
(2015) 03 KAR CK 0442

In the Karnataka High Court

Case No : Writ Petition No. 102635/2015(GM-CPC)

Udakahapa and Others

APPELLANT

Vs

The Managing Director, Karnataka Nirawari Nigam Ltd. and
Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

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

Citation : (2015) 03 KAR CK 0442

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : Jagadish Patil, for the Appellant

Final Decision : Dismissed

Judgement

B. Manohar, J.

1. Petitioners are the plaintiffs in O.S. No. 167/2014 on the file of the Civil Judge and JMFC, Ramdurg, being aggrieved by the order dated 13-02-2015 allowing I.A. No. 5 filed by the 3rd defendant under Order VI Rule 17 of CPC, filed this writ petition.

2. The plaintiffs filed a suit seeking for permanent injunction restraining the defendants from interfering with their peaceful possession and also for other reliefs. The defendants entered appearance and filed written statement denying the entire averments made in the plaint. Before framing the issues, the 3rd defendant filed an application under Order VI Rule 17 of CPC seeking for amendment of the written statement in order to incorporate some more defenses. The said application was objected by the plaintiffs contending that at this length of time, the 3rd defendant cannot be permitted to amend the written statement. The admission made by the defendants cannot be taken away by way of amendment to the written statement and sought for dismissal of the said application.

3. The Trial Court after considering the matter in detail found that immediately after filing the written statement, the defendant noticed that he has not taken some defenses and thereafter he invoked Order VI Rule 17 of CPC and filed an application for amendment of the written statement. The Code of Civil Procedure provides for amendment of the written statement at any stage of the proceedings. However, before commencement of the trial, the written statement can be amended. In the instant case, the amendment has been sought before commencement of the Trial. Relying upon the judgment of the Hon''ble Supreme Court reported in ILR 2007 KAR 2590 (SC) in the case of case of USHA BALASAHEB SWAMI AND OTHERS v. KIRAN APPASO SWAMI AND OTHERS, the Trial Court allowed the application permitting the defendants to amend the written statement. Being aggrieved by the said order, the plaintiffs filed this writ petition.

4. Sri. Jagadish Patil, learned counsel appearing for the petitioners contended that the order passed by the Trial Court permitting the 3rd defendant to amend the written statement is contrary to law. In the original written statement, the defendants have not taken any such defense as taken in the amended written statement, and now he cannot take some more defenses, which will change the cause of action and nature of the suit. If the amendment sought for by the defendants is allowed, the plaintiffs have to implead the State Government also as party to the suit. The suit filed by them is for bare injunction. Hence, the amendment sought for by the defendants cannot be permitted and sought for allowing the writ petition.

5. I have carefully considered the arguments addressed by the learned counsel for the petitioners, perused the impugned order and other relevant records.

6. The records clearly disclose that within a few days after filing the written statement, the 3rd defendant filed I.A. No. 4 invoking Order VI Rule 17 of CPC seeking amendment of the written statement to take some more defenses apart from the defense already taken in the written statement. The Trial Court after considering the objections filed by the plaintiffs found that the defendants can take additional defenses and that will not adversely affect the interest of the plaintiffs and allowed the said application. The said order has been questioned in this writ petition. Order VI Rule 17 of CPC contemplates for amendment of the pleadings of the parties. At any stage of the proceedings, the Court can permit the parties to amend the written statement. The only restriction contained in the proviso is that no amendment can be permitted after commencement of the trial. In the instant case, much prior to the commencement of the trial, the defendants had filed an application seeking amendment of the written statement. The Code of Civil Procedure provides for such an amendment. The Hon''ble Supreme Court in various judgments has laid down a law that the defendants can seek for amendment of the written statement to include some more defenses and he can also take contrary stand to the stand he has already taken in the written statement. The yardstick for amendment of the written statement with that of

the plaint is different. Insofar as the amendment of written statement is concerned, the approach of the Court must be liberal and it will not change the cause of action or nature of the suit. Hence, I do not find any infirmity or irregularity in the order passed by the Trial Court. Relying upon the judgment of the Hon"ble Supreme Court, the Trial Court has passed the order.

7. The petitioners have not made out a case to interfere with the order passed by the Trial Court. Accordingly, the writ petition is dismissed.