
(1984) 07 AHC CK 0034
In the Allahabad High Court
Case No : Civil Revision No. 147 of 1984

S.K. Agarwal and Company and Others APPELLANT
Vs
Sailesh Chand Agarwal and Others RESPONDENT

Date of Decision : 23-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 17, 115

Citation : AIR 1984 All 293

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : S.M. Dayal, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Sharma, J.—This revision is directed against order dated 25-11-1983 recorded by Ist Additional Civil Judge, Kanpur in Original suit No. 314 of 1974 by which the application of revisionists under Order VII Rule 17 C. P. C. was partly allowed and partly rejected.

2. It appears that the suit was filed by Lala Mool Chand Agrawal against M/s. S.K. Agarwal & Company and others for recovery of Rs. 88,551.50 P with interest pendente lite and future on 26-11-1974. After his death, his sons have been substituted as plaintiff.

3. The revisionists and co-defendants are inter-related. It was a case of loan. It was acknowledged on 15-7-1972 and 10-10-1973.

4. The written statements were filed by defendants in two sets. Initially, the written statements contained some admissions which are alleged to have operated to the prejudice of revisionists. So they sought leave to amend successively. They also filed additional written statement and made statement under Order X Rule 2 C. p. C.

5. In the leave to amend application dated 7-11-1983, it was alleged by Sri

Surendra Kumar Applicant No. 2 that his Advocate Sri Sunder Lal Geol was related to the son of Sri Baddeo Prasad and so revisionist reposed faith in him and did not know about the contents of admissions imputed to him in his written statement. These admissions will cause injury to him.

6. The prayer was opposed by opposite parties on the around that the applicant was a grown up and intelligent person and it is difficult to believe that he could have signed the written statement in such a fashion. He did not give this belated version in his additional written statement or in his earlier statement under Order X Rules 1 and 2 CPC or in his earlier application leave to amend submitted in 1976. He successively chanced so many advocates and his application was mala fide.

7. Learned Judge partly allowed the leave to amend on payment of Rs. 100/-as costs. However, he refused to allow the other portion of the amendment application by which the applicant wanted to wriggle out from the earlier admissions and sought to wipe out the liability admitted by him alleging that the letters and account books were signed by him at the request of plaintiff who wanted to evade the clutches of Income Tax authorities. Learned Judge found such amendment be an afterthought and belated.

8. I have heard learned counsel for parties and perused the record.

9. On behalf of applicants, my attention was invited to Swami Durkeshranand Saraswatiji Mahraj v. Jagatguru Shri Shankaracharya Jyotishpeethadhiswar reported in 1983 All LJ 1270. It was the case of prayer for amendment in written statement. Plaintiff was not prejudiced by the amendment and so the prayer was allowed. It was held that amendment in such case should be liberally made.

10. Another authority relied upon by learned Advocate for applicants, has been reported in Panchdeo Narain Srivastava Vs. Km. Jyoti Sahay and Another, . The facts of the case were as below:--

"Appellant plaintiff filed title suit No. 122 of 1978 in the court of 3rd Munsif at Patna for a declaration that he is entitled to withdraw a certain amount deposited by the second defendant in the court. Two respondents were impleaded as defendants in the plaint. Appellant plaintiff had described himself as the son of uterine brother of Rama Shankar Prasad. Subsequently plaintiff moved an application for amendment of the plaint inter alia seeking deletion of the word "Uterine" from the plaint. The trial court granted the application for amendment. First respondent preferred CR No. 921 of 1980 in the High Court of Judicature at Patna. The learned Judge of the High Court after setting out the history of litigation allowed the revision application of the first respondent observing as under :--

"I, however, feel satisfied at least to this extent that in view of the legal position, this word "Uterine" has got a -significance and may work in favour of either side to a very great extent. In this context therefore, as it would amount to change

the basis of the claim. I am of the view that the amendment should not have been allowed."

It was held that interference by High Court in revision was not justified in this case.

