

CASE NO.:
Appeal (civil) 7484-85 of 2004

PETITIONER:
Raj Kumar

RESPONDENT:
Dipender Kaur Sethi

DATE OF JUDGMENT: 19/11/2004

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

(Arising out of SLP(C) NOS..2382-2383 OF 2004

Leave granted.

These appeals are directed against the orders of the High Court of Punjab and Haryana dated 30.10.2002 dismissing the civil revision application no. 1837 of 1995 and the order dated 22.8.2003 in C.M. No.10021-CII of 2003 declining to recall the said order.

On 21.12.1989 the respondent agreed to sell certain property to the plaintiff at certain consideration. Certain amount was also received by the first respondent as earnest money. On 20.3.90 the appellant filed a suit for permanent injunction against the respondent-defendant in which temporary injunction was sought to restrain the respondent-defendant from alienating the suit property until further orders. It was urged by the defendant that a suit for permanent injunction was not maintainable and the plaintiff can seek redress under the Specific Relief Act for specific performance. On 3.10.1991 the appellant moved an application under Order 6 Rule 17 read with section 115 of CPC for making appropriate amendments in the plaint to convert it into a suit for specific performance of the agreement to sell dated 21.12.1989. This application was allowed on 29.2.1992 despite objections made by the respondent. The amendment was permitted and carried out. The appellant thereafter paid the requisite court fee and filed an amended plaint. Unfortunately, for the appellant, however, perhaps due to negligence of the draftsman of the plaint, the necessary pleading, that the plaintiff was still ready and willing to perform his part of the contract in terms of the agreement, was inadvertently omitted even in the amended plaint.

On 10th June 1992 the respondent filed an application under section 151 of the CPC Order 7 Rule 11 and sought an order to reject the amended plaint. By an order dated 18.5.93 the trial court disposed of the said application by directing the appellant-plaintiff to file an amended plaint only after carrying out amendment in the relief clause "after taking the plea regarding the fact that he has been ready and willing to perform his part of the contract". The trial court also directed the plaintiff to comply with this order by 30.5.1993 failing which the provisions of Order 7 Rule 11 CPC shall be invoked against him. The appellant thereafter filed the amended plaint in compliance with the said order.

The respondent-defendant challenged the order of the trial court dated 18.5.93 by a civil writ petition \026 CR No.2214 of 1993 which was disposed of by an order made on 15.8.1993 giving liberty to the appellant to make appropriate application to the trial court. On 5.3.1994 the appellant filed an application under Order 6 Rule 17 CPC read with Section 151 CPC for amendment of plaint and thereby to add inter alia para 5A which reads as

follows:

"\005that the plaintiff has always been and is still ready and willing to perform his part of contract in terms of the said agreement, but the defendant has failed to perform per part of the contract."

This was objected to by the respondents. On 9.2.1995 the trial court allowed the amendment as prayed for after finding that the amendment of adding para no.5A did not change the original controversy between the parties since the nature of the suit would remain the same. This order of the trial court was challenged by a revision petition before the High Court. The revision petition was allowed by order dated 30.10.2002. A miscellaneous petition for recalling that order was dismissed on August 22, 2003.

The High Court in the order dated 30.10.2002 rightly points out that the first application for converting the suit for injunction into a suit for specific performance had not been objected to. Consequently, when the said amendment was allowed, the suit became one for specific performance. Undoubtedly, the said suit was filed within the period of limitation. It is only the inadvertence of the draftsman in not making the material averment which was sought to be rectified by seeking the 2nd amendment of adding para 5A. The ground on which the second amendment application was objected to was that the period of limitation for filing a suit for specific performance was 3 years; the agreement to sell was dated December 21, 1989 and the concerned amendment introducing para 5A was filed on December 3, 1994, was much beyond the period of limitation.

The learned counsel for the appellant have reiterated the contentions which were urged before the High Court. The learned counsel also placed on record a judgment of this Court in Gajanan Jaikishan Joshi vs. Prabhakar Mohanlal Kalwas (1990) 1 SCC 166 which also pertains to a suit for specific performance in which the averments required under Section 165 (c) of the Specific Relief Act, 1963, had been inadvertently omitted while drafting the plaint. The application was made for amending the plaint to bring this averment on record. This Court pointed out that, thereby no fresh cause of action was introduced and, hence, there was no question of causing any injustice to the respondents on that account. Reiterating the principle laid down in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil AIR 1957 SC 363, it was held by this Court that all amendments ought to be allowed which satisfy the two conditions : (a) not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. It was further observed:

"Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim."

In our view, therefore, the trial court was justified in permitting the second amendment and the High Court was not right in allowing the revision petition thereagainst for the reason that the suit had already been converted into a suit under the Specific Relief Act within the period of limitation and, thereafter, it is only the missing averment which was introduced by para 5A. There was no question of not complying the law of limitation, as far as the 2nd amended plaint was concerned. The High Court was also not justified in not recalling the order.

Learned counsel for the respondent heavily relied on the judgment of

this Court in *Gurdial Singh & Ors. vs. Raj Kuamr Aneja and Ors.* JT 2002 (1) SC 633. Having perused the said judgment with the help of learned counsel for the respondent, we find there nothing which would be of assistance in deciding this case; nor is there anything apart from indicating the procedure for amendments.

In the result, we are of the view that the impugned judgment and order of the High Court are erroneous and need to be set aside. The appeals are allowed and the impugned judgment of the High Court dated 30.10.2002 and the Order dated 22.8.2003 are both set aside. The trial court's order dated 9.2.1995 is restored. The appeals are accordingly allowed with no orders as to costs.

JUDIS