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Court : Chennai

Decided On : Aug-29-1997

Reported in : (1998)1MLJ305

Appellant : Kumar Alias Selvakumar and anr.

Respondent : P.B. Thirunavukkarasu

Judgement :

ORDER

S.M. Abdul Wahab, J.

1. This revision petition is against the order of the Small Causes Court, Madras (Appellate Authority) dated 8.7.1997 allowing M.P. No. 332 of 1997 in R.C.A. No. 726 of 1994.

2. The respondent has filed the petition for eviction of the petitioner before the Rent Controller on the ground that he requires the building for own use and occupation for parking of vehicles. He stated that he requires the building for parking his vehicles viz., Scooters T.M.H. 2058, T.S.J. 455, T.M.A. 5268 besides the car. The Rent Controller without proper appreciation of the facts and of the law dismissed the petition for eviction. As against the same, the respondent has filed the appeal. After hearing of appeal at length, and when orders were reserved the respondent has filed a petition in M.P. No. 332 of 1997 for amendment of Ground No. 5. The amendment is for deleting the word 'which was sold recently by the

appellant. ' The respondent filed a counter opposing the amendment. In the counter it is stated that the petitioner filed a petition for appointment of a Commissioner to ascertain the facts as to whether the petitioner was still in possession of the car bearing registration No. M.L.Y. 2477. The said petition was dismissed on the ground that it was at the belated stage. It is stated that another application was taken out by the respondent for production of relevant documents pertaining to the car mentioned above. Only a duplicate R.C. Book with the renewal of tax for the vehicle for the year 1996-97 was produced. In paragraph 7 it is also stated that the application for amendment was taken on 25.4.1997 after a lapse of 3 years. It was at a belated stage particularly when the case was reserved for orders and on that ground the application must be dismissed

3. The learned Appellate Authority has allowed the petition for amendment. According to him the requirement was not only for parking the car alone. If that was the only reason the arguments of the petitioner would be acceptable. Further it is stated that no pre-judice was likely to be caused to the petitioner. Aggrieved by the said order the petitioner has filed this revision petition.

4. The learned Counsel for the petitioner vehemently contended that after having dismissed, his petition for appointment of commissioner stating that the said application was a belated one, on the same ground the application of the respondent for amendment must also be dismissed. The learned Counsel for the petitioner contended that the arguments were over and the orders were reserved and that stage the application for amendment ought not have been entertained because apart from the said application for amendment there is no petition for reopening the case.

5. On the other hand, the learned Counsel for the respondent vehemently contended, the Court has got power to permit amendment at any stage. Only when the amendment was likely to cause prejudice to the case of the other side the amendment cannot be allowed. He also cited number of decisions on the said point.

6. In this case the respondent wanted the amendment of the ground No. 5 which is as follows:

The Court below failed to see that the appellant sought for order of eviction as against the respondent for parking his vehicles namely Scooters T.M.H. 2058, T.S.J. 455, T.M.A. 5268 besides the car which was sold recently by the appellant. ' The amendment sought for is to delete the word 'which was sold recently by the appellant.

7. The line or the sentence 'which was sold recently by the appellant' is said to be a typographical error. This is unacceptable. Typographic mistakes can occur in spellings, wrong words, repetition of a sentence etc. but it cannot be by adding the statement of fact. If the statement is in respect of a fact the said fact unless instructed by someone to the typist to type it out, the typist would not add such a statement of fact. A reading of the words itself shows that they cannot be construed to be a typographical error by any stretch of imagination.

8. Further the amendment sought for is also very much belated. The Appellate Authority after having rejected the application filed by the petition for the appointment of a Commissioner on the ground that the application was belated, he ought to have rejected the petition for amendment also on the same ground. Further nothing prevented the respondent from seeking amendment during the arguments by requesting the Court to adjourn the case for the purpose of filing the petition. It has not been done. On the other hand the full arguments appear to have been advanced and the case was reserved for orders.

9. One more fact that has to be considered is that there is no petition for reopening of the case. The learned Counsel for the respondent when confronted with this question, stated that it would be filed here-after, after the petition for amendment was allowed. This will only show that there is an attempt on the part of the respondent to drag on the proceedings after coming to know the mind of the Court during the arguments.

10. The learned Counsel for the respondent cited in *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon* : [1970]1SCR22 . In the said case it is held that the Appellate Court is empowered to order amendment of plaint in its discretion to meet the ends of justice and such amendment is not governed by any technical limitations. In the said case the amendment sought for was before the

trial, and immediately after filing the written statement. Hence the said case is not applicable to the facts of the present case.

11. In *Chintaparthi Venkataramana Reddy v. Nallam Rajamma and Anr.* : AIR 1988 AP40 a single Judge in the Andhra Pradesh High Court has taken a view that the amendment can be allowed at any stage of the proceedings. It is a well known principle and there is no doubt about it. But there must be a limit. After the arguments have been advanced fully and when the orders have been reserved, the right to seek amendment cannot be taken advantage of. The amendment sought for in this case is with ulterior motive to drag on the proceedings. Therefore the principle laid down above is not applicable.

12. In *Gauri Bala Dutta v. Ill Additional Civil Judge, Varanasi and Anr.* : AIR1991 All216 a single judge of Allahabad High Court has taken a view that amendment can be allowed even at the appellate stage. The facts of the said case is not applicable to the present case. Because the amendment sought for is said to be due to typographical error. I have taken a view that amendment sought for cannot be brought under the said category.

13. In *Air India v. Meenakshi Achi and Ors.* : AIR1992 Mad206 the Bench of this Court found that no injustice would be caused to the appellant, if the amendment was allowed. But here, in this case if the amendment is allowed, the case has to be reopened. The respondent has not filed the petition for reopening. Injustice will be caused to the petitioner if the amendment is allowed at the belated stage.

14. In *P. Sriramamuthy v. Mrs. Vasantha Raman* (1997) 2 M.L.J. 46 (S.N.) the Apex Court has held that 'in a petition for eviction of tenant on ground of wilful default in payment of rent and on the ground of personal requirement pleaded and not taken ear-lier can be permitted since subsequent events could mould relief. ' But in this case the amendment sought for is on the ground of typographical error, therefore the principle laid down in the said case is not applicable to this case.

15. The learned Counsel for the petitioner represented that some subsequent events have taken place after the filing of the petition. It is always open to the respondent to take advantage of the subsequent events and initiate necessary

proceedings, afresh.

16. In the circumstances I am of the opinion that the amendment sought for ought not to have been granted. Therefore the revision petition is allowed. The Appellate Authority is directed to dispose the appeal without further delay.

No orders as to costs.

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