
(2019) 08 SIK CK 0002
In the Sikkim High Court
Case No : Writ Petition No. 39 Of 2018

S.P. Subba

APPELLANT

Vs

Sukhim Yakthung Sapsok Songjumbho

RESPONDENT

Date of Decision : 07-08-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 6 Rule 17

Citation : (2019) 08 SIK CK 0002

Hon'ble Judges : Meenakshi Madan Rai, J

Bench : Single Bench

Advocate : S.S. Hamal, Priyanka Chhetri, Srijana Chhetri, N. Rai, Malati Sharma

Final Decision : Allowed

Judgement

Meenakshi Madan Rai, J

1. The Petitioner herein impugns the Order dated 31-07-2018 in Title Suit No.05 of 2017 of the Learned Civil Judge (Jr. Division), Chungthang Sub-Division, North Sikkim, stationed at Gangtok, by which the prayer of the Petitioner seeking to amend the written statement was disallowed and the Petition dismissed.

2. Briefly, the facts put forth by Learned Counsel for the Petitioner was that the "Sukhim Yakthung Sapsok Songjumbho" (Sikkim Limboo Literary Society) was formed in the year 1979 for improvement and development of Limboo literature and culture. It is a registered body with a constitution, permitting only registered members to participate in the elections of the Society. On 04-12-2016, a General Body Meeting was held wherein it was resolved that elections for the new Executive Body of the Society would be held only after 31-03-2017 towards which a notice was issued to all concerned on 11-03-2017, informing therein that, election for the office bearers of the Society would be held in the second week of April, 2017. In the interim, Title Suit No.05 of 2017 came to be filed by the Respondent, against the Petitioner, before the Court of the Learned Civil Judge (Jr. Division), East Sikkim, at Gangtok, and vide Order of ex parte ad

interim injunction on 07-04-2017 the Petitioner was enjoined from holding elections. Later, on 28-10-2017 the Title Suit was dismissed in default on account of the non-appearance of the Respondent before the Learned Trial Court. Subsequently, the Learned Trial Court restored the Suit to its File on 01-11-2017, setting aside its own Order of dismissal sans Notice to the Petitioner. The matter came before this High Court with the Petitioner assailing the Order of restoration. This Court on 30-11-2017 set aside the impugned Order and the Suit was restored to the File. That, from the facts and circumstances placed above, according to the Petitioner, from 28-10-2017 to 09-04-2018 the latter being the date on which the restoration application was allowed, no Suit was pending before the Learned Trial Court. In such circumstance, on 06-11-2017 the registered members elected and constituted a new Executive Body as the term of the previous Executive Body had expired on July, 2014. That, after restoration of the Suit, in order to bring the aforesaid circumstances before the Learned Trial Court, the Petitioner filed an Application under Order VI Rule 17 read with Section 151 of the Civil Procedure Code, 1908 (CPC), seeking to amend the written statement and also to insert a counter-claim. This was dismissed by the impugned Order dated 31-07-2018, hence the instant Petition. To bolster his submissions Learned Counsel for the Petitioner placed reliance on *Rajesh Kumar Aggarwal & Ors. vs. K. K. Modi and Ors.* AIR 2006 SC 1647: and *Shri Subash Gupta vs. Shri Yadap Nepal SLR (2017) Sikkim 424*.

3. Learned Senior Counsel for the Respondent while vehemently repudiating the Petition inter alia on grounds that exhaustive amendments are sought which would naturally require the Respondent to also amend the Complaint, postulated that, the amendments sought would not only change the entire nature and character of the Suit, but would prejudice the case of the Respondent. That, infact the election held on 06-11-2017 and the constitution of a new body were mala fide and the Petitioner had failed to take steps on time as required, for the benefit of the Society following which an ad hoc Committee was constituted by the Respondent and later on 12-03-2017 an election was conducted and new Executive Committee constituted for two years. That, the facts as projected by the Petitioner are erroneous and the amendments sought to be inserted apart from deserving a dismissal, do not assist in the administration of justice. The Writ Petition being mis-conceived and devoid of any merit deserves to be dismissed. Learned Senior Counsel for the Respondent garnered strength from *Karma Denka Bhutia vs. Sarki Lamu* AIR 2005 Sikkim 1, *A. K. A. CT. V. CT. Meenakshisundaram Chettiar vs. A. K. A. CT. V. CT. Venkatachalam Chettiar* AIR 1980 Madras 105 and *Kaluram vs. Shakuntala Devi* AIR 1992 Rajasthan 6.

4. I have heard the rival contentions of Learned Counsel for the parties at length, perused the impugned Order and the records of the case including the proposed amendments.

5. The guiding principle for an amendment is whether the amendment sought is for the purpose of determining the "real questions" in controversy between the

parties apart from testing whether the amendment if allowed would cause injustice to the other side which cannot be compensated in material terms. That having been said it would do well to be cognizant that technicalities of law ought not to hamper justice to the parties, as it goes without saying that procedure is the handmaid to the administration of justice. Amendments are essentially to be allowed to prevent multiplicity of proceedings and for dispensing even handed justice.

6. The controversy herein between the parties pivots around the Society and election to the Executive Body thereof with both parties being convinced that they are the legitimate Executive Body of the Society. It is not repudiated by the Respondent that a subsequent election was held to constitute a new Executive Body. I, ofcourse, refrain from voicing any opinion as to the merits of the matter, being unwarranted at this stage. However, from the proposed amendments, I find that the Petitioner seeks to insert facts about events that took place subsequent to the filing of the Suit that would be essential for a just decision in the matter and ofcourse prevent multiplicity of proceedings. The proposed amendments to the written statement and insertion of counter-claim, in my considered opinion, do not change either the nature or the character of the Suit. It would infact inject clarity into the dispute and facilitate a just decision of the matter. Besides, before the Learned Trial Court the parties were examined under Order X of the CPC but admittedly the issues have not been struck for adjudication, in other words, the suit is at an initial stage. It would be trite to recapitulate that Order VI Rule 17 of the CPC permits the Court at any stage of the proceedings to allow either party to alter or amend the pleadings for the purpose of determining the real questions in controversy between the parties. While on this aspect, it may be reiterated that procedural law is to facilitate and not obstruct the course of substantial justice.

7. Consequently, in view of the foregoing discussions and reasons, the Writ Petition is allowed.

8. The impugned Order dated 31-07-2018 is set aside.

9. The Learned Trial Court shall allow the amendments proposed by the Petitioner herein and thereafter take steps as envisaged by law.

10. I hasten to add that observations made in this matter are not to be interpreted as opinions expressed on the merits of the case.

11. Copy of this Judgment be forwarded to the Learned Trial Court for information and compliance.