
(2012) 08 RAJ CK 0097
In the Rajasthan High Court
Case No : Civil Writ Petition No. 11852 of 2012

Ram Charan Mali

APPELLANT

Vs

A.D.J. (Fast Track) No. 1, Karauli and Another

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 7 Rule 7
Specific Relief Act, 1963 — Section 12(3)

Citation : (2012) 3 WLN 647

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Hari Krishana Sharma, for the Appellant; Ravi Bhojak and Mr. Arvind Sharma, Advocates, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—Hard learned counsels for the parties. The present petition has been filed by the petitioner-defendant, challenging the order dt. 23.07.2012, passed by the Additional District & Sessions Judge (Fast Track) No. 1 Karauli, (hereinafter referred to as the trial Court), in Civil Suit No. 16/2007, whereby the trial Court has rejected the application of the petitioner seeking amendment in the written statement under Order VI Rule 17 read with Order VII Rule 7.

2. The short facts giving rise to the present petition are that the respondent No. 2-original plaintiff, has filed the suit against the petitioner-defendant seeking specific performance of agreement dt. 30.01.1992. The said suit has been contested by the petitioner-defendant by filing the written statement. The trial Court after considering the pleadings of the parties, framed the issues and proceeded further with the trial. After completion of the evidence of the respondent-plaintiff, the petitioner submitted the application seeking amendment in the written statement under Order VI Rule 17 of C.P.C. The said application has been rejected by the trial Court vide impugned order dt. 23.07.2012.

3. It has been submitted by learned counsel Mr. Hari Kishan Sharma, for the

petitioner that certain events had taken place after the filing of the written statement which were required to be brought on record and certain issues with regard to the provisions contained in Section 12(3) of the Specific Relief Act, were also required to be framed by the trial court and, therefore, the application was submitted by the petitioner. According to him, the subsequent events sought to be brought on record were not possible to be brought on record when the written statement was filed and hence the application seeking amendment was required to be allowed. He has also submitted that the agreement in question was not possible to be specifically performed in view of acquisition of part of the land in question and the respondent-plaintiff having not specifically relinquished his right in respect of the said lands in view of Section 12(3) of the Specific Relief Act, the respondent plaintiff was not entitled to obtain the decree for specific performance as prayed for and for other reliefs prayed for in the suit.

4. However, the learned counsel Mr. Ravi Bhojak, for the respondent-plaintiff submitted that the application seeking amendment in the written statement was submitted by the petitioner-defendant only with a view to delay the proceedings. According to him the issue with regard to Section 12(3) of the Specific Relief Act (hereinafter referred to as the Act), being legal issue, there was no need to make specific averment in the plaint and even otherwise in the prayer clause it was impliedly made clear that the respondent- plaintiff was not asking for the specific performance of the agreement in respect of those lands which were already acquired by the Govt. as the respondent had prayed for the compensation in respect of the said lands. He also submitted that the amendment sought is neither necessary nor permissible in view of the proviso contained in Order VI Rule 17 of C.P.C. and the trial Court has rightly rejected the said application of the petitioner.

5. Having regard to the submissions made by the learned counsels for the parties and to the impugned order passed by the trial Court, it appears that the petitioner- defendant had submitted an application seeking amendment in the written statement under Order VI Rule 17 after the completion of the evidence of the plaintiff. It is true that the said application sought to be given by the petitioner after the evidence of respondent plaintiff was over, should not be normally entertained by the Court, when the petitioner-defendant had failed to make out the case that inspite of due diligence, he could not have raised this matter before the commencement of trial, in view of the proviso to Rule 17 of Order VI of C.P.C. However, so far as the facts of present case are concerned, it appears that the petitioner-defendant has sought amendment on the ground that certain developments had taken place during the period 2009 to 2011 as narrated in para 2 of his application, which were not possible to be incorporated when he filed the written statement. The petitioner has also taken up the contention that the respondent-plaintiff was not entitled to the relief as prayed for in the suit in absence of specific pleading as required under Sec. 12(3) of the Act. The said contentions raised by the petitioner in his application under Order VI Rule 17 being necessary for deciding the issue involved in the suit, the same

deserves to be allowed, subject to the payment of costs of Rs. 10,000/- from the petitioner.

6. In that view of the matter, the impugned order dt. 23.07.2012 is set-aside. The petitioner-defendant is permitted to amend the written statement as prayed for, in his application, subject to the payment of cost of Rs. 10,000/- to be paid to the respondent-plaintiffs, within a period of one week from today. It is needless to say that the respondent-plaintiffs shall be at liberty to file rejoinder to the amended written statement and also to lead further evidence in that regard. The petition stands allowed accordingly.