

(2016) 02 MP CK 0066
In the Madhya Pradesh High Court
Case No : Writ Petition No. 16023 of 2014

Raju Tomar

APPELLANT

Vs

Lovely Yadav

RESPONDENT

Date of Decision : 22-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2016) 1 MPWN 250

Hon'ble Judges : Alok Aradhe, J.

Bench : Single Bench

Advocate : S.K. Sahu, Advocate, for the Appellant; D.K. Dixit, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Alok Aradhe, J.—With the consent of parties, the matter is heard finally.

1. In this writ petition under Article 227 of the Constitution of India the petitioner has challenged the validity of the order dated 04.9.2014, by which, the application under Order 6, Rule 17 of the Code of Civil Procedure for amendment of the written statement has been rejected.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the respondent No.1 has filed a suit seeking the relief of specific performance of contract on the basis of an agreement executed by respondent No.2, in which, the petitioner was the consensor. The petitioner was served with the summons of the suit. Thereafter, written statement was filed on behalf of the petitioner. It is the case of the petitioner that she was pressurised to sign the written statement by the husband of the respondent. But, after obtaining the certified copy of the written statement, the petitioner came to know that written statement is against the interest of the petitioner. Thereafter, the petitioner filed an application under Section 151 of the Code of Civil Procedure for withdrawal of written statement, which was rejected by the trial Court. Thereafter, the petitioner filed an

application under Order 6, Rule 17 of the Code of Civil Procedure for amendment of the written statement, which has been dismissed by the trial Court.

3. Learned counsel for the petitioner submitted that in civil suit, in the affidavit sworn by petitioner in support of written statement, the petitioner has been identified by the advocate for the plaintiff and written statement does not contain the signature of the counsel. It is further submitted that petitioner being defendant can take inconsistent pleas. In support of aforesaid submission, learned counsel for the petitioner has placed reliance on the decision in the case of Baldev Singh and others v. Manohar Singh and another, (2006) 6 SCC 498 and Andhra Bank v. ABN Amro Bank N. V. and others, AIR 2007 SC 2511.

4. On the other hand, learned counsel for the respondent No.1 has submitted that by proposed amendment the petitioner is seeking withdrawal of the admission and if the written statement is read in entirety, the same does not contain absolute admission in favour of plaintiff. Additional facts have also been pleaded in the written statement. Learned counsel has placed reliance on the decision in the case of M/s. Modi Spinning & Weaving Mills Co. Ltd. and another v. M/s. Ladha Ram & Co., AIR 1977 SC 680.

5. From perusal of the averments made by way of additional pleadings in the written statement, it is evident that defendant No.2 had entered into an agreement dated 16.4.2012. From perusal of written statement, it is evident that the petitioner has signed the same in English. In other words, the petitioner is not an illiterate person. From perusal of application for amendment it is evident that petitioner wants to withdraw the admission in the written statement and wants to set up altogether a new case, which is not permissible in view of decision in the case of Gautam Sarup v. Leela Jetly and others, (2008) 7 SCC 85. The impugned order neither suffers from any jurisdictional infirmity nor an error apparent on the face of record.

6. Even otherwise it is well settled in law that the jurisdiction of this Court under Article 227 of the Constitution can not be exercised to correct all errors of a judgment of a court acting within its limitation. It can be exercised where the orders are passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law and justice. In the instant case the impugned order is not passed in violation of fundamental principles of law and justice warranting interference of this Court under Article 227 of the Constitution. [See: Jai Singh and others v. M.C.D. and others (2010) 9 SCC 385 and Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329.

7. For the aforementioned reasons, I do not find any merit in the writ petition. The same fails and is hereby dismissed.