11. The next authority relied upon has been reported in Ganesh Trading Co. Vs. Moji Ram, where the facts were as below:--

"Where a suit for recovery of money due under a promissory note was filed by a firm through a partner, the amendment of plaint on ground that the partnership firm already stood dissolved on the date of filing the suit and that the suit is instituted by one of the partners of a dissolved firm could not be refused. It did not alter the cause of action or the character of the suit nor did change the identity of the plaintiff who remained the same, it only brought out correctly the capacity of the plaintiff suing."

It was held that such amendment was allowable.

12. Learned Advocate for opposite parties invited my attention to Parasnath Rai v. Tileshra Kuar reported in 1965 All LJ 1080 which posited :--

"If a party desires that previous statement made by him and amounting to an admission may not be effective against him, the least that he is expected to do is to repudiate the correctness or truth of that statement by his evidence and to explain the circumstances in which the statement came to be made and the reason or the motive for making it. But if even that is not done by him, he cannot ask the Court to ignore the admission or minimise its value and effect on the basis of a mere hypothesis put forward in argument. It may be that the defendants had a motive for making a wrong allegation regarding the mental capacity of the plaintiff in a suit filed by them for assailing an alleged adoption and restraining her from wasting her husband's property but there is no reason whatever for the court to suppose, in the absence of evidence, that the statement made by them in that respect was actually prompted by that motive and it did not represent the truth."

13. The next authority relied upon by learned Advocate for opposite parties has been reported in Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co., . The facts of the case were as under :--

The plaintiff's suit was for a decree for Rs. 1,30,000/- on the cause of action as laid in the plaint.

The suit was instituted sometime in the month of May 1971.

The defendants filed written statement.

Two paragraphs of the written statement contained additional pleas. Paragraph 25 stated that the agreement dated 7 April. 1967 was applicable to the transactions in which the plaintiff worked as stockist-cum-distributor of the

defendants. The defendants further alleged in paragraph 25 that the agreement was not applicable to transactions in which the plaintiff acted as a principal. In paragraph 26 the defendants/ appellants in the alternative alleged that even if agreement dated 7 April, 1967 applied to the dealings in suit plaintiff's position was merely that of an agent of the defendants and as such plaintiff was not entitled to claim any damages from the defendants for non-supply of its own goods for sale through the plaintiff.

The defendants-appellants approximately 3 years after the filing of the written statement made an application for amendment of the written statement. The proposed amendments were for deletion of paragraphs 25 and 26 and for substitution of two new paragraphs 25 and 26. The proposed amendment in para 25 was that by virtue of the agreement the plaintiff was appointed a mercantile agent and the plaintiff acted in that capacity in placing orders on the defendants. The defendants further denied the allegation of the plaintiff that the plaintiff placed orders with the defendants in the plaintiff's capacity as a purchaser. The defendants also alleged that the plaintiff throughout acted as an agent of the defendants. In paragraph 26 of the proposed amendment it was alleged by the defendants that being a mercantile agent and an agent of the defendants in accordance with the terms of the agreement, the plaintiff had no locus standi to file the suit.

The trial court rejected the application of the defendants for amendment.

It was held that the amendment introducing entirely different new case and seeking to displace the plaintiff completely from admissions made by them in the earlier written statement were liable to rejection.

14. This ruling has not been dissented from in any subsequent authority. In the instant case. I find that the revisionist wanted to throw the entire blame on their Advocate. They did not take up this stand earlier when they made statement under Order X Rules 1 and 2 C. P. C. or in their additional written statement or in the application for leave to amend the plaint filed earlier. Revisionist No. 1 is an educated person and well advanced in age as laid in the objection. By the proposed amendment which is belated, he wants to wriggle out from the earlier admissions made by him which still occur in the written statement filed by other set of defendants. Under such circumstances when plaintiff shall be seriously prejudiced by the new case introduced by proposed leave, I do not find that learned court below refused this portion of the leave to amend without any application of mind.

15. Moreover, according to the proviso appended to Section 115 of Code of Civil Procedure, the impugned order did not finally dispose of the suit or proceeding nor if such order is allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

16. Thus, the revision as well as the stay application are dismissed at admission stage.