

(2008) 08 MP CK 0078

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2716 of 2008

Shree 1008 Parshwanath Digambar Jain, Terapanthi
Panchayati Dharmshala, Gwalior

APPELLANT

Vs

Darshanlal Hablani (Dr.)

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 1 MPLJ 204

Hon'ble Judges : P.K Jaiswal, J

Bench : Single Bench

Advocate : Kamal Jain, for the Appellant; Sanjay Bahirani, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jaiswal, J.

Petitioner by Shri Kamal Jain, Advocate. Respondent by Shri Sanjay Bahirani, Advocate. Heard on admission.

The petitioner has filed this writ petition under Article 227 of Constitution of India challenging the order dated 10-4-2008 by which the application for amendment and taking resolution of the Trust on record in which the petitioner authorized the President of the Trust Shri Anil Shah to file suit on behalf of the Trust has been rejected on the ground that the application has been filed after inordinate delay and in absence of the pleadings to the effect that the President of the Trust was authorized to file a suit and prosecute the case, the amendment cannot be allowed. It is also held that the proceedings of the Trust by which the President was authorized has not been filed. The amendment is not bona fide and the aforesaid application was rejected and the case was fixed for evidence.

It is submitted by learned counsel for the petitioner that the said documents are very material and the same be taken on record by compensating other side by awarding cost. He further submitted that the suit was filed in the year of 2005

and when the additional issues were framed then only he filed an application for amendment and also application for taking resolution register on record. He further contended that the petitioner/trust has passed a resolution on 25-5-2005 and in the said resolution, the President of the Trust was duly authorized to file a suit, but due to mistake of the counsel such fact has not been mentioned in the plaint. It has further been submitted that in case such documents and facts be not taken on record then the petitioner will suffer immensely and the suit is based on such documents.

On the other hand, learned counsel for the respondent has submitted that as per amended provisions under Order 6, Rule 17 of Civil Procedure Code, the petitioner has to plead the fact that the President of the Trust has been authorized by the Trust to file a suit. As per documents, the petitioner before filing this suit knew the said facts and the documents were in possession of the petitioner but the same could not be filed on time and when the respondents raised an objection and issues to this effect were framed by the trial Court, the same was filed along with application after inordinate delay of three years from date of filing of the suit. The explanation submitted by the petitioner cannot be accepted. The respondent further submitted that the trial Court has not committed any legal error in rejecting the application filed by the petitioner.

As per first part of Rule 17 of Order 6 of CPC which makes it clear that amendment of the pleadings before at any stage of the proceedings, the proviso impose certain restrictions which makes it clear that after commencement of trial no application for amendment shall be allowed, however, if it is established that in spite of due diligence party could not have raised the matter before commencement of the trial depending on the circumstances, the Court is free to pass order on such application. The word "due diligence" means the diligence reasonably accepted from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge those obligation. It is clear that unless a party takes prompt steps after commencement of the trial, as mentioned earlier, the application for amendment and for taking proceedings register of the society on record which was filed after a period of three years from the date of filing of the suit cannot be allowed. It is true that evidence of the parties are yet to started. The proviso to Rule 17 of Order 6 of CPC limits the power to allow amendment after commencement of the trial but grant discretion to the Court to allow the amendment after it feels that the party could not have raised the matter before commencement of the trial, in spite of due diligence. It is well settled that the power to allow amendment should be liberally exercised. The liberal principles which guide the exercise of discretion in allowing the amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be granted, while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of amendment. The petitioner in the present case immediately after amending the additional issues filed an application for amendment as stated earlier. Now

the case is fixed for plaintiffs evidence, the amendment thereby is very material and will decide the issues involved in the suit.

The main reason for seeking the amendment in the plaint is that the petitioner is a charitable trust and the President of the Trust is duly authorized by the Trust to file a suit on behalf of the Trust. Since the said amendment and proceedings register of the Trust are material one has a bearing on the dispute between the parties and that passing of the resolution is not disputed by the respondents, in the interest of justice, the application for proposed amendment is allowed and the documents filed by the petitioner is taken on record subject to cost of Rs. 5000/-.

In the light of above discussions, the impugned order dated 10-4-2008 (Annexure P/I) is hereby set aside. The application for amendment and taking documents on record is allowed. The cost awarded by this Court shall be deposited within a period of two weeks from today.

In the result, the writ petition is allowed with cost.