

(2003) 09 BOM CK 0072

In the Bombay High Court

Case No : Writ Petition No. 5119 of 2003

The Immigrants Ideal Producers Co-operative Society Ltd.
and Another

APPELLANT

Vs

Mrs. Jahanara Moiz Dalal

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2), Order 6 Rule 17, 16(2)

Citation : (2004) 1 ALLMR 147 : (2004) 2 BomCR 597 : (2004) 1 MhLj 910

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : Y.S. Jahagirdar and M.R. Desai, for the Appellant; V.A. Thorat and J.A. Udaipuri, for Respondent Nos. 1 and 2 and S.S. Bhende, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—Rule, returnable forthwith. Learned counsel for the Respondents waive service. By consent taken up for hearing and final disposal.

2. The question which arises for consideration before the Court in these proceedings under Article 227 is whether a Court whose jurisdiction is questioned under the provisions of Section 9-A of the CPC Code, 1908 ceases to have jurisdiction to allow an application for amendment of the plaint under Order 6 Rule 17 of the Code.

3. The First and Second Respondents instituted a suit in the Court of Small Causes in May 2002 for a permanent injunction restraining the Petitioners and the Fourth Respondent from dispossessing them from the premises of an open godown admeasuring 12 feet x 65 feet situated at 38/B, S.V. Road, Mumbai 400 058 and from interfering with their possession or from obstructing their ingress and ingress without due process of law. According to the First and Second Respondents (whom it would be convenient to refer to as the plaintiffs), they

have been tenants of the defendants of two godowns, one admeasuring 10 feet x 50 feet and another 12 feet x 65 feet. It has been averred that the tenanted godowns of the plaintiffs and a factory of the defendants are situated in close proximity. The godown which forms the subject matter of the suit admeasuring 12 ft x 65 ft was taken on tenancy in 1998 on a monthly rent of Rs. 3,5000/-. The plaintiffs have stated that since 1998 they have been in exclusive possession, use and enjoyment of the suit premises as tenants of the defendants and have been paying rent. On 8th December 2001 a fire took place at the workshop of the defendants as a result of which, it has been alleged that a major portion of the timber stock lying in the adjacent godown of the plaintiffs and the roof of the godown were gutted. What was left was the half burnt timber stock and the boundary of the godown. On 8th December, 2001, the statement of the First Plaintiff was recorded by the personnel from the police station at Andheri. The plaintiffs have set up a case that their tenancy has not lapsed or been extinguished following the mishap which took place. According to them, even after the mishap which took place in December 2001 rent has been received by the defendants from then in cash from January to March 2002. The cause of action for the institution of the suit is alleged to be that on 13 May 2002, "some 3 to 4 tough looking men called on the Plaintiffs and their leader gave his name as Iqbal Khan". The plaintiffs alleged that the First Plaintiff was informed by the said Iqbal Khan that the Second and Third Defendants wanted the plaintiffs to vacate the suit godown. According to the plaintiffs " the persons accompanying the said Iqbal Khan even indicated by signs that they were capable of shooting the plaintiffs, if not vacated". A complaint was lodged with the Deputy Commission of Police on 14th May 2002 by the plaintiffs seeking protection and thereafter a suit came to be instituted before the Court of Small Causes for a permanent injunction.

4. Before the Court of Small Causes, the Defendants raised a preliminary objection to the maintainability of the suit. The objection u/s 9-A of the CPC 1908 was heard. After arguments were heard, an application was filed by the plaintiff's for the amendment of the plaint. By the proposed amendment, the plaintiffs have sought to set up a case that since October - November 2001 the defendants demanded enhanced rent of Rs. 5,000/- per month in respect of the premises which the plaintiffs refused. The defendants, it is alleged, thereupon commenced harassing the plaintiffs. According to the plaintiffs, in order to show that the fire had occurred accidentally the defendants got a fire started in their own workshop situated in close proximity to the premises of the plaintiffs. The plaintiffs then sought to allege that it was the defendants who got the suit premises gutted in a fire on 8th December 2001, with the sole intent to dispossess the plaintiffs and prevent them from claiming a right of tenancy in respect o the suit premises. In support of the application for amendment, the plaintiffs filed an affidavit of their advocate in order to explain the circumstances in which the averments which are proposed to be incorporated by an amendment of the pleadings remained to be included in the plaint as originally filed. In his

affidavit, the advocate confirmed that he distinctly recollected that he had received instructions from the plaintiffs to the effect that the defendants had deliberately caused a short circuit resulting into a fire which destroyed the godown. An averment incorporating these instructions had remained to be included.

