

(2001) 12 OHC CK 0027

In the Orissa High Court

Case No : Civil Revision No. 384 of 2001

The Nayabati and Others

APPELLANT

Vs

Sanghamitra Sahoo and Another

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115

Citation : (2002) 1 CivCC 472 : (2002) 93 CLT 20 : (2002) 1 OLR 282

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : D. Mohanty, J.P. Choudhury and A.K. Patnaik, for the Appellant; B.N. Tripathy, C.R. Swain, J.K. Mohanty, S.B. Sahoo, P.K. Kuanr and M.K. Sahoo, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The order dated 20.10.2001 passed by the learned Civil Judge (Senior Division) 2nd (sic.) Court, Cuttack rejecting the prayer of the defendant-petitioner for amendment of the written statement is under challenge before this Court in this revision.

2. The opposite party has filed the suit claiming damages to the tune of Rs. 1,50,000/- against defendant-petitioner for defamatory publication made in their local daily "The Nayabati" against the plaintiff-opposite party. A further prayer has also been made in the suit to restrain the defendants permanently from publishing any news item against the plaintiff in the paper publishing by them.

3. The allegations of the plaintiff-opposite party is that in 24.10.97 edition of the defendants publication, namely "The Nayabati", a new item was published with the heading "Mahadevanka Ghara Ghauda". Under the said heading a small article was published making some allegations against the plaintiff-opposite party. In the written statement filed by the defendants a plea was taken that the said item had never been published for the purpose of either defaming the

plaintiff or her family members. It was also pleaded that the facts were based on news reports from reliable sources including police department and there was no malice from the side of the defendants in publishing the same. After closure of evidence from both sides, application for amendment of written statement was filed.

In the application an amendment was sought for to add a paragraph indicating the meaning of the heading under which the article had been published. An objection was filed on behalf of the plaintiff-opposite party stating that the amendment sought for was only to cause delay in disposal of suit and in course of hearing sufficient opportunity had been given to the defendants to explain the meaning of the news item at different stages, but the defendant did not choose to do so and at the fag and of the suit, when the same was posted for argument, application for amendment was filed.

4. Learned Civil Judge in the impugned order held that if the amendment will be carried out the parties will be forced to lead evidence and litigate dispute afresh resulting in protraction of the trial as well as multiplicity and repetition of evidence. Learned Civil Judge was so of the view that the amendment sought for shall change the nature and character of the suit and will also affect the interest of the plaintiff-opposite party. On the aforesaid finding, prayer for amendment of the written statement was rejected.

5. In course of argument learned counsel for the petitioner submitted that in para - 13 of the written statement the defendant had already stated that the news item was never meant to defame the plaintiff or her family members and the facts are based on information received from reliable sources including the police department and there was no malice from the side of the defendants in publishing the said article.

The amendment sought for was only to explain the meaning of the heading under which the article had been published which does not change the nature and character of the suit. Since the heading itself is also stated to be dematory it was necessary to explain the meaning of the heading under which the article had been published. Reliance is placed by the learned counsel for the petitioner on a decision reported in 1989 (I) OLR 150 (Subash Ch. Das and Ors. v. Kanheill Khndelwalla and Ors.). Learned counsel for the opposite party on the other hand submitted that the defendant No. 3 who examined himself as D.J.M. 4 in the suit has already explained in his evidence the meaning of the heading under which the article had been published. Therefore, there is no necessity for amending the written statement and that the application was filed only for the purpose of delaying disposal of the suit.

6. From para - 13 of the written statement filed by the defendants it appears that a specific stand has been taken by the defendants that the heading as well as the article published under the heading are not meant to defame the plaintiff or her family members and there is no malice from the side of the defendants in

publishing the same as it was based on information received from reliable sources including the police department. Amendment sought for is only to explain the meaning of the heading. In the decision cited by the learned counsel for the petitioner referred to above, this Court held that when an amendment sought for is continuation of the stand already taken in the written statement and for the purpose of better clarification of the same, it should be allowed provided it does not change the nature and character of the suit. Here is a case where the heading under which article had been published is sought to be explained with the purpose of convincing the court that there was no intention to defame the plaintiff or her family members and there was no malice behind the publication of such article. In my view, the amendment sought for neither changes the nature and character of the suit nor shall cause any prejudice to the plaintiff-opposite party. Apprehension of the Court that by allowing such amendment the parties will adduce evidence and the litigation has to be taken up afresh does not appear to be justified. Even if the amendment is allowed the explanation having been given by the D.W. 4 in his deposition, there will be no necessity for the defendants to adduce any evidence in order to explain the meaning of the heading under which the article was published.

7. I, therefore, set aside the impugned order passed by the learned Civil Judge and allow the prayer for amendment of the written statement. However, it is directed that the defendants shall not be allowed to adduce any further evidence on the amendment as the same has already been explained by D.W. 4 in his evidence. The learned Civil Judge shall dispose of the suit as early as possible preferably within a period of two months from the date of communication of this order.

8. Revision allowed.