
(2018) 04 GAU CK 0096
In the Gauhati High Court
Case No : CRP 304 of 2016

SUBRATA DEB NATH

APPELLANT

Vs

ASHOK KUMAR DAS

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 6 Rule 17, Order 6 Rule 14A
Constitution of India, 1950 — Article 227

Citation : (2018) 04 GAU CK 0096

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Judgement

1. Heard Mr. N.N. Jha, the learned counsel for the petitioner as well as Mr. R.K. Mour, the learned counsel appearing for the respondent.

2. By filing this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 10.09.2015 passed by the learned Civil Judge No. 2, Kamrup Â (M), Guwahati in T.S. No. 378/2013, thereby rejecting the prayer for amendment made under Order VI Rule 17 read with Section 151 CPC.

3. The petitioner is the plaintiff in the said T.S. No. 378/2013. The said suit was instituted on 11.01.2013. The respondent had filed his written

statement on 15.03.2015, disclosing therein certain statements, which is the basis of filing the petition for seeking amendment of the plaint. After

availing several adjournments, the petitioner had filed the prayer for amendment vide petition No. 6094/2014 dated 20.12.2014. In short, the purpose of

amendment is to bring the present address of the respondent at Kolkata on record, as well as to bring on record a copy of the Advocate's notice

dated 16.11.2013, issued on behalf of the respondent as well as the copy of

reply dated 04.12.2013, issued to the Advocate of the petitioner herein.

The respondent herein had filed his written objection to the said amendment petition and the learned trial court by the order impugned herein, rejected

the prayer for amendment on the ground that the petitioner could not show due diligence and that there was no explanation why the petition for

amendment could not be preferred prior to commencement of trial. The learned trial court had held that the prayer for amendment was hit by the

proviso of the provisions of Order VI Rule 17 CPC.

4. The learned counsel for the petitioner submits that by the nature of the amendments sought for, there was no amendment to the cause of action for

the suit and the intention of the petitioner was to bring on record the correct address of the respondent and two above referred notices, which was

within the knowledge of the respondent and would not cause any prejudice to the respondent. By referring to the case of Pankaja & another Vs.

Yellappa (D) by LR. & Ors., (2004) 6 SCC 415, it is submitted that in the present case, the nature of amendment does not take away any right which

had accrued in favour of the respondent and that the facts sought to be introduced was not barred by limitation and moreover, both the

Advocate's Notices were exchanged during the course of trial. Hence, on the basis of the case of Pankaja (supra), it is submitted that the prayer

for amendment ought to be allowed.

5. Per-contra, the learned counsel for the respondent, by referring to the extract of the order sheet, which he had filed along with affidavit-in-

opposition, submits that after filing of the evidence-on-affidavit, the petitioner had sought for various adjournments on 19.07.2014, 21.08.2014,

22.09.2014 and 15.11.2014 and on the thereafter on 20.11.2014, the petition for amendment was filed. It is submitted that the learned trial court had

not committed any jurisdictional error because there is no statement in the petition that as to why the petitioner could not file a petition for amendment

before commencement of trial. It is further submitted that the statements made in respect of the proposed amendments were already brought on

record by virtue of statements made in the written statement filed on 15.03.2014 and that by filing the petition for amendments on 20.11.2014, after

eight months, the petitioner had been successful in dragging the suit for about four years now. It is submitted that as the respondent had taken the

defence in respect of the statements sought to be incorporated by way of amendment of the plaint, there was no impediment on part of the petitioner

to lead evidence on the said matter even without praying for amendment of the plaint. Hence, it is submitted that the prayer for amendment was

rightly refused and the impugned orders does not call for any interference from this Court.

6. Having seen that by way of amendment, the petitioner is seeking to incorporate the correct address of the respondent. In this regard, this Court is of

the view that even without applying for amendment of the plaint, to incorporate the correct postal address of the parties, either party to the suit is

permitted to file a statement in a prescribed form about the change of the registered address of the parties, as provided for in Rule 14-A of Order VI

CPC. The said Rule not only enables the parties to file the correct address of the parties for service of notice from time to time, but it is provided such

address would be known as "registered address" of the parties and the said address would hold good for the purpose of serving of all process in

the suit or in the appeal as well as in the execution proceedings. Therefore, amendment of plaint for the purpose of incorporating the address of the

defendant for service of notice is held to be unnecessary as the same can be done by taking recourse to the provisions of Order VI Rule 14-A CPC.

