The application preferred was disposed of by the Court observing that on account of para No. 5, 6A & 26 incorporated in the written statement as aforesaid, the rights of the petitioner-plaintiff are not going to be adversely affected inasmuch as order dt. 10.03.2005 passed by the Court striking out the said paras remains operative.

7. After a lapse of about 1 1/2 years the respondents-defendants preferred an application under Sec. 151 CPC praying for treating the para No. 5, 6A & 26 as part of the written statement ignoring the order passed by the Court striking out the said paras. The application has been allowed by the trial Court by the order impugned observing that while passing the order dt. 29.09.2012, the Court has observed that the order dt. 10.03.2005 remains operative but since the amendment has been allowed thereafter vide order dt. 30.07.2012, the said paras deserve to be treated part of the written statement. Hence, this petition.

8. Learned counsel for the petitioner contended that the Court below has seriously erred in permitting the para No. 5, 6A & 26 as part of the written statement inspite of the fact that the same are not in conformity with the amendment sought for and allowed by the Court. Learned counsel submitted that the order dt. 10.03.2005 has attained finality and therefore, there was no occasion for the trial Court to review the same on account of order dt. 31.07.2012 passed by the Court allowing the amendment. Learned counsel submitted that the respondents-defendants are entitled to incorporate para No. 26 in the written statement as proposed by way of amendment application in respect whereof leave has been granted by the Court. Learned counsel submitted that in view of earlier order passed which has attained finality and keeping in view the provisions of Order VI Rule 17 CPC, providing for the procedure for amendment of the pleading, the question of the Court invoking the inherent powers under Sec. 151 CPC does not arise. Learned counsel submitted that by way of incorporation of said paras, the respondents-defendants have attempted to raise the question with regard to title over the property which is not even required to be gone into by the Court in the matter regarding eviction of the tenant from the suit premises. Learned counsel submitted that if the order impugned is allowed to stand, great prejudice will be caused to the petitioner. Learned counsel submitted that as a matter of fact, the defence of the respondents-defendants against the eviction having been struck out, even otherwise no further amendment of the written statement is permissible. Learned counsel submitted that by invoking inherent power the Court cannot enlarge the scope of the suit and therefore, the order impugned deserves to be set aside. Learned counsel submitted that the suit for eviction preferred is pending since 1976 and the proceedings are being delayed by the respondents-defendants by adopting delaying tactics and therefore, appropriate directions deserve to be issued for expeditious disposal of the suit.

9. On the other hand, learned counsel appearing for the respondents-defendants supporting the order impugned passed by the Court below submitted that nothing limits or affects the inherent power of the Court which is in addition to and complementary to the powers expressly conferred under CPC and therefore, for the substantial justice the Court can always invoke powers under Sec. 151 CPC. Learned counsel submitted that in view of amendment subsequently allowed, the order dt. 10.03.2005 does not remain operative and therefore, the Court has committed no error in treating the para No. 5, 6A & 26 as incorporated

as part of the written statement which were erroneously struck out vide order dt. 10.03.2005. Learned counsel submitted that the Court below has committed no error in allowing the application under Sec. 151 CPC, ignoring the order dt. 29.09.2012. Learned counsel submitted that the order impugned does not suffer from any illegality or irregularity so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

10. I have considered the submissions of the learned counsel for the parties and perused the material on record.

11. Indisputably, by way of application preferred under Order VI Rule 17 CPC, seeking leave to amend the written statement, the petitioner sought incorporation of para No. 26 in the written statement, as proposed, which stood rejected by the Court below vide order dt. 13.07.2001. However, on the petitioner questioning the legality thereof by way of writ petition, the order passed by the Court below as aforesaid, was set aside by this Court vide order dt. 23.07.2010 and the matter was remanded back to the Court below to decide the application preferred by the respondents-defendants seeking leave to amend the written statement afresh. Thus, it cannot be disputed that on the application seeking amendment being allowed by the Court below vide order dt. 31.07.2012, the respondents-defendants became entitled to add para No. 26 in the written statement as proposed. It is not even the case of the respondents-defendants that at any stage of the proceedings any amendment in respect of para No. 5 & 6A was ever sought for by making an appropriate application. In this view of the matter, the question of permitting the petitioners to incorporate amended para No. 5 & 26 and addition of para No. 6A in the written statement beyond the amendment allowed by the Court vide order dt. 31.07.2012, does not arise.

12. In the considered opinion of this Court, the trial Court has seriously erred in observing that the amendment prayed for has been allowed vide order dt. 31.07.2012, after passing of the order dt. 10.03.2005 which is treated to be operative vide order dt. 29.09.2012 and therefore, the paras No. 5, 6A & 26 incorporated by the respondents-defendants in the written statement deserve to be treated as part of the pleadings. Obviously, in terms of the order dt. 31.07.2012, only the amendment sought for allowed by the Court can be permitted to be incorporated in the written statement and nothing beyond and in addition thereto. Thus, the petitioner is not entitled to incorporate averments in the pleadings by way of amendment beyond para No. 26, incorporation whereof has been permitted by the Court vide order dt. 31.07.2012.

13. Indisputably, the inherent power of the Court is in addition and complementary to the powers expressly conferred under the CPC, but then, the inherent power cannot be exercised by the Court which comes into conflict with any of the powers expressly conferred under other provisions of CPC. The amendment of the pleadings is governed by Order VI Rule 17 and therefore, the parties to the proceedings cannot be permitted to amend the pleadings so as to

incorporate additional averments therein in respect whereof no leave has been granted by the Court, by invoking inherent powers of the Court under Sec. 151 CPC. Moreover, in the instant case, while invoking power under Sec. 151 CPC, the Court has permitted incorporation of additional paras in the written statement on the basis of order dt. 31.7.12, whereas by the said order no other amendment except incorporation of para No. 26 as proposed was permitted by the Court.

14. In view of the discussion above, in the considered opinion of this Court, the orders impugned passed by the Court below, suffers from jurisdictional error and therefore, deserves to be set aside.

15. It is really unfortunate that the trial of the suit seeking eviction of the tenant from the suit premises is pending before the Court below for last more than 38 years. Thus, on the facts and in the circumstances, the direction deserves to be issued to the Court below to expedite the trial of the suit. Accordingly, the petition is allowed, the orders impugned dt. 07.05.2013 and 18.07.2013 passed by the Additional Civil Judge (J.D.), No. 2, Bhilwara in Civil Suit No. 5/07 (4/92) are set aside. The respondents-defendants shall file the amended written statement incorporating para No. 26 as proposed by way of application seeking amendment, which stands allowed by the Court vide order dt. 31.07.2012. The trial Court is directed to complete the trial and dispose of the suit expeditiously preferably within a period of one year. No order as to costs.