

Raj Kumar Jain Vs. Oil Selection Board (North) and ors.

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Court : Allahabad

Decided On : Sep-19-2005

Reported in : 2006(1)AWC246

Judge : Anjani Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 17; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 60269 of 2005

Appellant : Raj Kumar Jain

Respondent : Oil Selection Board (North) and ors.

Advocate for Def. : P. Padia, Adv. and ;S.C.

Advocate for Pet/Ap. : K.P. Tiwari, Adv.

Disposition : Petition dismissed

Judgement :

Anjani Kumar, J.

1. The petitioner-plaintiff aggrieved by the order dated 12th January, 2001, passed by the trial court, whereby the trial court rejected the amendment application filed by the petitioner approached the revisional court, who vide order dated 9th August,

2005, dismissed the revision filed by the petitioner, approached this Court by means of present writ petition under Article 226 of the [Constitution of India](#), copies whereof are annexed as Annexures-'4' and '5', respectively to the writ petition.

2. Heard learned counsel appearing on behalf of the parties.

3. In short the facts of the present case are that the petitioner-plaintiff filed a suit in the year 1985 against the respondents-defendants before the trial court. Thereafter in the year 2000, after 15 years from the date of filing of the suit, the petitioner-plaintiff filed an amendment application under Order VI, Rule 17 of the Code of Civil Procedure seeking amendment in the plaint, which was partly allowed by the trial court vide order dated 15th February, 2000. Against the order dated 15th February, 2000, the petitioner-plaintiff preferred a revision before the revisional court and the revisional court vide order dated 6th April, 2000, allowed the revision in part and remanded back the matter to the trial court. The matter was again heard by the trial court and the trial court after hearing learned counsel for the parties, vide order dated 12th January, 2001 rejected the application for amendment filed by the petitioner-plaintiff holding that if the plaintiff is allowed to amend in the plaint, then it will affect the rights of the defendants. The trial court while rejecting the amendment application of the petitioner-plaintiff has relied upon a decision in K. Raheja Constructions Ltd. and Anr. v. Ailance Ministries and Anr. 1995 (2) ARC 242. Aggrieved by the order dated 12th January, 2001, the petitioner-plaintiff preferred a revision before the revisional court. The revisional court vide order dated 9th August, 2005 dismissed the revision filed by the petitioner-plaintiff holding that there is no error in the order passed by the trial court. Thus, this writ petition.

4. Learned counsel for the petitioner-plaintiff in support of his contention has relied upon decision of the Apex Court in A. K. Gupta and Sons Ltd. v. Damodar, Valley Corporation : [1966]1SCR796 . Paragraphs 7 and 8 of the decision in the case of A. K. Gupta (supra) relied upon by learned counsel for the petitioner is reproduced below :

(7) It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt, is that a

party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred : *Weldon v. Neale* (1887) 19 QBD 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : See *Charan Das v. Amir Khan* 47 Ind App 255 : AIR 1921 PC 50 and *L. J. Leach and Co Ltd. v. Jardine Skinner and Co.* : [1957]1SCR438 .

(8) The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes *Cropper v. Smith* (1884) 26 Ch D 700 (710-711), and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended *Kisandas Rupchand v. Rachappa Vithoba* (1909) ILR 33 Bom 644 at 651, approved in *Prigonda Hongonda Patil v. Kalgonda Shidgonda* : [1957]1SCR595 .'

5. A bare reading of the observations made by the Apex Court in the case of *A. K. Gupta* (supra) clearly demonstrate that the case of the petitioner is not covered by the aforesaid decision. Learned Counsel for the petitioner relied upon another decision in *B.K.N. Pillai v. P. Pillai* 2000 SC & FBRC 32. A bare reading of the decision in the case of *B.K.N. Pillai* (supra) demonstrates that the facts of this case are distinguishable to the facts of the present case. Learned Counsel for the petitioner-plaintiff further relied upon a decision in *Ragu Thilak D. John v. S. Rayappan and Ors.* 2001 (1) AWC 622 (SC) : 2001 (42) ALR 582. The facts of decision in the case of *Ragu Thilak D. John* (supra) are not applicable to the facts of the present case.

6. Considering the facts and circumstances of the case and the decision relied upon by the trial court in the case of *K. Raheja*, it reveals that the facts of the case relied upon by the trial court are fully applicable to the facts of the present case. In this view of the matter, I do not see any error in the orders passed by the trial court and affirmed by the revisional court.

7. In view of what has been stated above, this writ petition is devoid of any merits and is accordingly dismissed. However, there will be no order as to costs.

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