5. The learned Trial Judge by an order dated 2nd May 2003 allowed the application for amendment. The pleadings in this case were admittedly filed before the enforcement of the Amendment Act of 2002 on 1st July 2002 and there is no dispute about the fact that by virtue of Section 16(2)(b) of the aforesaid Act, the amended provisions of Order 6 Rule 17 shall not apply in respect of this particular case. Though the applicability of the amended provisions of Order 6 Rule 17 was the subject matter of argument before the learned Trial Judge, that issue has correctly not been pressed before this Court on behalf of the Petitioners. The learned Trial Judge held that though arguments have been heard on the application questioning the jurisdiction of the Court u/s 9-A and judgment had been reserved, the Court was not disabled from allowing an amendment in an appropriate case so as to bring out the real nature of the controversy between the parties. The learned Trial Judge held that the amendment was not malafide. The bonafides of the plaintiffs could not be doubted having regard to the affidavit of the advocate as well as having regard to the complaint lodged by the plaintiffs on 14th March 2002 to the Deputy Commissioner of Police wherein the plaintiffs had expressly stated that they suspected that the fire had been caused by the landlords. In the circumstances, the application for amendment has been allowed.

6. Counsel appearing on behalf of the Petitioners urged that the interference of this Court under Article 227 was warranted on the ground that once an application questioning the jurisdiction of the Trial Court had been moved u/s 9-A, that Court was duty bound to deal with the application questioning its jurisdiction and that the Trial Court consequently could not have entertained an application for the amendment of the plaint. Reliance was placed on three judgments of learned Single Judge of this Court to which a reference will be made in the course of this judgment. Counsel urged that the Petitioners had questioned the jurisdiction of the Court of Small Causes in view of the judgment of the Supreme Court in Vannattankandy Ibrayi v. Kunhabdulla Hajee (2001) 1 SCC 564 in which it was laid down that a tenancy in respect of a structure must be regarded as being extinguished if the structure itself is completely destroyed. The Supreme Court, however, held that the situation would be different where the landlord pulls down a building governed by the State Rent Act. Hence, the submission which was urged before this Court was that after the Petitioners had objected to the jurisdiction of the Court of Small Causes on the ground that the tenancy stood extinguished upon the destruction of the godown in the fire, an amendment of the plaint was sought only with a view to seek the benefit of the exception carved out by the judgment of the Supreme Court. Counsel urged that if the objection of the petitioners u/s 9-A is upheld, the Court of Small Causes

would have no jurisdiction at all in which event the order allowing the amendment would have been passed by a Court having no jurisdiction. an amendment which has the effect of ousting the jurisdiction of a Court can be allowed, but an amendment cannot be allowed where a Court has no jurisdiction over the subject matter of the suit as it stands.

7. These submissions can now be considered.

8. Section 9-A of the Code of Civil Procedure, 1908 was inserted by a Maharashtra Amendment with effect from 19th December 1977. the circumstances in which the amendment was introduced have been explained in the statement of Objects and Reasons. As a result of a Judgment of this Court reported in 1960 BLR 660, the City Civil Court for the purposes of the grant of interim relief was held as not being required to go into the question of jurisdiction. Hence, declaratory suits were some times instituted in the City Civil Court without a valid notice u/s 80 of the Code of Civil Procedure. A practice had grown in the City Court to adjourn Notices of Motion for injunction in suits filed even without valid notices. This gave time to the plaintiff to give another notice and after the expiry of the period of the notice plaintiffs were allowed to withdraw the suits instituted by them with liberty to file fresh suits. In the intervening period, Courts granted ad interim injunctions which were continued. This practice led to grave abuse. The legislature, therefore, proposed that if a question of jurisdiction was raised at the hearing of any application for granting or setting aside an order granting interim relief, the Court shall determine that question first.

