
(2007) 03 MP CK 0101
In the Madhya Pradesh High Court
Case No : W. P. No. 514 of 2005

Zamku Bhilala and Others

APPELLANT

Vs

Masari Bhilala and Others

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 2 MPLJ 580

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : Akshat Pahadiya, for the Appellant; K.K. Gangrade, for the Respondent

Final Decision : Allowed

Judgement

S.K. Seth, J.

This petition under Article 227 of the Constitution of India is directed against the order dated 28-2-2005 passed by the IInd Additional District Judge, Jobat. District Jhabua in Civil Appeal No. 23A/03. By the order impugned, the Court below has allowed the application under Order 6. Rule 17. CPC filed by the Respondents herein and has permitted them to raise objections with regard to the non-joinder/mis-joinder of necessary parties and cause of action.

Petitioners herein filed a suit for declaration and permanent injunction against the Respondents herein. After the trial, the suit was decreed in their favour by the trial Court. Being aggrieved by the judgment and decree passed in favour of the Petitioners, Respondents herein preferred a first appeal which is pending in the Court of Additional District Judge, Jobat, District Jhabua. During the pendency of the said appeal, Respondents herein preferred an application under Order 6, Rule 17, CPC proposing amendment in the written statement so as to raise the plea of non-joinder/mis-joinder of necessary parties and the cause of action. The application was opposed by the Petitioners herein, however, by the

order impugned, learned Court below allowed the application and permitted the Respondents to incorporate proposed amendment in the written statement, hence this petition by the Plaintiffs.

After having heard learned Counsel for the parties and going through the material available on the record, I am of the clear view that the Court below acted with material irregularity, if not illegality and committed a jurisdictional error in allowing the application for amendment to incorporate the plea of nonjoinder/mis-joinder of necessary parties and cause of action. Order I and II of the CPC deals with the necessary parties and the cause of action. Order 1, Rule 13. CPC provides that all objections on the ground of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity. Similarly Order II, Rule 7, CPC provides that all objections on the ground of mis-joinder or cause of action are required to be taken at the earliest possible opportunity. The underlying idea behind this provision is to put on guard the Plaintiff so that he is not taken by surprise at the end of the trial and suffers defeat on that score. That is why the legislature has thought it fit to provide that if such objection is not taken at the earliest possible opportunity, it shall be deemed to have been waived. In the present case, as has been pointed out hereinabove, the Respondents after they lost in the suit have preferred first appeal and during the pendency of that appeal, they came out with the amendment in the written statement with regard to the mis-joinder or nonjoinder of necessary parties and cause of action. According to learned Counsel for the Respondents, the plea raised in the written statement is only elaboration of the plea taken in the written statement does not impress me. If the pleas are already in the written statement then there was no occasion for the Respondents herein to move the application for amendment and if the pleas are not pleaded in the written statement then in view of the provisions contained, in Order I. Rule 13. CPC and Order II. Rule 7, CPC such objection shall be deemed to have been waived and the parties proceeded with the trial without there being any objection on that behalf. Learned Counsel for the Respondents also submitted that the Court should not adopt rigid attitude with regard to the amendments in the pleadings is of no assistance in the facts and circumstances of the case, inasmuch as the proposed amendments are not based upon any subsequent events and no latitude could be given to introduce pleas which ought to have been taken at the earliest possible opportunity or the vexatious pleading which are not necessary for the disposal of the appeal pending before the Court below.

In view of the aforesaid, this petition is allowed and the order impugned dated 28-2-2005 passed by the Additional District Judge Jobat. District Jhabua in Civil Appeal No. 23-A/03 is set aside, as a result the amendments incorporated in the written statement shall now stand deleted. Accordingly, this petition stands disposed of. However, there shall be no orders as to costs. Now the Appellate Court shall proceed to decide the appeal in accordance with law. Registry is directed to transmit copy of this order to the trial Court forthwith.