

Rajib Nandy. Vs. Sohagi DuttA.

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Court : Kolkata Appellate

Decided On : Mar-22-2011

Judge : Prasenjit Mandal, J.

Appeal No. : C.O. No. 396 of 2011

Appellant : Rajib Nandy.

Respondent : Sohagi DuttA.

Advocate for Def. : Mr. Hafizur Rahaman, Adv

Advocate for Pet/Ap. : Mr. Tapas Bhattacharyya; Mr. Debabrata Chakraborti, Advs

Judgement :

1. This application is at the instance of the defendant and is directed against the order no.24 dated January 5, 2011 passed by the learned Judge (Junior Division), Baruipur in Title Suit No.147 of 2009 thereby rejecting an application under Order 6 Rule 17 of the C.P.C. filed by the defendant.

2. The short fact is that the plaintiff/opposite party herein instituted a suit for declaration that the marriage between the parties registered on June 18, 2009 is null and void and other consequential reliefs against the petitioner herein before the learned Judge (Junior Division), Baruipur. The defendant/petitioner herein entered appearance and he is contesting the said suit. The suit was at the stage of recording evidence and the P.W.1 was examined on three occasions.

3. Thereafter, the petitioner filed an application for amendment of the written statement praying for amendment of the written statement as appearing as annexure B at page no.17. The plaintiff filed an objection to that petition. Upon hearing both the sides, the learned Trial Judge has rejected the application. Being aggrieved, this application has been preferred.

4. Now, the point for consideration is whether the impugned order should be sustained.

5. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the ground for amendment is that one skilled lawyer was not conducting the suit on behalf of the petitioner and for that reason, there were certain omissions and mistakes. That is why, an amendment of the written statement is required. Such omissions and mistakes were detected when a senior lawyer was conducting the suit on behalf of the defendant. It may be recorded herein that the P.W.1 has already been examined on three dates before the application for amendment of the written statement is filed. The schedule of proposed amendment has been incorporated at page no.19 and from the schedule of the proposed amendment, it appears that the defendant has wanted to incorporate the fact that the suit is barred by Section 34 of the Proviso of the Specific Relief Act.

6. The major amendment has been sought for in paragraph no.8 of the written statement after the line no.14. By the proposed amendment, the defendant has wanted to say that the parties to the suit are known to each other for a consideration period as being neighbours. The plaintiff and the defendant gradually attracted each other and in course of time, physical relationship grew up between them. The father of the defendant passed away long time back and the defendant is the earning member of his family. The father of the plaintiff was quite aware of the fact that the plaintiff and the defendant were in likening each other. The plaintiff, her father and other members of their family asked the defendant and threatened that they will ruin his life by making false complaint before police for physical relationship, etc. unless the defendant put his signature on several blank papers and also on some other papers which are partly written and partly printed.

And that the defendant had no other alternative but to put his signature at the foot of those blank papers under duress.

7. I find that the original paragraph no.8 does not lay down such contention at all save and except that the plaintiff and her parents took some photographs of the plaintiff and the defendant and started blackmailing the defendant and that the father of the plaintiff asked the defendant to put his signature on some notice of an intending marriage sometime in September, 2009. There is no indication in the earlier paragraph that the father of the plaintiff asked the defendant to put his signature on blank papers and some other printed papers which were partly blank and partly sheet of papers without having going into the contents thereof.

8. While in the last part of the said paragraph no.8 it has been stated that the father of the plaintiff asked the defendant to put his signature in September, 2009 on the notice of an intending marriage, by the proposed amendment, the defendant has went 180 degree opposite to the earlier statement by stating that the father of the plaintiff forced her to put his signature on such blank papers and some partly blank and partly sheet of papers out of sheer and extreme duress. Therefore, I find that the proposed amendment is nothing but a withdrawal of an admission made in paragraph no.8. After cross-examination of the plaintiff on three dates, such a prayer has been done. Therefore, it is crystal clear that such amendment was sought for when it has been established by evidence that the defendant knew that he had signed on some papers for the intending marriage between the parties in September, 2009. The learned Trial Judge has rightly observed that the proposed amendment is nothing but an afterthought matter and it has been invented after cross-examination of the plaintiff on three occasions to get rid off the suit.

9. According to the proviso of Order 6 Rule 17 of the C.P.C., an amendment can be allowed provided the applicant fulfils the condition that in spite of due diligence, he could not pray for amendment at the earlier stage. The plaintiffs ground for amendment as stated above is not convincing at all and therefore, it is held that he has failed to prove that in spite of due diligence, he could not pray for amendment earlier.

10. The learned Advocate for the petitioner has referred to the decision of Usha Balashaheb Swami and ors. v. Kiran Appaso Swami and ors. reported in (2007) 5 SCC 602 and submits that inconsistent pleas taken in the written statement can be allowed as long as the amended pleadings do not result in causing grave injustice and irretrievable prejudice to the plaintiff or displacing him completely. The learned Trial Judge has rightly observed that inconsistent pleas by the defendant is permissible but he cannot be allowed to withdraw the admission made earlier in his written statement. I have stated earlier that the P.W.1 has been cross-examined on three occasions earlier and if the proposed amendment is allowed, it will not only cause injustice but also irretrievable prejudice to the plaintiff at the belated stage.

11. Therefore, I am of the view that the learned Trial Judge has rightly observed in his findings that the defendant should not be permitted to withdraw the admission made earlier. The decision of Usha Balashaheb Swami and ors. (supra) will not be applicable in the instant case.

12. The learned Advocate for the petitioner also referred to the decision of Baldev Singh and ors. v. Manohar Singh and anr. reported in (2006) 6 SCC 498 which lays down that inconsistent defences could be raised in the written statement although the same may not be permissible in case of the plaint. He has also submitted that according to this decision, a wide power and unfettered discretion has been conferred on the court to allow amendment of pleadings in such manner and on such terms as it appears to the Court to be just and proper. I have held above that the learned Trial Judge has rightly observed that the proposed amendment is nothing but an afterthought. This is not at all a case of inconsistent defence but withdrawal of admission as observed above and by allowing such amendment, the plaintiff cannot be placed to a disadvantaged place which cannot be compensated by costs. So, this decision is not also applicable in the instant situation.

13. The learned Advocate for the petitioner has also referred to the decision of (2004) 1 WBLR (CAL) 808 wherein a Single Bench of this Honble Court has held that the material fact for proper adjudication of the suit may be incorporated and

the proviso to the provision is no bar to such amendment. This submission, I hold, cannot be accepted because the said decision refers to a suit for ejectment on the ground of reasonable requirement. There was an increase of the member of the family of the plaintiff due to transfer of one of the plaintiffs to Calcutta. So, it was treated as subsequent event and this is also a material fact to be incorporated to consider the need of the plaintiffs for the suit premises on the ground of reasonable requirement. This is not the situation at all. So, this decision will not be applicable in the instant case.

14. The learned Trial Judge has rightly rejected the application for amendment of the written statement. So, the impugned order should be sustained. This application is devoid of merits. It is, therefore, dismissed.

15. Considering the circumstances, there will be no order as to costs.

16. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

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