

Neutral Citation No. - 2025:AHC:115487

Reserved On: 08.07.2025

Delivered On:17.07.2025

Court No. - 9

Case :- MATTERS UNDER ARTICLE 227 No. - 6516 of 2021

Petitioner :- State Of U.P. And 2 Others

Respondent :- Smt Kalawati Singh And Another

Counsel for Petitioner :- Prem Prakash Chaudhary

Counsel for Respondent :- Kamlesh Kumar,Rajesh Nath Tripathi

Hon'ble Manish Kumar Nigam,J.

1. Heard learned Standing Counsel for the petitioners and Sri Kamlesh Kumar and Sri Rajesh Nath Tripathi, learned counsel appearing for the respondent.

2. This petition has been filed challenging the order dated 23.11.2019 passed by the District Judge, Deoria in Civil Appeal No. 52 of 2017 (Smt. Kalawati Singh Vs. State of U.P. and others).

3. Brief facts of the case giving rise to the present petition are that Original Suit No. 11 of 1999 (Smt. Kalawati Singh Vs. State of U.P. and others) was instituted by the plaintiff-respondent for the relief of mandatory injunction restraining the defendants not to give effect to the agreement executed till 1999 on the basis of tender issued for 1999-2000 and defendants may further be restrained from creating hindrance in transportation of goods in terms of agreement between the plaintiff and the defendants till 1999. It was also prayed that a decree be issued for payment of Rs. 6,49,687/- for work of transportation already executed by the plaintiff-respondent in pursuance to agreement executed in her favour. Other reliefs were also claimed. The petitioners contested the suit by filing written statement and denied the plaint averments. On the basis of

the pleadings of the parties, total 11 issues were framed by the trial court. Issue nos. 10 and 11 which are relevant for the present case were whether on the basis of averments made in the plaint, plaintiff is entitled for payment of Rs. 6,49,687/- from the defendants. Issue Nos. 10 and 11 are quoted as under:-

"10- क्या वादपत्र में तरमीमी धारा-1-स से कथित किसी संविदा/अनुबंध विभाग द्वारा वादिनी के पक्ष में किया गया है और कोई बकाया धनराशि वादी को. प्राप्त होना है? यदि हां तो प्रभाव?

11-क्या वादपत्र में दिये गये कारणों के आधार पर वादिनी, प्रतिवादीगण से मु0-6,49,687 / रु0 पाने की अधिकारिणी है ?"

The suit instituted by the plaintiff-respondent was dismissed by the trial court i.e. Civil Judge (Senior Division) Court No. 18 Deoria vide judgment and decree dated 18.11.2017. The issue Nos. 10 and 11 as mentioned above were decided against the plaintiff on the ground that in paragraph No. 7 A of the plaint, plaintiff has stated only that payment has not been made to the plaintiff by the department for the work done, but plaintiff has not pleaded details of amount to be paid to the plaintiff and it has also not been specifically pleaded by the plaintiff that from which date to which date, she has not received payment for the transportation work done under the agreement. It was contended by the plaintiff before the trial court that D.W. 1 in his statement has admitted that no payment has been made regarding paper No. 130 Ga to the plaintiff from which it is apparent that payment has not been made to the plaintiff for transportation work already done by the plaintiff. Against the judgment and decree dated 18.11.2017 passed by the trial court, plaintiff-respondent filed Civil Appeal No. 52 of 2017 (Smt. Kalawati Vs. State of U.P. and others) before District Judge, Deoria. During the pendency of the aforesaid appeal, an application for amendment was moved by the plaintiff-respondent for amending paragraph No. 7A of the plaint. The amendment sought by the plaintiff is quoted as under:-

"1. यह कि वाद पर की धारा 7 अ के प्रथम सत्र में शस्त "ढलाई" के बाद शब्द "1998-1999 के"

"इसी क्रम में वादिनी द्वारा ढलाई कार्य निशुल्क गेहूं बीज आदि कानपुर से देवरीया दिनांक 28.11.1998 से 09.12.1998 तक की ढलाई विल मु० 5,85,900/- व गोण्डा से देवरीया निःशुल्क गेहूं बीज बर्गरह का ढलाई कार्य दिनांक 18.12.1998 से 19.12.98 का ढलाई विल मु० 63,787 = 50 का भुगतान आज तक नहीं किया गया है तथा तरह-तरह से हम वादिनी को ऐ-केन-प्रकारेण प्रताडित किया जा रहा है। भुगतान कराने का न्यायिक आदेश पारित किया जाना आवश्यक व न्याय संगत है। "

At this stage, it would be relevant to quote paragraph No. 7A of the plaint, which is as under:-

