

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6400 OF 2009
[Arising out of SLP (C) 30468 of 2008]

Surender Kumar Sharma

...

Appellant

VERSUS

Makhan Singh

...

Respondent



ORDER

JUDGMENT

1. Leave granted.
2. In our view, this is a case in which the High Court, in its

revisional jurisdiction, and the trial Court had fallen in

grave error in refusing amendment of the plaint filed in a suit for eviction on the ground of arrears of rent.

3. The appellant, as a plaintiff, has filed the aforesaid suit in respect of Property No. 28, Varsha Sarvodaya Housing Cooperative Society, Hirapur post, Tatiband, Raipur, Chattisgarh against the tenant/respondent.
4. The trial Court rejected the application for amendment of the plaint mainly on the ground that the prayer for amendment was a belated one. In revision, the High Court affirmed the order of the trial Court rejecting the application for amendment of the plaint *inter alia* holding that not only the prayer for amendment of the plaint made by the plaintiff/appellant was a belated

one, but also that the prayer, if allowed, shall change the nature and character of the suit.

5. Feeling aggrieved by the impugned order of the High Court, this Special Leave Petition was filed by the plaintiff/appellant, which on grant of leave, was heard in presence of the learned counsel for the parties.

6. We keep it on record that in spite of notice on the defendant/respondent, no one had contested this appeal before us.

7. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that

even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our

view, mere delay and latches in making the application for amendment cannot be a ground to refuse amendment. It is also well settled that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by cost or otherwise.

[See B.K. N. Pillai Vs. P. Pillai and another [AIR 2000 SC 614 at Page 616]. Accordingly, we do not find any

reason to hold that only because there was some delay in filing the application for amendment of the plaint, such prayer for amendment cannot be allowed.

8. So far as the second ground is concerned i.e. the prayer for amendment of plaint, if allowed, shall change the nature and character of the suit, we are unable to accept this view of the High Court. We have carefully examined the amendment prayed for and after going through the application for amendment of the plaint, we are of the view that the question of changing the nature and character of the suit, if amendment is allowed, cannot arise at all. The suit has been filed for eviction *inter alia* on the ground of arrears of rent. It cannot be disputed that even after the amendment, the suit would remain a suit for eviction. Therefore, we are unable to agree that if the amendment of the plaint is allowed, the nature and character of the suit shall be changed. Accordingly, the High Court was not

justified in holding that the nature and character of the suit shall be changed, if such prayer for amendment is allowed.

9. For the reasons aforesaid, the orders of the High Court as well as of the trial Court are set aside. The application for amendment of the plaint filed by the appellant stands allowed, subject to the payment of costs of Rs.10,000/- to the opposite party, which shall be deposited/paid within a period of six weeks from the date of supply of a copy of this order. In default of deposit/payment of such costs, the application for amendment of the plaint shall stand rejected.

10. For the reasons aforesaid, this appeal is allowed to the extent indicated above. There will be no order as to costs.

.....,J
[TARUN CHATTERJEE]

.....,J
[R. M. LODHA]

NEW DELHI,
SEPTEMBER 18, 2009