7. The nature and purport of the amendment sought to be introduced by way of incorporating paragraphs No. 20(A) to 20(D) is to bring on record the

Advocate's notices dated 16.11.2013 and 04.12.2013. This is the event which had taken place after the institution of the suit. Notwithstanding that

the evidence-on-affidavit was filed on 19.07.2014, it is seen that from 15.03.2014 when the written statement was filed till 20.11.2014 when the

petition for amendment was filed, there was no inordinate delay. The prayer for amendment has been filed after the trial has commenced. Considering

the fact that the additional pleadings which are sought to be brought on record, notwithstanding the delay and laches which has occurred in the

presentation of prayer for amendment of the plaint, the same is not found to cause any prejudice to the respondent herein even if the amendment is

allowed because of the nature of defence taken in the written statement wherein the said two Advocate's notices are referred. Moreover, the

nature of amendment sought for does not have any effect on the cause of action for the suit.

8. No right which has accrued in favour of the respondent would be taken away if the amendment is allowed. Moreover, the present suit is based on

the prayer for specific performance of contract and therefore, if the proposed amendment is allowed by allowing incorporating of the statement made

in paragraphs No. 20(A) to 20(D), the factual matrix already on record does not change. Therefore, the petition for amendment is found to be

bonafide. Under the circumstances, the courts are not powerless to allow amendment of plaint, though belated, as it does not cause any prejudice to

the respondent.

9. In that view of the matter, this Court is of the view that the learned trial court has committed jurisdictional error by not appreciating the nature of

amendments prayed for and failed to consider that the factual matrix sought to be introduced by way of proposed amendment is already on record by

way of statements made in the written statement. In that view of the matter, this Court is of the opinion that even if the petitioner does not amend his

plaint on the basis of the statement made in the written statement, it would be still be open to him to lead evidence for the purpose of denial of the plea

taken by the respondent in the written statement, hence, this Court finds that the respondent would not suffer any prejudice if the amendment is

allowed.

10. Accordingly, the impugned order dated 10.09.2015 passed by the learned Civil Judge No. 2, Kamrup (M), Guwahati in T.S. No. 378/2013 is

hereby set aside. As a consequence, the prayer for amendment vide petition No. 6094/2014 dated 20.12.2014 stands partially allowed. The learned

trial court shall permit the amendment of plaint by incorporating paragraphs No. 20(A) to 20(D), as provided in the petition for amendment.

11. In order to curtail any delay in the proceeding of the suit, it is provided that the petitioner shall file the amended plaint within the outer limit of

14(fourteen) days from today. The learned trial court shall grant liberty to the respondent to file his additional written statement in respect of the

amended portion, within a period of 1(one) month thereafter. In order to prevent further delay, it is also provided that the evidence-on-affidavit already

filed on record by the petitioner shall be permitted to be kept on record. However, for the amended portion of the plaint, the learned trial court shall

grant liberty to the petitioner to file additional evidence-on-affidavit, based on

the written statement filed by the respondent No. 1 by granting not more than 4(four) weeks after the filing of the additional written statement by the respondent herein.

12. The cross-examination of the PW-1 and 2 are deferred till the filing of the additional evidence-on-affidavit by the PW-1, on which date, all the plaintiff's witness may be present in the court for their cross-examination.

13. As the petition for amendment was after the commencement of trial, this Court is inclined to impose a cost of Rs.5,000/- to be paid by the petitioner to the respondent herein, which is made a condition precedent before filing of the amendment plaint. The cost shall be deposited before the learned trial court.

14. The parties, who are duly represented by their respective learned Counsels herein, are directed to appear before the Court of the learned Civil Judge No. 2, Kamrup (M), Guwahati on 03.05.2018, without any further notice of appearance and by producing the certified copy of this order, shall seek further instructions from the said learned court.