"7- यह कि यदि प्रतिवादीगण बराह बदनियती पूर्व में दिये गये निविदा शर्तों के लिए मौजूदा निविदा 1999-2000 तक खोले गए निविदा का क्रियान्वयन करेंगे तो वादिनी की अपूर्णनीय क्षति होगी और वादिनी को किये गये अग्रीमेन्ट की शर्तों का उल्लंघन होगा जो विधानतः न्यायोचित नहीं है और न प्रति-वादीगण को वादिनी को साथ किये गये एग्रीमेन्ट/निविदा को सुपरसीड करते हुए निविदा को लागू करने का अधिकार ही है। प्रश्न- यह की दौरान मुकदमा मुताबिक निविदा/संविदा अनुबंध हम वादिनी द्वारा की गयी ढलाई 1998-1999 कार्य जो सरकारी कार्य है उससे सम्बन्धित भुगतान नहीं कर रहे हैं और जानबूझकर हम वादिनी को बिना किसी कारण के हैरान व परेशान कर रहे हैं जिससे वादिनी की आर्थिक स्थिति काफी खराब हो गयी है और सरकारी कार्य करने में भी कठिनाई हो रही है जिससे सरकारी क्षति भी है और प्रतिवादीगण व्यक्तिगत नराजगी के कारण से काफी धन का दुरुपयोग करते हुए भुगतान नहीं कर रहे हैं जो आवश्यक ही इसी सन्दर्भ में आप की मांग आवश्यक है।"

The amendment application filed by the plaintiff-respondent was opposed by the defendant-petitioners by filing objections on 01.02.2019. The appellate court i.e. District Judge, Deoria vide judgment and order dated 23.11.2019 (impugned in present petition) allowed the amendment

application filed by the plaintiff-respondent on payment of cost of Rs. 500/-. Hence the present petition.

4. Learned Standing Counsel submitted that the suit was filed in the year 1999 and the amendment has been sought in the plaint on 09.02.2018 and in view of proviso added to Rule 17 of Order 6 C.P.C., no application for amendment shall be allowed after the trial has commenced unless, the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Learned Standing Counsel further submitted that in this case, the amendment has been sought at the appellate stage after the dismissal of the suit. The amendment as such cannot be allowed, which is highly belated without their being any explanation for the reason as to why the amendment was not sought earlier and further by the amendment, the plaintiff-respondent has tried to fill up the lacuna in his pleadings at a very late stage.

5. *Per contra*, learned counsel appearing for the respondent submitted that amendment in the pleadings can be allowed at any stage of the suit even at the stage of first appeal or second appeal. It has been further contended that it is the consistent view of both the High Court as well as Hon'ble Supreme Court that court should be extremely liberal in allowing the amendment. It has also been submitted that since suit was instituted in the year 1999, prior to amendment in Rule 17 of Order 6 of C.P.C. in the year 2002, the proviso added by the amendment will not apply to the proceedings which were filed prior to amendment.

6. Before considering the rival submissions of the parties, it would be appropriate to look into the amended Rule 17 of Order 6 C.P.C, which is quoted as under:-

“[17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such

amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.]”

7. This amended Rule 17 has been substituted by Act 2022 of 2002 w.e.f. 01.07.2002.

8. Supreme Court in case of **State Bank of Hyderabad Vs. Town Municipal Council** reported in **(2007) 1 SCC 765** held that in suits instituted prior to the amendment made in Rule 17 of Order 6 of C.P.C. by the Amending Act 2002 will not apply in view of Section 16(2)(b) of the Amending Act of 2002. In this regard, paragraph Nos. 4, 5, 6, 7 and 8 of judgment in case of State Bank of Hyderabad Vs. Town Municipal Council (supra) is quoted as under:-

"4. The short question which arises for consideration is as to whether the proviso appended to Order VI, Rule 17 of the Code is applicable in the instant case.

5. Order VI, Rule 17 of the Code reads, thus:

"The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

6. The Proviso appended thereto was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 1.07.2002. It reads as under:

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

7. Section 16(2) of the Amending Act of 2002 reads as under:

"16(2) Notwithstanding that the provisions of this Act have come into force or repeal under sub- section (1) has taken effect, and

without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897

*(a) *** ***

(b) the provisions of rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and Section 7 of this Act;"

8. In view of the said provision there cannot be any doubt whatsoever that the suit having been filed in the year 1998, proviso to Order VI, Rule 17 of the Code shall not apply."

