

(2005) 11 UK CK 0020

In the Uttarakhand High Court

Case No : Writ Petition No. 1363 (M/S) of 2005

Sarafat

APPELLANT

Vs

Additional District Judge, IIIrd Fast Track Court and Others

RESPONDENT

Date of Decision : 24-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151, 153

Citation : (2006) 3 UC 1493

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

**Advocate : Munish Bhardwaj and Mohinder Singh Bisht, for the Appellant;
Learned Standing Counsel, for the Respondent**

Judgement

Rajesh Tandon, J.—Heard Sri Munish Bhardwaj and Sri Mohinder Singh Bisht, learned Counsels for the Petitioner and Learned Standing Counsel for the Respondents.

2. By the present writ petition, the Petitioner has prayed for a writ of certiorari quashing the order dated 07-09-2005.

3. The Petitioner has filed a suit No. 261/93 in the Court of Civil Judge (J.D.), Hardwar seeking relief of permanent injunction against the Respondents not to open their doors on the passage and not to put any hindrance on the passage. The suit was dismissed on 02-12-1998 and the Appeal was preferred bearing Civil Appeal No. 18/1998 by the Petitioner against the judgment dated 02-12-1998. The Petitioner has filed an application under Order 6 Rule 17 read with Section 151 and 153 of CPC The said application has been rejected on technical grounds.

4. The law on the amendment is well settled as will appear from the various decisions of the Apex Court. In view of the above, the court below is directed to consider the observation made in the case of B.K.N. Narayana Pillai Vs. P. Pillai and Another, and Raghu Thilak D. John v. S. Rayapan and Ors. (2001) 2 SCC 472

and judgment in Civil Revision No. 103 of 2001 Bachan Lal v. State of Uttaranchal 2003 U.D. 513 in order to find out the criteria for deciding the amendment application. The observation in Bachan Lal v. State of Uttaranchal (2003 U.D., 513) is quoted below:

It is a settled law that at the time of allowing of amendment, the Court has only to look as to whether the ingredients of Order VI Rule 17 are satisfied or not. Rule 17 is very much clear it provides that amendment can be allowed at any stage of proceedings on such terms as may be just, there is no quarrel with the proposition that the amendment was sought at the trial stage and that too without changing the nature of the suit.

5. As will appear from the aforesaid observation that Order 6 Rule 17 has been interpreted by the Hon"ble Supreme Court in various decisions and the Apex Court has given guide lines for the law courts that the courts while deciding the amendment application should not adopt a hypertechnical view. It has also been emphasized in the aforesaid decision that technicalities of law should not be permitted to hamper the court in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation.

6. In B.K.N. Narayana Pillai Vs. P. Pillai and Another, held as under:

3. The purpose and object of Order 6 Rule 17 CPC is allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by various High Courts and this Court, It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.

7. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances, but it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings in order to avoid uncalled

for multiplicity of litigation.

8. The Court below is directed to consider afresh in the light of the judgments of the Apex Court.

9. Accordingly, the writ petition is disposed of. No order as to costs. Court below is directed to consider afresh and disposed of the amendment application.