
(2009) 07 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 141 Of 2008

Vinay Pasricha & Anr.

APPELLANT

Vs

Bashir Ahmad Khan & Anr.

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Jammu and Kashmir Civil Procedure Code, 1977 — Order 1 Rule 10, Order 6 Rule 17

Citation : (2009) 3 JKJ 807

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : Sajad Geelani, Tufail Qadiri, Advocates appearing for the Parties

Judgement

1. In this petition, order dated 12th July 2008 passed by IInd Additional District Judge Srinagar is called in question. A copy of the plaint for

examination of the court is produced by the learned counsel for the petitioners which after perusal has been returned to the learned counsel.

Respondent no. 1 instituted a suit for issuance of decree for an amount of Rs. 1,82,080/ (one lac eighty two thousand and eighty) against the

defendants/petitioner no. 1 and 2 and proforma respondent no. 2 in this revision petition. He also sought issuance of decree for interest from the

date of decree till its actual realization at the rate of 18% per annum. After instituting the suit, it appears that wisdom dawned upon the respondent

no. 1 and he filed an application seeking permission from the court to amend the cause title of the suit so as to include the company, Chairman and

its Chief Executive Officer in the array of defendants. In the application, copy whereof has been placed on the record of this petition, it is pleaded

that the above stated parties could not be included in the array of defendants inadvertently by the counsel for the plaintiff. It has been further

pleaded that, in case, the application is not allowed, the plaintiff will suffer irreparable injury. It is further pleaded in the application that by allowing

the application, none of the rights of the petitioners will be affected nor they will be prejudiced in any manner whatsoever. Petitioners filed their

objection to the said application stating therein that the application is misconceived and such type of amendment cannot be ordered by having

recourse to Order 6 Rule 17 Code of Civil Procedure. It was further pleaded in the objection that addition or deletion of parties in suits can be

done only by invoking the provisions of Order 1 Rule 10 Code of Civil Procedure. The petitioner accordingly prayed for dismissal of application.

2. The trial court vide impugned order, however, allowed the application and directed for addition of parties mentioned in the application of the

plaintiff as defendant 4 to 6 subject to payment of cost of Rs. 400/ (four hundred).

3. Heard learned counsel for the parties. Considered the matter.

4. Learned counsel for the petitioner very vehemently argued that the order impugned is bad in law in as much as the application which has been

allowed was not countenanced in law. Learned counsel further submits that the application seeking amendment of the cause title of the suit by way

of filing of application praying therein to allow the plaintiff to amend the cause title of the suit was not maintainable.

5. Learned counsel for the respondent on the other hand submits that the order is legal and does not suffer from any material irregularity. Learned

counsel prays that the revision petition be dismissed.

6. The original defendants in the suit are functionaries of company known as Wigan and Ligh College (1) Limited Nehru Place New Delhi. The suit

against the corporation is to be filed in the name of the corporation and against the corporation. Order 29 of Code of Civil Procedure provides the

procedure for institution of such type of suits in which relief is sought against the company. A company/corporation is to be named as defendants in

the suit. In the present case, though the functionaries are named as defendants in the suit, but the relief is actually sought against the company. In the

application, it has been stated that the company has not been impleaded as party defendant because of the inadvertent mistake of the counsel for

the plaintiff.

7. The petitioners who are defendants in the suit have not filed their written statement. In the revision petition, the petitioners have not stated as to

how they are prejudiced by passing of impugned order. Learned counsel for the petitioner was pointedly asked as to how and in which

circumstances the petitioners are prejudiced by the impugned order. Learned counsel would not reply the query of the Court.

8. The parties come to courts of law for redressal of their lawful grievances. The case cannot to be thrown out of the court without adjudicating

upon the controversies raised, on mere technical grounds,

9. In this case, the application is filed seeking table amendment of the cause title of the plaint for addition of parties. An application seeking

amendment of cause title of the suit for adding some more parties cannot be said to be not permissible. The court is not deprived from impleading

the necessary parties under Order 1 Rule 10 Code of Civil Procedure for just and proper disposal of the case. In the present case, the parties who

have been ordered to be imp leaded as parties are necessary parties for just and proper disposal of the case. A suit cannot be allowed to be

thrown out on mere technical grounds. The court has even sumoto power to order for impleadment of parties in pending matters.

10. The courts jurisdiction and power to implead parties as plaintiffs or defendants, when it is found that they are necessary parties and/or proper

parties is unquestionable. In this case, by directing impleadment of the persons mentioned in the application of the plaintiff as defendants has not

caused any prejudice to the petitioners. The trial court in the interest of justice and for sufficient reasons has passed the order impugned in this

petition. The impugned order does not suffer from any illegality or material irregularity.

11. The civil courts under Order 1 Rule 10 of Code of Civil Procedure have powers to sumoto order for impleadment of parties. The said power

can be exercised by invoking inherent jurisdiction of the civil court as well.

12. Even the application seeking impleadment of parties has the effect of amending the cause title of the suit. The court while ordering impleadment

of parties is in a way ordering for amendment of cause title. So the application of respondent cannot be said to be not maintainable.

13. For the above stated reasons, this petition being merit less is dismissed

alongwith CMP.

14. Learned counsels for the parties submit that court of IInd Additional District Judge is not being manned by any presiding officer, so seek

transfer of the suit to some other court of competent jurisdiction.

15. With the consent of the learned counsel for the parties, the suit titled Bashir Ahmad Khan Vs. Noor Ali & Ors pending on the files of IInd

Additional District Judge is ordered to be transferred to the files of Additional District Judge Srinagar. It is directed that the record of the suit be

send to the transferee court.

16. Parties to appear through their learned counsels before the trial court on 22nd July 2009.