9. Section 9A provides as follows :

"9A. Where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue to be decided by the Court as a preliminary issue --(1) Notwithstanding anything contained in this Code or any other law for the time being in force, if at the hearing of any application for granting or setting aside an order granting any interim relief, whether by way of stay, injunction, appointment of a receiver or otherwise, made in any suit, an objection to the jurisdiction of the court to entertain such suit is taken by any of the parties to the suit, the court shall proceed to determine at the hearing of such application the issue as to the jurisdiction as a preliminary issue before granting or setting aside the order granting the interim relief. Any such application shall be heard and disposed of by the Court as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit.

(2) Notwithstanding anything contained in Sub-section (1), at the hearing of any such application, the Court may grant such interim relief as it may consider necessary, pending determination by it of the preliminary issue as to the jurisdiction."

10. Section 9-A applies where at the hearing of an application for the grant of or setting aside an order granting any interim relief made in any suit an objection to

the jurisdiction of the Court to entertain such a suit is taken by any of the parties to the suit. The provision mandates that in such a case, the Court shall proceed to determine at the hearing of such application the issue as to jurisdiction as a preliminary issue before granting or setting aside the order granting interim relief. The provision then mandates that such application shall be heard and disposed of as expeditiously as possible and shall not in any case be adjourned to the hearing of the suit. Sub-section (1) is prefaced with a non obstante provision, the effect whereof would be that it would operate notwithstanding what has been set out inter alia in Order 14 Rule 2 of the Code of Civil Procedure. What Section 9-A, therefore, mandates is that where the jurisdiction of the Court is questioned at the hearing of an application for the grant or setting aside of an order granting interim relief (i) The Court must determine the issue of jurisdiction as a preliminary issue; (ii) The issue of jurisdiction must be determined before granting or setting aside the order granting interim relief; (iii) The application must be heard and disposed of as expeditiously as possible; and (iv) In any case the application cannot be adjourned to the hearing of the suit. Sub-section (2) creates a limited exception in that the Court is empowered to grant such interim relief as it may consider necessary pending the determination by it of the preliminary issue of jurisdiction. Sub-Section (2) is intended to ensure that the plaintiff is not irretrievably prejudiced merely by the defendant raising an objection to jurisdiction.

11. Absent the provisions of Section 9-A, the provisions of Order 14 Rule 2 of the CPC would normally operate. Those provisions provide thus :

"2. Court to pronounce judgment on all issues - (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions Sub-rule (2), pronounce judgment on all issues.

(2) Where issue both of law and of fact arise in the same suit, and the Court is of opinion that the case or, any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

- (a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

Sub-rule (1) of Rule 2 thus mandates that even if a case can be disposed of on a preliminary issue, the Court must pronounce judgment on all issues. Under Sub-rule (2) Rule 2, however, where the Court is of the opinion that a case or any part thereof can be disposed of on an issue of law only, it may try that issue first if it relates to the jurisdiction of the Court or to a bar to the suit created by any law for the time being in force. The Court is empowered for that purpose to postpone the settlement of the other issues.

12. Section 9-A as already noted in prefaced by a non obstante provision. The provisions of Section 9-A have been construed by the Supreme Court and by a judgment of a Division Bench of this Court. In *Tayabbhai M. Bagasarwalla and another Vs. Hind Rubber Industries Pvt. Ltd. etc.*, Mr. Justice B.P. Jeevan Reddy speaking for the Bench held thus :

"The Correct principle, therefore, is the one recognised and reiterated in Section 9-A to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim order therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it would also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the Court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the Court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case the court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these order have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction."

