
(2020) 05 MP CK 0065

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 5573, 5578 Of 2019

Smt. Sayarbai

APPELLANT

Vs

Mahesh Kumar & Another

RESPONDENT

Date of Decision : 13-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civill Procedure, 1908 — Order 6 Rule 17, Order 8 Rule 1A(3)

Citation : (2020) 05 MP CK 0065

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : Antim Kumar Khedkar, Nitin Phadke

Final Decision : Dismissed

Judgement

[1] This order will govern the disposal of MP No.5573/2019 and MP No.5578/2019 as it is jointly submitted by counsel for both the parties that identical

orders, though, passed in different suits, tween the same party are under challenge in these petitions, therefore, the petitioner are heard jointly and

decided by common order.

[2] In Â MPÂ No.5573/2019Â orderÂ ofÂ theÂ trialÂ courtÂ dated 16/9/2019 passed in Civil Suit No.41-A/2017 rejecting the application of the

defendant u/O.6 Rule 17 and Order 8 Rule 1A(3) of the CPC is under challenge whereas in MP No.5578/2019 similar order dated 16/9/2019 passed

in CS No.40-A/2017 rejecting the defendantâ??s application u/O.6 Rule 17 and Order 8 Rule 1A (3) CPC are under challenge.

[3] Learned counsel for petitioner submits that the trial court has committed an error in rejecting the application whereas learned counsel for

respondents has supported the impugned order.

[4] Having heard the learned counsel for parties and on perusal of the record, it is noticed that the petitioner had filed the application u/O.6 Rule 17 of

the CPC and Order 8 Rule 1 A(3) of the CPC when the matter was at the stage of plaintiffs evidence. By way of the amendment application, the

petitioner wanted to bring the details of the reply of the petitioner in the mutation case as also the notice which was given by the petitioner and the trial

court has duly considered the said plea and has rightly found that the facts which the petitioner wants to incorporate are within her knowledge since

beginning. The petitioner had sought amendment after the commencement of the trial, therefore, she was required to satisfy the test of due diligence

as provided in the proviso to Order 6 Rule 17 CPC. In the application for amendment only justification given by the petitioner for not incorporating the

plea earlier, was that it could not be incorporated because of lapse. Hence, the petitioner has not satisfied the test of due diligence.

[5] The trial court while rejecting the petitioner's application for amendment has assigned just and proper reasons and the order of the trial court

does not suffer from any patent error in this regard.

[6] So far as the application u/O.8 Rule 1A(3) of the CPC is concerned, by the said application the petitioner wanted to bring on record the document

in support of the plea proposed to be taken by way of amendment. Since the trial court had rejected the application for amendment, therefore, the

consequential application u/O.8 Rule 1A(3) of the CPC has also rightly been rejected. While rejecting his application due reasons have been assigned

by the trial court. Even otherwise this court is exercising limited supervisory jurisdiction under Article 227 of the constitution.

[6] Even otherwise, the Supreme Court in the matter of Jai Singh and others Vs. Municipal Corporation of Delhi and Another reported in 2010(9) SCC

385 while considering the scope of interference under Article 227 of the Constitution, has held that the jurisdiction under Article 227 cannot be

exercised to correct all errors of judgment of a court, or tribunal acting within the limits of its jurisdiction. Correctional jurisdiction can be exercised in

cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

[7] In view of the aforesaid, there is no merit in the petitions which are accordingly dismissed.

[8] Signed order be kept in MP No.5573/2019 and a copy whereof be placed in the record of connected MP No.5578/2019.