
(1988) 06 MP CK 0008
In the Madhya Pradesh High Court
Case No : Civil Revision No. 427 of 1984

Shivsahay

APPELLANT

Vs

Nandlal and Others

RESPONDENT

Date of Decision : 28-06-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 17(4)

Citation : AIR 1989 MP 40 : (1989) JLJ 259

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : G. K. Patidar, for the Appellant; K. L. Goyal, for the Respondent

Judgement

S. K. Dubey, J.—Aggrieved by the order dt. 4-4-84, in Civil Suit No. 9B/81, passed by the Additional Judge to the Court of Distt. Judge, Mandsaur/Neemuch, whereby the prayer of the plaintiff/applicant for examination of himself and one witness, and for amendment in relief clause against defendant No. 4 was disallowed, the plaintiff has presented this revision.

2. The plaintiff filed a suit for recovery of Rs. 18,993/- on 2-4-1976 against the defendants, but in relief clause the decree was prayed against the defendants 1 to 3 only. The defendants 1 to 4, denied the claim of the plaintiff and the suit is being contested on various grounds. On 11-11-1982, as the plaintiff was ill and was admitted in hospital at Jaipur, son of the plaintiff examined himself and closed the evidence. The defendants 1 to 3 also produced their evidence and therefore, the case was posted for arguments on 4-4-84.

3. On 4-4-1984, the plaintiff filed two applications one Under Order 18, Rule 17 Civil P. C., for allowing permission to examine the plaintiff and one witness Nandlal. Another application was filed under Order 6, Rule 17 of the CPC whereby an amendment in relief clause was sought for claiming the decree against the defendant 4, which was originally not mentioned in the prayer clause on the same cause of action and facts. The applications were opposed by the

respective defendants. The learned trial Court dismissed the application under Order 18, Rule 17 of the Code of Civil Procedure, on the ground that when the plaintiff and defendants closed their evidence and the case was fixed for arguments, the power under Order 18, Rule 17, C.P.C. cannot be exercised at the instance of the plaintiff. Another application under Order 6, Rule 17, C.P.C. was dismissed on the ground that the suit was filed on 2-4-1976, and proposed amendment of relief against the defendant No. 4 has become barred by time.

4. Learned counsel Shri G.K. Patidar for the applicant/plaintiff and Shri K.L. Goyal for the non-applicants/defendants 1 to 3 and Shri V.S. Kokje, for the non-applicant/defendant⁴ are heard. After, considering the peculiar circumstances of the case, I am satisfied, this revision deserves to be allowed.

5. First I will deal with the application under Order 6, Rule 17, C.P.C. which was dismissed by the trial court on the ground that the relief now being claimed against the defendant 4, who is already a party to the case, has become barred by time. The learned trial court has lost sight of the fact that new claim or new facts or new cause of action was being introduced by the plaintiff in the application. The defendant 4 was already a party to the suit. There was no amendment prayed in the cause of action or new facts pleaded by the plaintiff against the defendants. The plaintiff originally inadvertently or even because of carelessness, did not pray the decree against the defendant 4. The decree was prayed against the defendants 1 to 3. This omission or error is due to bona fide mistake. Even the error to be considered as not inadvertent, power to grant amendment of the pleadings is to serve the ends of justice which is not governed by any such narrow or technical limitations. Rules of procedure are intended to be a hand-maid to the administration of justice. A party cannot be refused leave because of some mistake, negligence, inadvertence or even infraction of rules and procedure. The Court always grants leave to amend the pleading of the party unless the court is satisfied that the party applying was acting mala fide or that by his blunder, he had caused injury to his opponent, which cannot be compensated for by an order of costs. (See *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, . While allowing the application for amendment, the circumstances of the case are to be considered. In the present case, the suit was already against the defendant 4, on the same cause of action and on the same set of facts. No new cause of action or set of facts was being introduced. It is not a case, where the defendant 4, was being impleaded by amendment and the relief was being prayed for after impleading the defendant as a party to the suit. An amendment can always be granted on the same set of facts and cause of action and that new claim is not being made.

