

Md. Ishaque Vs. Krishna Mohan Singh @ Lalan Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/517395

Court : Jharkhand

Decided On : Feb-12-2004

Reported in : [2004(3)JCR73(Jhr)]

Judge : P.K. Balasubramanyan, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 6, Rule 17;
[Constitution of India](#) - Article 227

Appeal No. : CR No. 450 of 2003

Appellant : Md. Ishaque

Respondent : Krishna Mohan Singh @ Lalan Singh and ors.

Advocate for Def. : M.K. Laik, Sr. S.C.-I

Advocate for Pet/Ap. : Jai Prakash and; Ritesh Kr. Bobby, Advs.

Disposition : Petition allowed

Judgement :

ORDER

P.K. Balasubramanyan, C.J.

1. Heard counsel for the petitioner and Dr. Laik, learned counsel appearing for the respondents.

2. This revision under Section 115 of the Code of Civil Procedure is seen to be one challenging an order on an application for amendment of the written statement passed by the Trial Court. Dr. Laik rightly raised the objection that the revision is not entertainable under Section 115 of the Code of Civil Procedure in view of the amendment brought to that provision with effect from 1.7.2002.

3. Learned counsel for the petitioner then submitted that this Court has undoubtedly jurisdiction under Article 227 of the [Constitution of India](#) to scrutinize the proceedings of the Trial Court and the matter can be considered in exercise of that jurisdiction.

4. Although Dr. Laik objected to the exercise of power conferred under Article 227 of the [Constitution of India](#), I am not inclined to accept that objection. After all, the jurisdiction of this Court is to keep the Subordinate Courts within bounds and in that process, if necessary, to interfere with an order like the one in the present case.

5. A suit for eviction was filed by the petitioner herein in the year 1993. He claimed to be the owner of the premises or the building and claimed eviction in terms of the Bihar, Building (Lease, Rent and Eviction) Control Act, 1982. The defendants resisted the suit taking up various pleas. After considerable lapse of time, the suit went to trial. Two witnesses from the side of the plaintiffs were examined. At that stage, the defendants proceeded to make an application under Order VI, Rule 17 of the Code of Civil Procedure for adding a plea in the written statement by setting up an agreement allegedly entered into on 4.2.1971 regarding construction of certain structures or additions and contending that eviction could not behead. It was submitted that the fact pleaded could not be incorporated in the written statement by an omission although that was an important plea.

6. The plaintiff opposed the application by pointing out that the application was filed at a belated stage, that it would tend to displace the plaintiff from the position, he was put in by the original written statement filed by the defendants and that the trial having commenced, such an amendment cannot be allowed.

7. The Court below, without properly advertent to the proviso introduced in Order VI, Rule 17 of the Code of Civil Procedure and without giving any special reason for entertaining an application for amendment after the trial had commenced and without bothering to find out what exactly was the original plea taken, and that was sought to be raised, proceeded to allow the application saying that the proposed amendment appears to be formal in nature and does not change the nature and character of the suit.

8. Apart from the bar created by the proviso to Order VI, Rule 17 of the Code of Civil Procedure to entertaining an application for amendment of pleadings after the trial has commenced, unless special reasons are given by the Court for exercise of its power conferred thereunder, it is seen that the proposed amendment, if allowed, would substantially change the nature of the defence originally put forward. The plea, in my view, would tend to displace the plaintiff from the position he was put in by the original written statement. The Court below has not given any special reason for allowing the amendment of the written statement. In my view, the amendment should not have been allowed at such a belated stage. The Court below has, therefore, committed an error of jurisdiction in allowing the amendment of the written statement at this belated stage.

9. I am, therefore, of the opinion that the order of the Court below calls for correction in exercise of my jurisdiction under Article 227 of the [Constitution of India](#). I therefore, set aside the order of the Court below.

10. The suit is of the year 1993. The Trial Court is directed to proceed and conclude the trial expeditiously and, in any event, within four months from this date and report the factum of disposal to this Court.

11. Obviously, the Court below will dispose of the suit untrammelled by any of the observations contained in this order.

This petition is thus allowed.