
(2006) 04 OHC CK 0023

In the Orissa High Court

Case No : Writ Petition (C) No. 2695 of 2006

Sri Bajranglal Ladha

APPELLANT

Vs

Sri Maniklal Bhattar and Others

RESPONDENT

Date of Decision : 04-04-2006

Acts Referred:

Citation : AIR 2006 Ori 127 : (2006) 3 CivCC 119 : (2006) 101 CLT 633 : (2006) 1 OLR 525 Supp

Hon'ble Judges : N. Prusty, J

Bench : Single Bench

Judgement

N. Prusty, J.—Heard Mr. Mohapatra, Learned Counsel for the petitioner.

2. This writ petition has been filed by defendant No. 1/appellant challenging the order dated 15.2.2006 passed by the Learned Additional District Judge, Mayurbhanj, Baripada in R.F.A. No. 1/24 of 2005-06 whereby the Learned Appellate Court has allowed the prayer for amendment of the memorandum of appeal and simultaneously rejected the prayer for amendment of the written statement, in considering an application filed by the defendant No. 1/petitioner under Order 41, Rule 5 read with Order 6, Rule 17 of the C.P. Code.

3. As it appears from the impugned order, an application was filed by defendant No. 1/appellant during the pendency of the appeal, for amendment of both the memorandum of appeal as well as the written statement. Considering the submissions made by the learned Counsel for the respective parties and after going through the contents of the petition, Learned Appellate Court allowed the prayer for amendment of the memorandum of appeal since the petition for amendment was filed during pendency of the appeal; there was some omissions in the grounds of appeal which were on record in the lower Court judgment; if the amendment is allowed it will not cause any prejudice to the other side; it will not change the nature and character of the appeal as well as there was no objection from the other side. So far as prayer for amendment of the written statement is concerned the same was rejected since the plaintiff/respondent

vehemently objected to such amendment; the suit has already been decided on merit by the Trial Court as well as it will not be just and proper to allow the amendment of the written statement at this state i.e. on the date the appeal is fixed for hearing.

4. Keeping in view all the facts and circumstances of the case, the Learned Appellate Court accordingly allowed the prayer for amendment of the memorandum of appeal and simultaneously rejected the prayer for amendment of the written statement as stated above.

5. As per the terms of Order 6, Rule 17, CPC either party can alter or amend his pleadings, at any stage of the proceeding, in such manner and such terms as may be just, and such amendment shall be made, if it is necessary for the purpose of determining the real question of controversy between the parties.

6. In the instant case, defendant No. 1, who is the appellant, filed an application with the prayer for amendment of both the grounds of appeal as well as the written statement in one and the same application on the date the appeal was posted for hearing, which was also for incorporating one and the same statement in both the grounds of appeal and written statement below paragraphs 9 and 2 respectively as has been mentioned in the petition. The prayer for amendment sought to be incorporated in the appeal has been allowed, as because final decision in this regard is yet to be taken in the matter at the time of disposal of the appeal and that it will not change the nature and character of the appeal, since there were certain omissions in the grounds of appeal which were there in the trial Court Judgement. The prayer for amendment of the written statement was rejected because the suit has already been decided on its own merit and as such the controversy between the parties to the suit has already been determined by the Trial Court on the basis of the pleadings/evidence of the respective parties and the statement which the defendant wants to incorporate now was within his knowledge when he filed his written statement, but he did not choose to incorporate the same then and he has filed this application at this belated stage when his appeal is fixed for hearing.

7. In view of the above, I do not find any illegality, irregularity or manifest error of law in the impugned order in rejecting the prayer for amendment of the written statement. However, if there is any other substantial question of law involved in the case, the petitioner shall be always at liberty to urge the same at the time of hearing of appeal.

8. Writ petition is accordingly disposed of.

Urgent certified copy of this order may be granted on proper application.