In such a situation, the powers of the Court are not circumscribed by the law of limitation, if, in its opinion, the amendment sought otherwise can be allowed. In case of *Charandas v. Amirkhan* AIR 1921 PC 50 the Privy Council in exceptional case, the amendment was allowed where the effect of it was to take away from a defendant, a legal right, which had accrued to him by lapse of time, because the

Court found that consideration of lapse of time is outweighed by special circumstances. To the same effect, the Supreme Court also observed in the case of Shanti Kumar R. Canji Vs. The Home Insurance Co. of New York, . In case of Anandibai and Another Vs. Sundarabai, , this court has held that the plaint can be allowed to be amended to claim, relief of possession, at the appellate stage, even at that time, the relief was barred by time, following the judgment of the Apex Court in the case of L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., . The Madras High Court in the case of Govinda Chetti Vs. M.V. Chinnappa Udayar, relying upon the cases of Charandas(supra) and of L. J. Leach and Co. (supra) in a suit for recovery of money, allowed the plaintiff to amend the plaint by introducing a relief on the basis of the promissory note alone and held that such an amendment, which was based entirely on facts stated in the plaint, could be permitted, despite the fact that the suit would have been time barred had it been instituted on the date when the amendment was sought for. In the present case in hand, the situation is not different as the plaintiff has claimed the relief against the defendant No. 4 also by way of an amendment on the same set of facts and cause of action, as originally pleaded in the plaint. In view of this, the trial court acted illegally .and with material irregularity in not allowing the amendment of plaint for claiming the relief by the plaintiff against the defendant 4, merely on assumption that such relief was barred by time against the defendant No. 4.

6. The learned trial court also acted illegally and with material irregularity in dismissing the application for examination of the plaintiff, who was admittedly at the time of recording of evidence, admitted in a hospital at Jaipur and could not have been produced at the time of recording of evidence. The plaintiff has not assigned any reason for non-examination of the witness Nandlal, Why he could not be produced earlier. As such the prayer for examination of this witness was rightly refused No doubt, the mention of Order 18 Rule 17, C.P.C. was wrong on the part of the plaintiff because the said provision relates to exercise of powers by the Court, but wrong mentioning of the Section or Order of C.P.C. is not sufficient to throw out an application of the plaintiff for his examination. The learned trial Court overlooked the express provision under Sub-rule (4) of Rule 2 of the Order 18, C.P.C. which reads as under

" Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage."

Under Sub-rule (4) of Rule 2 of Order 18, CP.C. the Court may "direct or permit any party" to examine any witness "at any stage". Expression "at any stage" means at any time before judgment (See Alekh Pradhan and Others Vs. Bhramar Pal and Another, . If a party applies to examine a witness at any time before judgment, the Court has to consider the sufficiency of grounds and thereafter, after recording of reasons, the Court is competent to allow any witness to be examined. For allowing such prayer, the sufficiency of grounds are to be seen and are to be recorded If the reason for non-examination of a witness to be so

examined is not patently incorrect, improper or illegal, in that case the Court is competent to allow the prayer. In this case, this fact is not disputed that the plaintiff was admitted in the hospital at Jaipur, as such he was not available for his examination. The reason is a sufficient reason and the Court ought to have allowed the prayer. The trial Court having not held that there was no sufficient reason, acted illegally and with material irregularity in not allowing the prayer for the examination of plaintiff.

7. The upshot of the above is that the revision is allowed. The prayer for examination of the plaintiff, is only allowed, and the order of the learned trial Court is set aside to that extent. The trial Court shall allow the opportunity to the defendants to lead evidence in rebuttal, if they so choose. The amendment shall be carried out within 12 days from the date of this order. The plaintiff shall keep himself present in the Court on 8-8-88 for his examination. In case he fails to attend, no further time shall be granted to the plaintiff. The defendant 4 will also be allowed to amend his pleadings and to lead evidence in rebuttal. The plaintiff shall also pay the costs of Rs. 50/- (fifty) to defendant 4 for allowing the amendment and cost of Rs. 50/- to the defendants 1 to 3 for allowing the permission for examination of the plaintiff, The parties shall appear before the trial Court on 11-7-88. The parties shall, bear their own costs of this revision petition.