

(2012) 05 SHI CK 0045

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 136 of 2012

Udit Kanoi

APPELLANT

Vs

Himachal Pradesh State Industrial Development Corporation
Ltd. and Others

RESPONDENT

Date of Decision : 15-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4, Order 22 Rule 4(2), 151

Citation : (2013) 1 ShimLC 152

Hon'ble Judges : Kurian Joseph, C.J; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Jivendera Katoch, for the Appellant; Hamender Chandel, Counsel for the Respondent No. 1, Mr. R.K. Bawa, Advocate General and Mr. J.K. Verma, D.A.G. for the State, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, C.J.—What is the scope of expression "defence appropriate to his character as legal representative" appearing under Order 22 Rule 4(2), is one of the questions arising for consideration in this case. Trial of a suit is confined to the issues framed in the suit. In other words, there is no trial on pleadings; trial is on issues. That is the scheme of Civil Procedure Code. We have to analyze the contentions placed by the appellant in the light of this principle.

2. The appeal arises out of the order, dated 20th March, 2012 in OMP No. 388 of 2011 in Civil Suit No. 20 of 2003. That application was filed u/s 151 of the CPC on behalf of the appellant, who is the legal representative of the original second defendant with a prayer for recalling the plaintiff's witnesses for cross examination and for permission to lead further evidence on the issues already framed. The learned Single Judge dismissed the application holding that no additional issues have been framed, the parties have already led evidence on the issues already framed and hence, it was not permissible to the newly added defendant to lead further evidence. Thus aggrieved the appeal.

3. It is the contention of the appellant that newly added defendant, in his capacity as legal representative, having been permitted to file additional written statement, should be permitted to lead evidence on the pleadings taken in the additional written statement. It has to be seen that after filing the additional written statement, the appellant had sought for framing of additional issues. That prayer was dismissed and that has become final by the judgment, dated 28th September, 2011 in LPA No. 179 of 2011. Therefore, the learned trial Judge is right in law in rejecting the request for leading further evidence as no additional issues had been framed.

4. It is contended by the appellant that under Order 22 Rule 4 C.P.C., the legal representative who is made a party, is entitled to make any defences appropriate to his character as legal representative of the deceased defendant. He has stepped into the shoes of original defendant whose interest is pursued by him. Having come on the party array as a legal representative, no doubt he is entitled to take all available defences, but those defences are to be confined to his position as legal representative of the deceased defendant. That is why he was permitted to file additional written statement as well, permitting him to take defences available to the deceased defendant and if omitted to be taken by the defendant. In other words, when a legal representative is brought on the party array, he is entitled to take all defences available to the original defendant and in case such defences had not been taken by the original defendant, the legal representative is entitled to take such defences by way of an additional written statement, which could have been taken by the deceased defendant. However, he cannot take any inconsistent plea. He is bound by the defence already taken. He cannot also take a plea or defence which was personal to the deceased defendant. However, in case the newly added defendant has a plea on independent title, the same can be raised after impleading him in his personal capacity. No separate suit is necessary. In Jagdish Chander Chatterjee and Others Vs. Shri Kishan and Another, the Supreme Court had an occasion to consider this issue and has held as under:--

The legal representative of the deceased respondent was entitled to make any defence appropriate to his character as legal representative of the deceased respondent. In other words, the heirs and the legal representatives could urge all contentions which the deceased could have urged except only those which were personal to the deceased. Indeed this does not prevent the legal representative from setting up also their own independent title, in which case there could be no objection to the Court impleading them not merely as the LRs. of the deceased but also in their personal capacity avoiding thereby a separate suit for a decision on the title.

5. The same view was also taken in Bal Kishan Vs. Om Parkash and Another, wherein it has been held as follows:--

The sub-rule (2) of Rule 4 of Order 22 authorized the legal representative of a deceased defendant to file an additional written statement or statement of

objections raising all pleas which the deceased defendant had or could have raised except those which were personal to the deceased-defendant or respondent.

6. In the instant case, even after the additional written statement having been permitted to be filed, though an attempt was made for raising additional issues, the learned trial Judge and this Court in appeal have entered a finding that it was not necessary to have additional issues since the disputes raised in the additional written statement are otherwise covered by the issues already framed by the Court, as suggested by the original defendant.

7. Reliance was placed by the appellant on the decision of Apex Court in K.S. Krishna Sarma Vs. Kifayat Ali, Paragraph 9 of the judgment deals with the question which arose for consideration in the case and the question has been answered in paragraphs 10 and 11 of the judgment. Para 9 of the judgment reads as follows:--

9. The only point for consideration in this appeal is whether the appellant-first defendant is entitled to lead evidence in respect of all issues including additional issues afresh or to be confined only in respect of the eighth defendant who was subsequently impleaded on the orders of the High Court.

It has thus to be seen that it was a case where the legal representative having been permitted to file additional written statement, additional issues were framed by the Court and it was held that the liberty to the legal representative/additional defendant was confined to the additional issues framed in the suit and not on all issues. That decision is of no help to the appellant since in the instant case no additional issues were framed and, therefore, the appellant cannot be permitted to lead further evidence. Thus, there is no merit in the appeal and it is accordingly dismissed. The pending applications, if any, also stand dismissed.