

(2016) 11 AHC CK 0106

In the Allahabad High Court

Case No : Matters Under Article 227 No. 9081 of 2016

Smt. Kamla Devi

APPELLANT

Vs

A.D.J., Court No. 2

RESPONDENT

Date of Decision : 15-11-2016

Acts Referred:

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

Citation : (2017) 1 ARC 119

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Kshitij Shailendra, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.— Heard learned counsel for the petitioner.

2. This writ petition is directed against the order dated 24.10.2016 passed by the Additional District Judge, Court No. 2, Moradabad in SCC Suit No. 17 of 2014. By the order impugned, an amendment application filed by the plaintiff, has been allowed.

3. The contention of learned counsel for the petitioner is that this amendment application had been filed after the trial had commenced and the matter was pending at the stage of evidence. It is, therefore, submitted that the amendment application was barred by the proviso to Order 6, Rule 17 CPC. The amendment application has wrongly and illegally allowed on the ground that evidence had not yet been adduced. The proviso to Order 7, Rule 16 of the CPD has been totally misread.

4. In support of the contentions that have been raised, reliance has been placed on the following judgments :-

1.2009(2) AWC 1607 (SC) : Alkapuri Co-operative Housing Society Ltd. v. Jayantibhai Naginbhai (Deceased) through L.Rs.

2. 2009 (2) Supreme Court Cases 409 : Vidyabai & Others v. Padamalatha & Anr.
3. 2012(2) Supreme Court Cases 300 : Samuel & Others v. Gattu Mahesh & Others
5. I have considered the submissions made by the learned counsel for the petitioner and have perused the impugned order, the amendment application filed by the opposite party and the judgements cited.
6. The amendment application was filed on the primary ground that certain wrong dates had been mentioned in the plaint due to a typographical error.
7. A notice had been served upon the tenant terminating his tenancy and for arrears of rent damages and eviction. On the expiry of the period of notice, the suit was filed. However, due to a typographical error, in the plaint the arrears of rent had been demanded till the date of service of notice and the damages from the day thereafter, when in fact, the demands should have been from the date of expiry of the period of notice. Hence the amendment application which also sought amendments in the amount of arrears and damages etc., on the basis of the main amendment, which figures necessarily changed on account of the amendment.
8. It is no doubt true that an amendment of the pleadings is normally not permitted once trial has commenced, in view of proviso of Order 6, Rule 17 CPC. However, in the instant case no new fact has been alleged by the respondent. In case, the primary submission in the amendment application is accepted, the other amendments, as regards, the various amounts mentioned in the plaint would be mere consequential amendments and that no new facts were sought to be incorporated.
9. Under the circumstances, I do not find any illegality in the impugned order.
10. The amendments have been, in my considered opinion, rightly permitted to determine the actual controversy between the parties.
11. In any case, an amendment can be allowed, even if a new fact is sought to be introduced in case such new fact was not in the knowledge of the person seeking amendment, despite due diligence. In the instant case, the situation is entirely different as already observed herein above.
12. Under the circumstances, therefore, I find no illegality in the impugned order. No prejudice is caused to the petitioner tenant by means of the amendments that have been permitted nor the same have occasioned any change in the nature of the case, itself.
13. The writ petition is accordingly dismissed.