13. In so far as the judgment of the Division Bench of this Court is concerned, in *Meher Singh Vs. Deepak Sawhny and Another*, . Chief Justice M.B. Shah (as the learned Judge then was) speaking for a Division Bench noted that Section 9-A is a departure from the procedure established for deciding a preliminary issue under Order 14 Rule 2 of the Code of Civil Procedure. Under Order 14 Rule 2(1) the mandate is to decide as far as possible all issues and pronounce judgment on all issues. This is, however, subject to Sub-rule (2) which gives discretion to the Court, if it is of the opinion that the case or any part thereof can be disposed of on an issue of law only, to try that issue first if it relates to the jurisdiction of the Court or to a bar to the suit. As against this, Section 9-A specifically mandates that notwithstanding anything contained in the code or any other law, if an objection as to the jurisdiction of the Court to entertain a suit is taken by any of the parties to the suit, the Court is required to determine that issue as a preliminary issue before granting or setting aside the order granting interim relief. The Division Bench noted that this was not merely a prima facie determination for the purposes of the application for the grant of interim relief. If

the question of jurisdiction is a mixed question of law and facts, then for the purpose of deciding the preliminary issue, it would be necessary to allow parties to lead evidence on the issue. The Division Bench held that since the issue of jurisdiction is required to be raised and finally determined, it would require giving an opportunity of leading evidence and a hearing to both the parties. The Division Bench, therefore, held thus :

"In the result we hold that if Sections 9A is not added, then at interim stage, the Court is not required to decide the issue of jurisdiction finally and the Court by referring to the averments made in the plaint, would ordinarily determine whether or not the Court has jurisdiction to try the suit. however, it is apparent that Section 9A is added with a specific object to see that objection with regard to jurisdiction of the Court is decided as a preliminary issue. According to the Legislature, the practice of granting injunctions, without going into the question of jurisdiction even though raised, has led to grave abuse. Hence, the said section is added to see that issue of jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Civil Procedure Code, including Order XIV, Rule 2. Once the issue is to be decided by raising it as a preliminary issue, it is required to be determined after proper adjudication. Adjudication would require giving of opportunity to the parties to lead evidence, if required."

14. Counsel appearing on behalf of the Petitioners urges that once an objection to the jurisdiction of the Court is raised at the hearing of an application for the grant or for the setting aside or an order granting interim relief, that objection has to be taken up first to the exclusion of all other proceedings. Counsel urged that once the jurisdiction of the Court is questioned, the Trial court would have no jurisdiction to pass any other orders under Order 6 Rule 17 for allowing an amendment of the plaint. There is no merit in that submission. Section -A of the Code was, as the Statement of Objects and Reasons demonstrates, intended to remedy a situation where, despite the absence of a notice u/s 80 of the CPC, interim orders were passed in suits by the City Civil Court and Notice of Motion were thereupon adjourned without an immediate disposal of the issue of jurisdiction. This led to grave abuse. Section 9-A, therefore, mandates that once an objection to the jurisdiction of the Court is taken by a party to the suit at the hearing of an application for granting or setting aside an order of interim relief, the Court must determine the issue of jurisdiction as a preliminary issue before granting or setting aside the order granting interim relief. The further mandate is that the application has to be heard and disposed of by the court as expeditiously as possible. Finally, Section 9-A stipulates that the hearing of the application shall not in any case be adjourned to the hearing of the suit. The application for interim relief may be for a stay, injunction, appointment of a receiver or otherwise. The words or otherwise bring in all applications for interim relief other than those spelt out earlier. this is evident from the use of the word "whether by way of" before the specified categories of interim relief that are listed out. In other words, Section 9-A applies where at the hearing of an application for the grant or setting aside of an order of interim relief an objection as to jurisdiction is

