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**(1993) 08 AHC CK 0044**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 115 (R/C) of 1992**

Sant Ram Agarwal

APPELLANT

Vs

Civil Judge, Mohanlal Ganj, Lucknow and others

RESPONDENT

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**Date of Decision :** 16-08-1993

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17  
Constitution of India, 1950 — Article 226

**Citation :** AIR 1994 All 99 : (1994) RD 55

**Hon'ble Judges :** B.C. Saksena, J

**Bench :** Single Bench

**Advocate :** R.C. Gupta, for the Appellant; S.K. Mehrotra, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. This petition is directed against an order dated 3-10-1992, passed in Civil Appeal No. 107 of 1990 Sant Ram Agarwal v. Smt. Ram Dei and others. The petitioner had filed an application numbered as 27-A and sought amendment in the written statement, filed by him in suit No, 229 of 1987. The said application for amendment was rejected by the aforesaid order dated 3-10-1992.

2. It may also be relevant to indicate that suit No. 29 of 1987 was decided by the learned Munsiff, South, Lucknow on the 26th of July, 1990. The application for amendment was moved at the time of the hearing of the appeal arising from the judgment in the said suit. By the said application for amendment 18 paragraphs were sought to be added to the written statement.

3. Present opposite parties 2 to 4 had filed suit No. 29 of 1987 on the allegation that in the night intervening 24-25 December, 1986 the petitioner had blocked main door of premises No. 86/248 Ka Mohalla Kurmi Tola Lal Kunwan Lucknow and had covered the area measuring 13" x 12" situated in front of the aforesaid door into a room and has fixed exit door in it. The allegation further was that the petitioner took forcible possession over the land situate in front of the aforesaid

door in illegal manner. On these facts opposite parties 2 to 4 prayed relief of mandatory injunction, directing the petitioner to demolish and to removed illegal construction made by him in front of the exit door of premises No. 86/248 Ka and further for a decree for permanent injunction, restraining the petitioner from making any encroachment for construction over the land situate in front of this exit door.

4. Earlier the petitioner had filed suit No. 139 of 1982 in the Court of Munsif South Lucknow against Ashok Kumar Yadav S/o late Ram Prasad Yadav and Som Prakash Yadav s/o Badloo Ram Yadav praying relief for permanent injunction, restraining them from taking forcible possession over the premises No. 86/248 having old No. 110.

5. Present opposite parties 2 and 3 are the widow and son of late Badloo Ram Yadav. By the amendments the petitioner sought to incorporate facts leading to the possession in suit No. 139 of 1982. The said suit was decreed in favour of the petitioner who was plaintiff in the said suit by a judgment dated 28th January, 1985.

6. That on behalf of the present opposite parties Nos. 2 and 3 objections were filed to the application for amendment. It was pleaded in the said objection that the appellant/ defendants wanted to take a fresh defence which he could not take earlier before the lower Court and was not legally entitled to do same at a very belated stage. It was also pleaded that the appellant-defendants wanted to harass the respondent-Landlord by dragging them in an unnecessary litigation by the amendment sought which requires fresh trial and thus would not be permitted under law.

7. The learned Civil Judge Mohanlal Ganj by an order dated 3-10-1992 rejected the said application for amendment on the ground that the averments sought to be incorporated by way of amendment in the written statement has no relation with the averments and relief claimed in suit No. 29 of 1987. The application was also rejected on the ground of being highly belated. It held that no explanation has been offered for the delay and the averments sought to be incorporated by way of amendment are not such as were not within the knowledge of the appellant, the present petitioner. It also held that there was no commonalty between the two suits.

8. A counter-affidavit on behalf of opposite parties 2 and 3 was filed in reply to the averments in the writ petition and the petitioner had filed the rejoinder-affidavit.

9. I have heard the learned counsel for the petitioner and learned counsel for opposite parties 2 and 3.

10. The learned counsel for the petitioner urged that in view of several Supreme Court decisions as also of this Court that a liberal view with regard to permitting amendment should be adopted. He urged that merits of the proposed

amendment are not to be seen at the time of granting or refusing leave since they could only be adjudicated upon at the time of final trial.

11. The learned counsel for the petitioner further urged that documents pertaining to filing of suit No. 139 of 1982 by the petitioner and a Commissioner's report dated 24th of March, 1982 were already on record of suit No. 29 of 1987 but the learned Munsif while deciding suit No. 29 of 1987 did not take the said documents into consideration in view of the fact that necessary averments had not been pleaded in the written statement.

12. In paragraph 20 of the writ petition it has been alleged that the necessary averments in the written statement could not be pleaded because of immaturity of the Advocate initially conducting the suit on behalf of the petitioner. It has been alleged that the petitioner engaged Senior Advocate to argue the appeal on his behalf and on his advice the application for amendment was moved.

13. The learned counsel for opposite parties 2 and 3 on this aspect of the matter has drawn attention to paragraph 19 of the amendment application, a copy of which has been filed as Annexure 13 to the writ petition. In paragraph 19 aforesaid it has been averred "That the defendant/appellant could not state the above facts in the pleadings by mistake. The omission to state the above facts was unintentional."

14. The learned counsel for opposite parties 2 and 3 therefore submitted that the reason for seeking amendment now stated in the written statement is altogether different from that indicated in the application for amendment. The learned counsel for opposite parties 2 and 3 also submitted that there was no identity of the parties nor there was any commonality between the two suits. He further urged that since the facts sought to be introduced had all along been in the knowledge of the petitioner and no attempt to explain the conduct as to why the amendment could not be sought earlier having been made, this conduct of the petitioner disentitles him to the discretionary relief under Article 226 of the Constitution.

