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Nanjan Vs. Selai and ors.

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Court : Chennai

Decided On : Sep-12-1957

Reported in : AIR1958Mad383; (1957)2MLJ601

Appellant : Nanjan

Respondent : Selai and ors.

Judgement :

Panchapakesa Ayyar, J.

1. This is a petition filed by one Nanjan, the plaintiff in O.S. No. 127 of 1948, on the file of the Subordinate Judge of Ootacamund, for revising and setting aside the Order of the Additional District Judge, Coimbatore, dated 11th August, 1956, in A.S. No. 320 of 1951, directing the respondents-defendants to file their additional written statements on or before 16th August, 1956, and the petitioner-appellant to file his reply thereto on or before 24th August, 1956 and posting the appeal to 27th August, 1956, for framing of further issues.

2. I have perused the records and heard the learned Counsel on both sides. Mr. P. S. Ramachandran, the learned Counsel for the petitioner, rightly urged that a Court should not direct suo motu the amendment of the pleadings like the filing of such additional written statements by the respondents in an appeal, however necessary they may be in the interest of justice, but should wait till the respondents in the appeal file an application for amending their original written

statements in the suit by adding the additional written statements, and hear the other side's objections or reply, and then pass suitable orders regarding the entertainment or non-entertainment of the additional written statements, and then alone proceed with the appeal. What the learned District Judge did was, he urged and I agree, to put the cart before the horse. The learned District Judge practically admitted the additional written statements in the appeal before he knew what they were, or what they would contain or the reasons for admitting such additional written statements in appeal. Under the Code, only written statements on record can be taken notice of by a Court, whether it is the trial Court or the appellate Court. If the party wants to file an additional written statement, he has to file a petition stating the reason why he failed to say these things in the original written statement and what excuse there is for allowing him to file an additional written statement at that stage. Then the other side has to be given an opportunity to oppose the petition and contend that suchadditional written statement should not be entertained at that stage. Then the Court has to give its decision as to whether the additional written statement is to be admitted or not. Instead of doing so, for the Court to call for the additional written statements in an appeal without a petition and without even knowing what those statements would contain, and to ask the other side to file by a certain date a reply to such written statements not yet filed, and to post the appeal on the assumption of taking the additional written statements into consideration, will be, in my opinion, quite against law and common sense alike. Of course, as the learned Counsel for the respondents urges, there may be very good grounds for admitting the additional written statements, in the light of the prior history of this litigation, and he also urges that an additional written statement has been already filed as ordered, together with an affidavit.

3. The best thing to do, in the circumstances, is to set aside the suo motu order of the lower Court, but give liberty to the respondents to file an application to the lower Court for entertaining additional written statements, and to allow the plaintiff-appellant to oppose such an application, on such grounds as he deems- fit and then for the Court to pass orders as to whether the additional written statements should be entertained or not, and then proceed with the appeal. I pass orders accordingly. Nothing is lost by following the usual course of law and procedure.

4. In the circumstances, the petitioner will get half his costs in this Civil Revision Petition from the respondents.

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