taken. The words "or otherwise" are not intended to cover applications other than those for the grant of interim relief. Those words are a residuary category of all application for interim relief and not of applications other than for interim relief. The provision does not disable the Court from exercising its functions as a Court governed by the procedural stipulations contained in the Code of Civil Procedure, 1908. Unquestionably once an objection to the jurisdiction of the Court is taken which has to be dealt with u/s 9-A, it is the bounden duty of the Court to deal with that application as expeditiously as possible. An expeditious disposal of the question of jurisdiction cannot be allowed to be derailed by recourse to a stratagem of pursuing meaningless and, often times frivolous procedural applications. By this is quite different from holding that the Court is disabled from passing any other orders (otherwise than of interim relief) merely because an objection as to its jurisdiction has been taken. In each case, the Court must necessarily have regard to the bonafides of the applicant and on the question as to whether it would be appropriate to take up the objection as to jurisdiction immediately having regard to the object and purpose which underlies Section 9-A. This discretion the Court must exercise ex debito justice in order to advance the object and purposes of Section 9-A. But there would be a range of eventualities which the Court may have to deal with in the facts of each case. If a party to the proceedings has expired, for instance, an application may be made to the Court for bringing on record the legal heirs, under Order 22 of the Code of Civil Procedure. In a suit by or against a minor, the Court will have to exercise its powers under Order 32 of the Code of Civil Procedure. Therefore, there cannot be any general principle that once an objection has been raised u/s 9-A the Court is completely disabled from the exercise of its jurisdiction save and except for deciding that application. No such prohibition is contained in the statute. Section 9-A does not expressly contain words of prohibition. Undoubtedly, it is for the Court to deal with any application that is preferred before it in a manner which would advance the objects and purpose of the provision. The Court has to be vigilant in order to ensure that the hearing of the plea questioning its jurisdiction is not delayed by procedural strategies which will defeat the legislative object. Where a procedural application appears to be a device for delaying a decision on jurisdiction, the Court will not only be justified but be duty bound to not defer a decision on the plea of jurisdiction. However, to hold that the Court is disabled from exercising any jurisdiction save and except to decide the question as to its own jurisdiction, is to read words into the statute which the legislature has not incorporated. Section 9A imposes a restriction upon the power of the Court to grant or set aside an order granting interim relief when at the hearing of such an application, the jurisdiction of the Court is questioned. In such a case (i) the jurisdiction of the Court has to be dealt with as a preliminary issue; (ii) the question of jurisdiction has to be taken up before considering the application for granting or setting aside an order granting interim relief; and (iii) the application on jurisdiction cannot be adjourned to the hearing of the suit. The restriction upon the power of the Court is in relation to the grant of interim relief or an order setting aside interim relief. The Court must scrupulously adhere to this

restriction, save to the limited extent to which an exception is charged out in Sub-section 2. This is on a proper construction the true ambit of Section 9A. To accept the argument of the Petitioners would be to read a new category of restrictions in Section 9A which the legislature has not done. That would be impermissible.

15. Counsel appearing on behalf of the Petitioners relied upon a judgment of learned Single Judge of this Court in Radhakishin N. Advani Vs. Sheila Gobind Mirchandani and Another, . That was a case where the Trial Judge in the City Civil Court had granted an interim injunction and, despite an objection which was raised u/s 9-A adjourned the hearing of the Notice of Motion till the hearing of the suit. This was exactly what was prohibited by Section 9-A. In that context Mukhi, J. held that the purpose and intent of the legislation was that if a suit was capable of being disposed of on the question of jurisdiction, it should be so disposed of forthwith before any further proceedings are taken or the suit is allowed to remain in some docket over years to come. Kranti Mohan Guruprasad Mebra and Another Vs. Fatehchand Vasuram Behal, was similarly a case where the Trial Judge in the City Civil Court had declined to go into the question of jurisdiction u/s 9-A at that stage holding that it would decide the question along with the Notice of Motion on merits simultaneously. The jurisdiction of the Trial Court was questioned on the ground that it had no pecuniary jurisdiction. In that context, a learned Single Judge of this Court held, and in my respectful view correctly, that if a motion or an application questioning the jurisdiction of the Court is made, then it must be attended to immediately. In such a case, the grant of interim relief has to be placed in the background since the main question of jurisdiction has to be answered. The learned Single Judge held that in such a case, the outcome of the preliminary issue cannot be postponed to a full dressed trial on merits of other issues. Finally, there is a judgment of my learned brother. Mr. Justice A.M. Khanwilkar, dated 23rd July, 2003 in Writ Petition No. 2259 of 2003, Shri. Arjun Dada Gadage v. Mallappa Gurappa Chougule). The learned Single Judge held that having regard to the purpose underlying the introduction of Section 6-A, it necessarily follows that the Court is obliged to decide the issue of jurisdiction not only while considering the prayer for interim relief, but also while considering any other incidental prayers made during the pendency of the suit. The learned Single Judge held that the essence of the provision is that the issue of jurisdiction should not only be decided at the interlocutory stage, but at the threshold, before the Court proceeds with the matter on any other issue; for if it has no jurisdiction to try and entertain the suit as presented, then obviously it should not dwell upon any other matter at all. The only exception, noted the learned Judge, was the grant of ad interim relief under Sub-section (2) pending determination of the preliminary issue of jurisdiction. Consequently, it was held that the Court is obliged to decide the question of jurisdiction at the interlocutory stage itself to avoid hearing of any other issue or relief on merits.

