

Madho Singh Vs. Shiv Prasad (Dead) Thr L.R.S. Prem Narayan

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Court : Madhya Pradesh

Decided On : Sep-14-2012

Appellant : Madho Singh

Respondent : Shiv Prasad (Dead) Thr L.R.S. Prem Narayan

Advocate for Def. : Shri. Ashok Chakrawarti

Advocate for Pet/Ap. : Shri. R.B.Patel

Judgement :

W.P.No.16632 o

14. 09.2012 Shri R.B.Patel, learned counsel for the petitioners. Shri Ashok Chakrawarti, learned counsel for the respondent Nos.1 to 4.

Shri Lalit Joglekar, learned PL for respondent No.6.

The presence of respondent No.5 being co-defendant with the petitioners in the trial court is not required to adjudicate this petition, hence notice against such respondent is hereby dispensed with.

With the consent of the parties, this writ petition is heard finally.

ORDER

(Oral) (1) The petitioners/defendants have filed this petition under Article 227 of the Constitution of India for quashment of the order dated 14.7.2011 (P-1) passed by the Civil Judge, Class-II in C.S.No.1-A/2010 (old No.3-A/92).whereby the application filed by the respondent - plaintiff Nos.1 to 4 under Order 6 Rule 17 of the CPC for consequential amendment in the plaint has been allowed.

(2) The petitioners.counsel after taking me through the papers placed on record by referring the copy of the judgment dated 10.2.2007 passed by Additional Judge of Begamganj to the Court of Illrd Additional District Judge, Begamganj in Regular Civil Appeal No.9-A/2000, (Ann.

P-8).whereby in the fiRs.inning of the litigation between the parties, after setting aside the trial court, Civil Judge, Class-I, Begamganj dated 14.8.2000, (Ann.

P-7) passed in C.O.S.No.3-A/2002 remanded back the matter with some direction to decide afresh said that in view of terms of remand the respondents - plaintiffs did not have any authority to amend the plaint.

They could only adduce the evidence and cross examine the witnesses of the petitioners.In continuation he fairly submits that subsequent to such remand on filing the amendment application by the present petitioners for amended in the written statement in the light of documents submitted on behalf of the respondent Nos.1 to 4 - plaintiffs, the same was allowed and the written statement was amended accordingly.

He further submits that in any case the respondent Nos.1 to 4 did not have any authority to propose the consequential amendment in response of aforesaid amendment of the petitioners.In alternate he said that the proposed amendment of the respondent Nos.1 to 4, is not of consequential nature.

Infact the plaintiffs want to introduce some new pleadings with respect of the issue which has already been decided between the parties in above mentioned earlier litigation and, therefore, the impugned amendment of the respondents is neither bonafide not necessary to adjudicate the present suit and in such premises, by saying that the trial court has committed grave error in allowing the amendment of

the respondent Nos.1 to 4 and prayed to set aside the same by allowing this petition.

(3) On the other hand responding the aforesaid arguments the counsel for respondent Nos.1 to 4 submits that his proposed amendment being purely consequential in nature in response of the amendment carried out by the petitioners in their written statements, the trial court has not committed any error in allowing the same.

He further argued that even otherwise in view of settled proposition of law that at the stage of considering the amendment application the merits or demerits of the proposed amendment could not be examined.

If the same appears to be relevant with the matter, then there is no option with the court except to allow such amendment and merits of the same could be examined only after framing the additional issues.

He further said that mere perusal of the proposed amendment alongwith earlier existing pleadings of the plaint in the light of some documents, it is apparent that the same is not more than the additional approach or some different approach from the existing pleadings of the plaint.

So in such premises, also the trial court has not committed any error in allowing the impugned amendment application.

In continuation he said that after remanding the matter by the appellate court with some limited direction to the trial court if such court has allowed the application of the petitioners for amendment in the written statement, then in view of the principles of equity, his amendment application could not be refused by such court.

So in such premises, also the impugned order does not require any interference.

He further said that the impugned order being passed under the discretionary jurisdiction vested in the trial court could not be interfered under Article 227 of the Constitution of India and prayed for dismissal of the writ petition.

(4) Having heard the counsel at length, keeping in view the arguments, I have carefully gone through the papers placed on record.

(5) It is undisputed fact between the parties that on earlier occasion some judgment and decree, (Ann.

P-7) was passed by the trial court.

The same was subject matter of aforesaid regular appeal and consideration of such appeal, vide judgment, (Ann.

P-8) after setting aside the judgment of the trial court, the matter was remitted back to the trial court to decide afresh with some direction and thereafter in the light of some documents submitted by the respondents - plaintiffs some amendment in the written statement was proposed by the petitioners and on consideration, same was allowed.

On challenging such order allowing the amendment by the respondent-plaintiff before this Court under Article 227 of the Constitution of India, on consideration, by dismissing such writ petition, such order was affirmed.

Keeping in view this circumstance, if the matter is examined, then it is apparent that in view of the amendment carried out by the petitioners after remanding the matter, the impugned amendment of the respondent Nos.1 to 4 was proposed as consequential amendment.

On perusing the proposed amendment prima facie the same appears to be consequential in nature.

So firstly in such premises, it is held that the trial court has not committed any error in allowing the impugned application of the respondent for amendment in the plaint.

(6) Apart the above, it is settled proposition of law that at the time of amendment application the merit or demerits of the proposed pleadings should not be considered in strict manner, if in the available circumstance such proposed amendment appears to be relevant with the matter, then it deserves to be allowed.

So in such premises, also the impugned order does not appear to be contrary to existing legal position.

(7) Apart the above, if any order is passed by the subordinate court or the trial court under the vested jurisdiction of it, then such order could not be interfered under the superintending or revisional jurisdiction of this court.

My such approach is based on a principle laid down by the Apex Court in the matter of The Managing Director (MIG) Hindustan Aeronautics LTD. Balnagar, Hyderabad and another (In both the Appeals) versus Ajit Prasad Tarway, Manager (Purchase and Stores) Hyderabad, (In both the Appeals). reported in AIR 197.SC page 76, in which it was held as under:- 5.

In our opinion the High Court had no jurisdiction to interfere with the order of the fiRs. appellate court.

It is not the conclusion of the High Court that the fiRs. appellate court had no jurisdiction to make the order that it made.

The order of the fiRs. appellate court may be right or wrong ; may be in accordance with law or may not be in accordance with law ; but one thing is clear that it had jurisdiction to make that order.

It is not the case that the fiRs. appellate court exercised its jurisdiction either illegally or with material irregularity.

That being so, the High Court could not have invoked its jurisdiction under Section 115 of the Civil Procedure Code: See the decisions of this Court in Pandurang Dkoni Chougule v.

Maruti Hari Madhav (1966) 1 SCR 102. AIR 196.SC 15.D.L.F. Housing & Construction Company Private Ltd., v.

Sarub Singh and ORS. (1970). SCR 36. = AIR 197.SC 2324.

(8) In view of the aforesaid, I have not found any perversity, infirmity or illegality or anything against the propriety of law in the order impugned (Ann.

P-1) allowing the amendment application of respondent Nos.1 to 4, consequently by affirming the same, this writ petition is hereby dismissed.

C c as per rules.

(U.C.Maheshwari) Judge bks

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