

(2013) 10 MP CK 0156
In the Madhya Pradesh High Court
Case No : Writ Petition No. 13693 of 2013

Smt. Radha Bai

APPELLANT

Vs

Shankarlal Kachhi

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0156

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : A.K. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—He is heard on the question of admission.

The petitioner/plaintiff has filed this petition under Article 227 of the Constitution of India, being aggrieved by the order dated 29.7.13 (Annex.P/1) passed by II Civil Judge-II, Jabalpur in COS No. 77-A/10 whereby dismissing her application filed on the same day under order 6 rule 17 of the CPC for amendment of the plaint, her right to cross-examine the defendant's witness has been closed and the case has been fixed for final arguments on 7.8.13.

Petitioner's counsel after taking me through the impugned amendment application Annex. P/5 and the copy of the plaint argued that such proposed amendment is necessary in the matter because in the lack of such proposed description in the pleadings of the plaint the matter could not be adjudicated effectively by the court between the parties but the trial court has dismissed the same under wrong premises and, in such premises, after dismissing such application also committed error in closing the right to cross examine the witnesses of the respondents. In continuation he said that such examination could not be carried out on the date because the counsel of the petitioner became busy before some other court and could not reach to the trial court to cross-examine the witness of the respondents but without considering such

cause, the right to cross-examine, has been closed and prayed to allow the aforesaid application and permit the petitioner to cross-examine the witness of the respondents in the matter by admitting and allowing this petition.

2. Keeping in view the arguments advanced, I have carefully gone through the papers placed on the record, in the available circumstances the proposed amendment as stated in the application Annex.P/5 does not appear to be necessary. Even otherwise, in view of the settled proposition of the law laid down by the Apex Court in the matter of Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others, and in the matter of J. Samuel and Others Vs. Gattu Mahesh and Others, , holding that after starting the process to record the evidence in the matter, no such amendment could be allowed which was apparently in the knowledge of the concerning party on the date of filing his pleadings. The impugned application could not have been allowed by the trial court because the facts proposed in the application were very well in the knowledge of the petitioner on the date of filing the suit. Even on the date on which the issues were settled between them or in any case at the time of recording the plaintiff's evidence but no such amendment application was filed at that stage. So, in such premises, I have not found any perversity in the order impugned in dismissing the aforesaid application of order 6 rule 17 of the CPC. Consequently, till this extent, the order of the trial court is hereby affirmed.

3. So far the other part of the impugned order whereby her right to cross-examine the respondents witness has been closed is concerned, the impugned order in that regard has been passed by the trial court in very speaking manner in which the conduct of the petitioner is also shown. So, in such premises, the same does not require any interference.

4. Apart the aforesaid, it is also apparent that such order has been passed by the trial court under the vested discretionary jurisdiction of the such court and it is settled proposition of the law as laid down by the Apex Court in the matter of The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and Another v. Ajit Prasad Tarway, Manager(Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad- AIR 1973 SC-76 and in the matter of Kokkanda B. Poondacha and Others Vs. K.D. Ganapathi and Another, , that such orders passed by the subordinate courts under the vested discretionary jurisdiction of such court, could not be interfered at the stage of revision or writ petition under Article 227 of the Constitution of India, so, in such premises also, the impugned order does not require any interference at this stage. In the aforesaid premises, I have not found any perversity, illegality, irregularity or anything against the propriety of the law in the impugned order of the trial court. Consequently, this petition being devoid of any merit deserves to be and is hereby dismissed at the stage of motion hearing.