
(2018) 01 MP CK 0183
In the Madhya Pradesh High Court
Case No : 8822 of 2016

Vijay Kumar Jain

APPELLANT

Vs

MPMKVV Co. Ltd. and Ors.

RESPONDENT

Date of Decision : 31-01-2018

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Code of Civil Procedure, 1908, <a href=3859 — Order 1Rule
10>Order 1Rule 10, <a href=3859-O

Citation : (2018) 01 MP CK 0183

Hon'ble Judges : S.A. Dharmadhikari

Bench : Single Bench

Advocate : Rajiv Jain, Ravi Jain, B.M. Patel

Final Decision : Dismissed

Judgement

1. Heard finally with the consent of both the parties.
2. In this petition under Article 227 of Constitution of India, the petitioner has assailed the order dated 04/11/2016 passed in Civil Suit No. 26-A/2011 by Additional District Judge, Ambah, Dist. Morena whereby, the learned trial court had dismissed the application U/o 1 Rule 10 & U/o 23 Rule 1 r/w section 151 of CPC filed by the petitioner/plaintiff No. 1 for deleting his name from the array of cause title of the suit.
3. Brief facts leading to filing of this petition are that the petitioner filed a suit against respondents No. 1 & 2 seeking compensation of Rs. 30, 50, 000/- towards death of their daughter namely Shikha aged about 11 years due to electrocution. During pendency of the suit, the petitioner who is father of the deceased moved an application U/o 1 Rule 10 & U/o 23 Rule 1 r/w section 151 of CPC for deleting his name from the array of cause

title of the suit on the ground that he being resident of village Gormi did not have any work/business to earn his livelihood, therefore, he has shifted

to Indore in search of a job and is residing with his relatives and due to paucity of fund he is unable to prosecute the suit and pay the court fees as

directed by the court below. In such situation, he is not interested to prosecute the suit, therefore, he seeks deletion of his name as plaintiff No. 1

from the array of cause title of the suit.

4. Respondent No. 1 submitted reply to the application and opposed the same on the ground that the court below vide impugned order has

directed the petitioner /plaintiff No. 1 to deposit the court fees due to which he is bound by that order and as such no application for deletion can

be entertained without depositing the court fees.

5. In the present case, the respondent No. 1 has filed detailed reply wherein it has been submitted that petitioner has moved an application to avoid

payment of ad-valorem court fees payable on the claim/suit for damages. The petitioner had filed a suit seeking compensation based on the

notification of the M.P. Government No. 9-2-86-B-XXI dated 01/04/1983 claiming exemption from payment of court fees. The court below vide

order dated 25/07/2011 rejected the objection raised by respondent No. 1 with the reasoning that the question of payment of ad valorem court

fees shall arise only in the event the claim is allowed in favour of the plaintiffs. Accordingly decided the issue. Being aggrieved, the respondent No.

1 approached before this Court by filing W.P. No. 8122/2011 challenging the order dated 25/07/2011. This court vide order dated 21/07/2016

disposed of W.P. No. 8122/2016 with the following observations:-

It appears that the aforesaid notification was not placed on record by the plaintiff for consideration before the trial court. Therefore, in the fitness

of things it is considered apposite to dispose of the writ petition with the following directions :-

(1) both the parties are at liberty to place on record relevant notifications ;

(2) thereafter, the trial court shall address upon the issue as regards payment of ad valorem court fees raised by the petitioner/plaintiff in the

application U/o XIV Rule 2 r/w section 151 of CPC.

(3) both the parties undertake to appear on 11/08/2016.

6. Thereafter, the court below framed issue No. 4 i.e. ""whether the suit for damage can proceed without depositing ad valorem court fees."" The trial court decided the aforesaid issue No. 4 after granting due opportunity of hearing to both the parties vide order dated 29/07/2016 in favour of respondent No. 1 and directed the petitioner /plaintiff to deposit ad valorem court fees within 15 days. The said order dated 29/07/2016 has attained finality, therefore, the trial court has rightly rejected the application U/o 1 Rule 10 & U/o 23 Rule 1 r/w section 151 of CPC seeking deletion. Moreover, application filed by the petitioner under section 35 of Court Fees Act, 1870 was also decided by the trial court vide order dated 13/02/2017, whereby, notification of M.P. Government No. 9-2-86-B-XXI dated 01/04/1983 was also taken into consideration and rejected the same on the ground that it had already held vide order dated 29/07/2016 that the petitioner is not entitled for the benefit of the aforesaid notification and was directed to deposit the court fees within a period of 15 days. Both the orders dated 29/07/2016 and 13/02/2017 have attained finality.