16. The principles which have been laid down by the learned Single Judges in the aforesaid decisions are, with respect, correct. There can be no doubt about the

question that once an issue of jurisdiction is raised, it has to be decided expeditiously, as a preliminary issue. The decision of that issue cannot be adjourned to the hearing of the motion for interim relief and in any event not to the trial of the suit. The question of jurisdiction has to be answered as expeditiously as possible, before other issues which arise in the suit are dealt with and before the entitlement of the plaintiff to relief on merits is considered. The question, however, in the present case is a more limited issue and that is as to whether the learned Trial Judge was ousted from his jurisdiction to allow the amendment of the plaint altogether. The answer must be in the negative. It must be emphasised that in the present case, there is a finding recorded by the learned Trial Judge that the bonafides of the plaintiffs could not be questioned. The application for amendment was not malafide nor was it an effort to delay the disposal of the application questioning the jurisdiction of the Court.

17. Counsel appearing on behalf of the Petitioners urged that the application for amendment was only with a view to bring the case of the Plaintiffs within the dictum laid down in paragraph 24 of the judgment of the Supreme Court in Ibrayi's case (supra). The Supreme Court had held that when a tenanted structure is completely destroyed as a result of a natural calamity, the tenancy rights stand extinguished since the demise must have a subject matter and if the same is no longer in existence, there is an end of the tenancy. The Court, however, made an exception in paragraph 24 holding that the situation would be different where the landlord pulls down a building governed by the State Rent Act. Even if the learned counsel is correct in urging that the underlying object of the object of the amendment was to bring the case of the plaintiffs within the fold of the exception carved out in paragraph 24 of the judgment of the Supreme Court, I am of the view that this is no ground in itself to disallow the amendment. A reading of the plaint would show that the plaintiff have pleaded the necessary jurisdictional facts. There is a clear reference in the plaint to (i) the creation of a tenancy in favour of the plaintiffs in respect of the suit premises; (ii) the payment of rent, (iii) the mishap took place; and (iv) the acceptance of rent even thereafter. It must, therefore, be emphasised that this is not a case *ex facie* where a matter which does not lie within the jurisdiction of the Court of Small Causes is sought to be brought within the jurisdiction of the Court as a result of an amendment. These observations should not however be construed to conclude the issue u/s 9-A and the learned Trial Judge will undoubtedly deal with that issue uninfluenced by these observations.

18. This is a case where the order passed by the learned Trial Judge is an order within jurisdiction. The circumstances in which the discretion has been exercised by the learned Trial Judge have been already adverted to earlier. The learned Trial Judge has held that the application for amendment was bonafide. The exercise of the discretion by the learned Trial Judge is not required to be interfered with in these proceedings under Article 227. The learned Trial Judge was within his authority in granting the application for amendment. In the circumstances, there is no merit in the Petition, which is accordingly rejected.