15. Both the counsel have cited a few decisions to support their submissions which have been noted.

16. The learned counsel for the petitioner cited the following decisions in support of his submission that a liberal view should be taken and an amendment even at the appellate stage should have been allowed. The decisions are :

(i) Mohammad Mustafa Vs. Sri Abu Bakar and Others, ; (ii) Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, ; (iii) Ganesh Trading Co. Vs. Moji Ram, ; (iv) Haridas Aildas Thadani and Others Vs. Godrej Rustom Kermani, .

17. The first-four decisions are by the Apex Court while 5th decision is by a learned single Judge of this Court. It is not necessary to analyse in detail of the aforesaid decisions.

18. The principle that emerges as laid down from the said decisions is that amendment should not be refused on technical ground. It is the discretion of the Court before whom the application for amendment comes up. Rules of procedure are intended to be a handmaid to the administration of the justice, parties should not be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always give leave to amend the pleading of the party unless it is satisfied that the party applying was acting mala fide or that by his blunder he has caused injury to his opponent which may not be compensated by an order of costs. The proposed amendment even if belated may be allowed if it can be made without injustice to other side. It has also been laid down that party should not be allowed by means of an amendment to set up a new cause of action particularly when a suit on the new case or cause of action is barred by time.

19. The learned counsel for opposite parties 2 and 3 on the other hand, cited the following decisions :

S.K. Agarwal and Company and Others Vs. Sailesh Chand Agarwal and Others, .

All the aforesaid decisions are by a learned single Judge of this Court. The decisions of the Supreme Court, relied upon by the learned counsel for the petitioner, have also been referred to and considered in these decisions. The decisions cited by the learned counsel for opposite parties Nos. 2 and 3 are specifically on the ground whether amendment of pleadings should be refused if there is mala fide design to delay the proceedings and if the facts sought to be introduced had all along been in the knowledge of the appellant and no attempt to explain the conduct as to why the amendment could not be sought earlier is a conduct which disentitles the petitioner to the discretionary relief under Art. 226 of the Constitution. It was also held that principle of "liberal view" would not be applicable if the Court below had recorded a finding that amendment will change the nature of the defence.

20. Now the said proposition of law may be considered in the light of the facts of the instant case. As noted hereinabove the learned Civil Judge Mohanlal Ganj in his order which has been impugned in the writ petition has given two reasons for rejecting the amendment application. First that the amendment application is belated one as it has been filed at a stage at the time of the hearing of the appeal for which no reason has been mentioned in the application. Secondly, held that the amendment seeks to introduce a new case. He held that the facts now sought to be averred by the amendment were well within the knowledge of the petitioner-applicant. The only reason indicated in the application for delay was that due to mistake that the facts could not be averred in the written statement. In the present writ petition it has been averred that the said facts could not be pleaded in the written statement because of the immaturity of his advocate. Evidently no such ground had been taken in the application for amendment. It is uncharitable for an Advocate engaged later to say that the previous advocate was immature. Be that as it may. The fact remains that the amendment was

sought at a belated stage viz. at the time of the hearing of the appeal. The facts now sought to be introduced pertain to an earlier litigation in suit No. 139 of 1982 between the petitioner and Ashok Kumar Yadav and Som Prakash Yadav sons of Ram Prasad Yadav. Ram Prasad Yadav is shown to be the brother of Badloo Ram Yadav, husband of opposite party No. 2 and uncle of opposite party No. 3. The said suit evidently was not between the same parties as in the present petition and suit No. 29 of 1987. The other suit No. 139 of 1982 also was not in respect of the premises which was subject matter of the second suit. The premises which were the subject matter of the first suit were 86/ 248 while in second suit they are in respect of premises No. 86/248 Ka. Thus there is no commonalty between the two suits.

21. It has been averred in para 20 of the writ petition that the documents pertaining to suit No. 139 of 1982 and the judgment dated 28th of January 1985 in the said suit were filed in suit No. 29 of 87. It is settled principle of law that oral or documentary evidence not connected with the pleadings of the parties deserves to be ignored. The petitioner is trying to fill up the lacuna in the pleadings in his written statement in the later stage.

22. Sri R. C. Gupta, the learned counsel for the petitioner stated that in the event the amendment is allowed the petitioner will not lead any oral evidence. The copy of the plaint of the first suti as also the written statement and the judgment rendered in the said suit as also the report of the Commissioner were already on record. This plea has also been taken in ground "B" in the writ petition. I am not impressed with the same, since earlier suit was not between the parties and did not pertain to the same premises. The judgment in the earlier suit was also on the basis of the evidence, adduced in the said suit. Mere filing of the judgment will not prove anything in relation to the issues involved in the second suit. The pleadings in the written statement of the first suti cannot bind the present opposite parties 2 and 3. They were not parties to the said suit. Considering all these aspects of the matter I do not find any good reason to interfere with the order, passed by the learned Civil Judge, Mohanlal Ganj, Lucknow in his order dated 3-10-92 Annexure-1.

23. Even if the principle of liberal view is adopted in view of the finding that the amendment will change nature of the defence it must be held that the principle of adopting liberal view will not be applicable and the petitioner has not succeeded in making out of a case under Art. 226 of the Constitution of India. The learned Civil Judge has exercised his discretion judicially and has applied the settled principle governing disposal of an application for amendment. The facts sought to be introduced had alt along been in the knowledge of the applicant. The amendment is clearly belated and has been moved with a design to delay the proceedings. Refusal to allow the amendment by the learned Civil Judge cannot be said to be in any manner erroneous in law.

24. In the light of the discussion herein-above the writ petition fails and is hereby dismissed with costs. The interim order passed earlier is discharged.

25. Petition dismissed.