

(2011) 08 DEL CK 0379
In the Delhi High Court
Case No : W.P (C) No. 4073 of 2007

Union of India (UOI) and Another

APPELLANT

Vs

Shri D.L. Khillon

RESPONDENT

Date of Decision : 09-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151

Citation : (2011) 182 DLT 407

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : A.S. Chandihoke, ASG, Anjana Gosain, Ritesh Kumar, Piyush, Simranjeet Singh and Nipun Bahri, for the Appellant; M.K. Bhardwaj, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

CM No. 1871/2011 in WP(C) No. 4073/2007

1. This is an application by the Petitioner/applicant under Order 6 Rule 17 read with Section 151 of the CPC to amend the present writ petition.
2. The applicant has contended that the Tribunal has committed an error in interpreting the Government's Office Memorandum dated 19th September, 2003 in its order dated 10th November, 2006. The Petitioner/applicant wants to add paragraphs (I) and (J) incorporating their grounds to challenge the order dated 10th November, 2006 and wants to amend paragraph (H) also incorporating the ground to challenge the said order, which was omitted inadvertently by the applicant.
3. The applicant has contended that the order dated 10th November, 2006 is impugned by the applicant, however, by inadvertence, in the prayer clause, quashing of order dated 10th November, 2006 passed in OA No. 577/2005 has

not been sought specifically and what has been sought is to set aside the order passed by the Tribunal in the review application for review of the order dated 10th November, 2006. The applicant has contended that the amendment sought is technical in nature and does not tantamount to withdrawal of any admission made by the Petitioner in any manner nor changes the pleas and contentions raised on behalf of the Petitioner.

4. The application is contested by the Respondent contending, inter alia, that the order dated 10th November, 2006 has not been challenged by the Petitioner in the writ petition. It is denied by the Respondent that the Tribunal has fallen in error in interpreting the Office Memorandum dated 19th September, 2003 in its order dated 10th November, 2006. The non-applicant has further contended that the amendment cannot be allowed as the only remedy available with the Petitioner is to withdraw the writ petition and to file a fresh petition.

5. It cannot be disputed that the power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of the guidelines laid down in various precedents. The purpose and object of Order 6 Rule 17 of the CPC is to allow either party to alter or amend his pleading in such a manner and on such terms as may be just and appropriate. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action, particularly when the legal proceeding in the new case or cause of action is barred. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed. The Supreme Court has held in numerous cases that the dominant purpose of allowing the amendment is to minimize litigation. Therefore, if the facts of the case so permit, it is always open to the Court to allow applications in spite of delay and laches in moving such application for amendment. Even in cases where the delay has apparently extinguished the right of the party, there is no absolute rule that the amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case.

6. After hearing the learned Counsel for the parties, this cannot be disputed that the order passed in the review application challenging the order dated 10th November, 2006 has been challenged in the writ petition. From the tenor of the writ petition, it is also apparent that the Petitioner has challenged the order dated 10th November 2006 and non-inclusion of order dated 10th November, 2006 in the prayer clause is by inadvertence. In any, case by including the challenge to order dated 10th November, 2006, the Petitioner does not withdraw any admission made in the writ petition or change the basic nature of the writ petition. The amendment sought by the Petitioner is necessary for determining the controversy between the parties. There does not seem to be any other impediment in allowing the application for amendment of the writ petition.

7. For the foregoing reasons, the application is allowed and the Petitioner/

applicant is permitted to carry out amendment as detailed in the application. Amended writ petition be filed.

WP(C) No. 4073/2007

8. The amended writ petition already filed along with the application for amendment is taken on record.

9. Counter affidavit to the amended writ petition be filed within four weeks. Rejoinder, if any, be filed by three days before the next date of hearing

10. List on 17th October, 2011.