

(2005) 01 AHC CK 0011
In the Allahabad High Court
Case No : C.M. Application No. 7 of 2005

Sridharlal Srivastava

APPELLANT

Vs

Shiv Prakash Verma and Others

RESPONDENT

Date of Decision : 17-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 AWC 1238

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : Manish Kumar Nigam and Rahul Sahai, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Poonam Srivastava, J.—Heard Sri Manish Kumar Nigam and Sri Rahul Sahai, learned Counsel for the applicant.

2. This application under Article 227 of the Constitution of India has been filed against an order dated 6.1.2005, passed by Vth Additional District Judge, Varanasi, whereby the amendment application at the appellate stage was allowed on a cost of Rs. 100. The counsel for the applicant addressed this Court on the question of maintainability of the application under Article 227 of the Constitution of India. Reliance has been placed on a number of decisions in the case of Yeshwant Sakhalkar and Another Vs. Hirabat Kamat Mhamai and Another, The Apex Court discussed the scope and ambit of Article 227 of the Constitution of India in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, The difference in jurisdiction between Articles 227 and 226 were held to be three folds. Firstly the exercise of supervisory jurisdiction is not an original jurisdiction and in this sense it is akin to appellate, revisional and corrective jurisdiction. Secondly in exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order as it is done

while exercising the original jurisdiction under Article 226, but it may also make such directions as the facts and circumstances of the case may warrant. In appropriate cases the High Court, while exercising supervisory jurisdiction may substitute its own decision and lastly the jurisdiction under Article 226 of the Constitution of India is capable of being exercised only on a prayer made by or on behalf of party aggrieved whereas the jurisdiction under Article 227 is capable of being exercised suo motu as well.

3. Sri Manish Kumar Nigam has also cited another case decided by the Apex Court in the case of The Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. and Others, In another case decided by the Apex Court in the case of Achutananda Baidya v. Prafulla Kumar Gayen and Ors. 1997 (Supp) AWC 556 . The Supreme Court has clearly defined the ambit of Article 227 of the Constitution of India. The power of superintendence of High Court is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. In cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent, error in procedure. A number of other decisions of single Judge and Division Bench of this Court have also been placed before me. After going through all the decisions and hearing the arguments of Sri Nigam I am satisfied that the jurisdiction under Article 227 of the Constitution is more wide than one under Article 226 of the Constitution. In the circumstances, I am in full agreement that this application under Article 227 of the Constitution of India for redressal of grievances of the applicant is maintainable.

4. The next question needs consideration is that whether order challenged in this application is illegal and calls for any interference in exercise of supervisory jurisdiction. The submission advanced on behalf of the applicant is that Order VI, Rule 17, C.P.C. which deals with the amendment of the plaint in the amended CPC does not limit the power of the Court to allow either party to alter or amend the pleadings in such manner and on such terms as may be just. It has further been argued that the proviso to Order VI, Rule 17, C.P.C. lays an embargo on the Court which is quoted below:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

5. The order dated 6.1.2005 does not state that despite due diligence the plaintiff could not amend the plaint before the commencement of the trial. It has only allowed the amendment application on a cost of Rs. 100. The amendment application has also been annexed with this application as well as the trial court's judgment in the Original Suit No. 426 of 1999. The only amendment sought by the defendant-opposite party is that word "no" (nahi) was omitted due

to typing error and same was prayed to be inserted in the first line of paragraph 26. The word "nahi" was left out and the trial court had recorded a finding on its basis that the defendant-opposite parties have admitted in their additional pleas in the written statement that the case of the plaintiff is proved. The word "no" was left out due to typing error whereas the correct sentence should have been that the plaintiff has not proved its case, hence the amendment. No doubt the trial court has not given a clear and categorical finding that despite due diligence the defendant did not seek amendment before the commencement of the trial. In the amendment application which is Annexure-4 to the application, it is clearly mentioned in paragraph 3 that when the counsel was making preparation for his argument in appeal, it came to his knowledge that the word "nahi" was left out by the typist and only on account of this typographical error the trial court had recorded a finding against him.

6. This application has been filed under Article 227 of the Constitution of India and while exercising supervisory jurisdiction it is the duty of this Court to ensure that there should be no failure of justice or grave injustice to any party, be it based on clear ignorance or utter disregard, it is the duty of the Court to ensure that no party should suffer on account of technical grounds and objections. This is exactly what has happened in the present case. The argument of the counsel for the applicant cannot be accepted as the court below while allowing the amendment application has failed to record a finding in strict sense of the requirement of the proviso to Order VI, Rule 17, C.P.C., he has allowed the amendment application but failed to record a finding in conformation with the requirement of Proviso to Order VI, Rule 17, C.P.C. In case, the amendment is not permitted it would result in gross failure of justice.

7. In the circumstances, I am not inclined to interfere in the order impugned in this application. The application is accordingly dismissed. There shall be no order as to costs.