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Court : Patna

Decided On : Sep-14-2004

Judge : R.N. Prasad, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 6, Rule 18

Appeal No. : CR No. 595 of 2003

Appellant : Mostt. Kanti Devi and anr.

Respondent : Surendra Prasad Singh and ors.

Advocate for Def. : Sandeep Kumar and Rajeev Kumar, Advs.

Advocate for Pet/Ap. : Mahesh Pd. No. II, Adv.

Disposition : Revision dismissed

Judgement :

R.N. Prasad, J.

1. The revision has been filed against the order dated 28.1.2003 passed in title suit No. 420/1990 whereby the petition filed by the petitioners on 23.8.2001 for permission to incorporate the amendment allowed on 31.7.1992 has been rejected.

2. The petitioners are defendants in the suit. The petition was filed by the defendant-petitioners for amendment of the written statement. Vide order dated 31.7.1992 the amendment was allowed. However, it was not incorporated. The evidence of the plaintiffs has been closed and the evidence of the defendants is going on. The petition for permission to incorporate the amendment was filed on 23.8.2001 i.e. after about 9 years of the order of amendment dated 31.7.1992. The Court below has rejected the said petition by the impugned order on the ground of delay.

3. Learned counsel for the petitioners filed a supplementary affidavit today in the Court stating that though the amendment was not incorporated yet the evidence was led on the amended pleading and the petitioners are not required to give any further evidence in the matter. Counsel for the opposite party however, stated that after such a long time permission to incorporate the amendment cannot be allowed. Though he has not filed any rejoinder to the affidavit filed today, he orally stated that on the amended pleading no evidence was led.

4. The question involved in this case is limited one - whether permission to incorporate the amendment after such a long time can be granted or not. In this regard, Order VI, Rule 18 is relevant. It is quoted hereinbelow for better appreciation.

18. Failure to amend after order.--If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

5. It is evident from the aforesaid provision that within fourteen days of the order of amendment it has to be incorporated by the parties or within the time extended by the Court. It appears that the aforesaid provision is mandatory. In the case of failure to incorporate the amendment the party would not be permitted to incorporate the amendment after expiration of time as indicated above. Counsel for the petitioners, however, stated that because the clerk of the counsel was ill

and the counsel missed to incorporate the amendment, it could not be incorporated within the time as required under the law. However, in the case of Dilbagh Rai Jerry v. Union of India and Ors., AIR 1974 SC 130 the Apex Court has held that on failure to incorporate the amendment allowed within time the authority is justified in refusing the permission to incorporate the amendment after expiry of such time. In the instant case petition was filed for permission to incorporate the amendment after nine years of the order of amendment.

6. Thus, on consideration, I find no error in the order. Accordingly, the revision petition is dismissed.

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