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Court : Allahabad

Decided On : Oct-03-2006

Reported in : 2007(2)AWC1777

Judge : S.U. Khan, J.

Appellant : Deo Naraln and ors.

Respondent : iiird Addl. District Judge and ors.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. Respondent No. 3, Bal Mukund has instituted Original Suit No. 317 of 1974 against petitioners for specific performance of an agreement for sale. Plaintiff filed an application seeking amendment of the plaint Incorporating the averment of readiness and willingness. Munsif East, Allahabad through judgment and order dated 8.8.1980 allowed the amendment application. Defendants-petitioners filed Civil Revision No. 283 of 1980 against the said order. Ill A.D.J. Allahabad through judgment and order dated 9.12.1983 dismissed the revision, hence, this writ petition.

2. Learned Counsel for the petitioner has contended that in the absence of plea of readiness and willingness the suit was fatally defective hence no amendment could be permitted in the plaint to incorporate the plea of readiness and willingness. In this regard reference has been made to a Division Bench authority of this Court in N.P. Singh v. Batjnath Singh : AIR1981 All410 . The said authority had placed reliance upon some earlier authorities of this Court including a Division Bench Authority. The Supreme Court overruled this view of the Allahabad High Court in Lakhi Ram v. Trikha Ram : [1998]1SCR705 . The Supreme Court reversed the judgment of this Court of a single Judge. In para 2 the Supreme Court held that 'learned single Judge who decided the appeal followed an earlier decision of the Division Bench of the High Court and held that once such proposed amendment was refused the suit would not survive and, therefore, the appeal was allowed.' In the said case amendment was allowed at the stage of first appeal. The Supreme Court held that the order passed by the first appellate court allowing the amendment was perfectly legal and just, which was wrongly set aside by the High Court.

3. There is one more aspect, which requires consideration. Supreme Court in several authorities including the following has held that it is not necessary that the averment of readiness and willingness in the plaint must be in some specific language and it is the substance which is relevant and not in the form:

1. Syed Dastagir v. D.R.G. Setty : AIR 1999 SC3029 ;

2. A. Yohannan v. Ram Latha : AIR 2005 SC3503 ; and

3. H.P. Pyarejan v. Dasappa : AIR 2006 SC1144 .

4. In the plaint, sufficient averment of readiness and willingness was already there in substance. Through the amendment it was sought to be added in the form also. There was, therefore no question of bar of limitation or change of nature of the suit.

5. Learned Counsel for the petitioner has also argued that the suit should be deemed to have been filed on the date on which amendment application was

allowed, hence the suit was barred by time. This plea is also not tenable. In view of the aforesaid authority of the Supreme Court where the averment of readiness and willingness is not there, it cannot be said that there is no suit in the eye of law.

6. Question of bar of limitation may arise only when in the plaint, as originally filed, no relief for specific performance has been prayed for and the said relief is sought to be added through amendment at a belated stage as was the case in T.L.M. Krishana v. Srimati L.R. Rao : [1997]1SCR11 . In the said case, originally relief was for mandatory injunction but after long time prayer for specific performance was sought to be added through amendment, which was held to be barred by time by the Supreme Court as limitation to file suit for specific performance had expired by then. In the instant case no such question is Involved. Prayer for specific performance was very much there in the plaint since inception.

7. Accordingly there is absolutely no merit in this writ petition, hence it is dismissed.

8. As the suit is pending for more than 30 years hence cost of Rs. 5,000 is also imposed upon the petitioner. The trial court is directed to decide the suit as expeditiously as possible.

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