7. Learned counsel for the petitioner submits that petitioner is father of the deceased daughter and cannot be considered as dependent. Thus he is eligible to withdraw himself from prosecuting the civil suit. He has placed reliance in the cases of Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr. reported in (2009) 6 SCC 121, Mathura Bai and Ors. vs. Daryanamal and Ors. reported in (1995) MPLJ 427, Bijayananda Patnaik vs. Satrughna Sahu and Ors. reported in 1963 AIR (SC) 1566 & Smt. Raisa Sultana Begam & Ors. vs. Abdul Qadir and Ors. reported in AIR 1966 Allahabad 318 to contend that the plaintiff cannot be enforced to continue the case when he does not so desire and wanted to withdraw the same. The aforesaid judgments cited by the petitioner are distinguishable on facts and circumstances with the present case.

8. I have considered the respective arguments /submissions advanced by learned counsel for the parties. The question which requires determination as to whether the petitioner/plaintiff is entitled to be deleted his name from the array of cause title of the suit on the ground that he has shifted to Indore and for want of sufficient earning, he is unable to pay ad valorem court fees. Order 1 Rule 10(2) of CPC empowers the court to delete or

add parties to the suit reads as under :-

10 (2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application

of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether

as plaintiff or defendant, be struck out, and that the name, of any person who ought to have been joined, whether as plaintiff or

defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to

adjudicate upon and settle all the questions involved in the suit, be added.

26. In *Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay* (1992) 2 SCC 524, this Court interpreted the

aforesaid provision and held:

6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the

inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the

touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one

without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose

presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally

not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and

circumstances of a particular case.

(emphasis supplied)

27. In *Anil Kumar Singh v. Shivnath Mishra* (1995) 3 SCC 147, this Court interpreted Order 1 Rule 10(2) in the following manner:

7. By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or

add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied

that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate

upon and settle all questions involved in the suit. To bring a person as party-defendant is not a substantive right but one of procedure

and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the

dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time without any

protraction, inconvenience and to avoid multiplicity of proceedings.

28. In *Mumbai International Airport (P) Ltd. v. Regency Convention Centre and Hotels (P) Ltd.* (supra), this Court considered the

scope of Order 1 Rule 10(2) CPC and observed:

13. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons

against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently,

a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the

provisions of Order 1 Rule 10(2) of the Code of Civil Procedure ("the Code", for short), which provides for impleadment of proper

or necessary parties. The said sub-rule is extracted below:

10. (2) Court may strike out or add parties.-The court may at any stage of the proceedings, either upon or without the application of

either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as

plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or

defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate

upon and settle all the questions involved in the suit, be added.

14. The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance),

either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons

may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person

whose presence before the court may be necessary in order to enable the court

to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

15. A "necessary party" is a person who ought to have been joined as a party and in whose absence no effective decree could be

passed at all by the court. If a "necessary party" is not impleaded, the suit itself is liable to be dismissed. A "proper party" is a party

who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately

adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be

made. If a person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of

the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will

not make such person a necessary party or a proper party to the suit for specific performance.

22. Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not

about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at

any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or

the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly

joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion

or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion

under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and

caprice." (emphasis supplied)" .

9. The court below while rejecting the application U/o 1 Rule 10 & U/o 23 Rule 1 r/w section 151 of CPC has come to the conclusion that vide

order dated 29/07/2016 the issue No. 4 with regard to payment of court fees has been decided and the petitioner has been directed to pay ad

valorem court fees within 15 days. Thereafter, another application under section 35 of Court Fees Act has also been rejected vide order dated

13/02/2017, therefore, the petitioner ought to have deposited ad valorem court fees without which application for deletion could not have been

entertained. However, the court below has rejected the application by exercising its judicial discretion taking into consideration the facts and

circumstances of the case. Though rejection of application appears to be vague since the petitioner is asking for deletion of his name from the cause

title of the suit.

10. The general rule in regard to impleadment/deletion of parties is that the plaintiff in a suit, being dominus litis, may choose to continue with the

suit or may apply for deletion and he cannot be compelled to continue in the suit.

11. In the instant case, as has already been discussed in the preceding paragraphs that the petitioner wanted to claim exemption under the

aforesaid notification of the State Government from payment of court fees and as he could not succeed in his endeavor, he has chosen to opt out

from the suit by getting his name deleted and the plaintiff No. 2 being wife of plaintiff No. 1/petitioner would continue with the suit and seek

exemption on the basis of the aforesaid notification. In such circumstances, the trial court has rightly exercised its power not to strike out the name

of the petitioner as it is satisfied that presence of the parties would be necessary in order to enable the court to effectively and completely

adjudicate upon and settle all the questions involved in the suit.

12. In view of aforesaid facts and circumstances of the case, particularly when the application under Order XIV Rule 2 of CPC having been

allowed and the application under section 35 of Court Fees Act having been rejected, the trial court has rightly rejected the application U/o 1 Rule

10 & U/o 23 Rule 1 r/w section 151 of CPC and as such no interference is called for in exercise of inherent powers under Article 227 of

Constitution of India.

13. Accordingly, the instant petition fails and is hereby dismissed. There shall be no order as to costs.