
(2003) 03 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3219 of 1986

Ram Parkash

APPELLANT

Vs

Food Corporation of India and Others

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2004) 1 CivCC 643 : (2003) 135 PLR 73 : (2004) 1 RCR(Civil) 93

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : Aneesh Setia, for the Appellant;

Final Decision : Dismissed

Judgement

J.S. Narang, J.—This petition has been filed impugning the order dated 26th September, 1986 passed by the trial Court vide which the application filed under Order 6 Rule 17 of the CPC has been dismissed. The brief facts which need to be noticed are that the plaintiff-petitioner has filed a suit for declaration that the order dated 25th August, 1984 passed by the defendant-respondent Nos. 1 to 3 in accepting the tender of defendant-respondent No. 4 is illegal and void. The plaintiff has also prayed for prohibitive injunction restraining the defendant-respondent Nos. 1 to 3 from implementing the said order and allotting the work to defendant-respondent No. 4. The trial Court in the first instance granted the ad interim injunction which was made absolute vide order dated 1st September, 1984. The said order had been challenged by way of appeal before the Lower Appellate Court, the appeal has been accepted vide order dated 19th November, 1984 and the application filed under Order 39 Rules 1 and 2 of CPC has been dismissed. The said order has not been challenged by the petitioner before any other Court, as such the same has attained finality.

2. The petitioner instead of filing a suit for damages in view of the observation made by the lower Appellate Court in the aforesaid order filed an application under Order 6 Rule 17 of CPC seeking amendment of the plaint by way of

converting the suit for declaration into a suit for damages has been filed. The trial Court has succinctly examined the aspect of amendment asked for and has opined that the basic principle for which the provision contained under Order 6 Rule 17 of CPC has been incorporated, has not been satisfied. If the amendment is allowed, it would be inconsistent with the import of the aforesaid provision. The basic principle is that the nature and character of the suit cannot be permitted to be changed by way of granting amendment. In the case at hand, the relief which has been asked for by way of suit for declaration and permanent injunction became extinct and that instead of filing a suit for damages separately, to which the plaintiff-petitioner was perhaps entitled to, it is a different matter as to whether on merit, he would have succeeded or not but the right to file the said suit could not be denied.

3. Learned counsel for the petitioner has placed reliance upon a judgment of the apex Court rendered in re: Sampath Kumar v. Ayyakannu and Anr. 2002(3) C.C.C. 364 and an argument has been advanced that to avoid the multiplicity of the suit, the amendment can be granted and the suit for recovery could be maintained. I am afraid the aforesaid precedent is not applicable to the facts of this case. In that case, the previous suit filed by the plaintiff had not become extinct and the relief had been asked for in addition to the first relief, the amendment had been allowed accordingly by the apex Court.

4. In the case at hand, the suit for declaration and permanent injunction filed by the plaintiff-petitioner has become extinct as the contract awarded to the defendant No. 4 was allowed to be expired, as such, the dicta of the apex Court is not applicable.

5. I do not find any reason to interfere in the order passed by the trial Court.

6. No merit. Dismissed.