9. So far as contention of learned counsel for the petitioner that the application for amendment being belated, same should not have been entertained and allowed. From the perusal of the paragraph No. 7A (as quoted above) and the amendment sought by the plaintiff-respondent in the plaint (as quoted above), it is apparent that the plaintiff-respondent has pleaded that payments for the transportation work done during the subsistence of the contract was not made by the department to the plaintiff. By the amendment plaintiff-respondent has given only the details of such pending payments as given in paragraph which were sought to be added by the aforesaid amendment. Nothing new has been tried to be introduced by the plaintiff-respondent.

10. It is one thing to say that application for amendment suffers from delay or laches but it is another thing to say that thereby the defendants were prejudiced. No prejudice has been caused to the petitioners as pleading was there for non-payment of transportation work done under the agreement by the plaintiff, only the details of such work was added by the said amendment. In my view, the same was necessary for doing complete justice between the parties.

11. Supreme Court in case of **Baldev Singh and others Vs. Manohar Singh and others** reported in **(2006) 64 ALR 895** has held that court

should be extremely liberal in allowing the amendment. Paragraph No. 8 of Baldev Singh and others Vs. Manohar Singh and others (supra) is quoted as under:-

“8. It is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference can be made to a decision of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung (AIR 1922 Privy Council 249) in which the Privy Council observed:

"All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

12. It has also been held by Supreme Court in case of **North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das** reported in **(2009) 74 ALR 370** that the amendment in a pleading can be allowed at any stage of proceedings. Paragraph No. 15 of North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (supra) is quoted as under:-

“15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 C.P.C. postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil & Ors. AIR 1957 Supreme Court 363 which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of 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. 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. (Also see: *Gajanan Jaikishan Joshi Vs. Prabhakar Mohanlal Kalwar*, 1990 (1) RCR (Rent) 229: 1990 (1) RRR 222: 1990 Civ.C.C. 277 (SC))”

13. In case of **Ragu Thilak D. John Vs. S.Rayappan & Others** reported in **2001 (2) SCC 472**, the Supreme Court has held that where the limitation as a defence has been taken against the amendment, the amendment can be allowed subject to decision on question of limitation. Paragraph Nos. 5 and 6 of *Ragu Thilak D. John Vs. S.Rayappan & Others* (supra) is quoted as under:-

“5. After referring to the judgments in *Charan Das v. Amir Khan* [AIR 1921 PC 50], *L.J. Leach & Co. Ltd. & Anr. v. Jardine Skinner & Company* [1957 SCR 438], *Smt.Ganga Bai v. Vijay Kumar & Ors.* [1974 (2) SCC 393], *M/s.Ganesh Trading Co. v. Moji Ram* [1978 (2) SCC 91] and various other authorities, this Court in *B.K.N. Pillai v. P.Pillai & Anr.* [JT 1999 (10) SC 61] held:

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

6. If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(a) to 8(f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation

being disputed could be made a subject matter of the issue after allowing the amendment prayed for.”

14. In **Rajesh Kumar Aggarwal & Ors vs K.K. Modi** reported in **2006 (4) SCC 385**, the Supreme Court has held the Court should allow the amendment that may be necessary for determining the real controversy to avoid the multiplicity of proceedings. Paragraph Nos. 15, 16 and 18 of **Rajesh Kumar Aggarwal & Ors vs K.K. Modi** (supra) is quoted as under:-

“15. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”

15. In my view, no illegality has been committed by the appellate court in allowing the amendment application filed by the plaintiff-respondent.

While deciding the amendment application, the court below has recorded a finding that the plaintiff-applicant has satisfactorily explained the delay in filing amendment application. By the proposed amendment nature of suit has not changed. Plaintiff-applicant has not withdrawn any admission by the proposed amendment nor has prayed for any new relief. Explanation sought to be added by the proposed amendment is necessary for deciding the real controversy between the parties. Finding recorded by the court below is quoted as under:-

" चूंकि वादिनी/अपीलार्थिनी द्वारा वाद पत्र में किये जा रहे संशोधन को विलम्ब से प्रस्तुत करने का संतोषजनक स्पष्टीकरण दिया जा चुका है। प्रस्तावित संशोधन से वाद की प्रकृति परिवर्तित नहीं होती है, वादिनी / अपीलार्थिनी किसी स्वीकारोक्ति को वापस नहीं ले रही हैं और न ही किसी नये अनुतोष की याचना की गयी। वादिनी/ अपीलार्थिनी द्वारा अपने वादपत्र में जो स्पष्टीकरण संशोधन के माध्यम से दिया जा रहा है वह पक्षकारों के बीच उत्पन्न वास्तविक विवाद के प्रभावी न्यायनिर्णयन के लिए आवश्यक पाया जाता है।"

16. Learned counsel for the petitioner could not point out any perversity or illegality in the findings recorded by the court below except for grounds of objections raised above.

17. Accordingly, the writ petition lacks merit and is **dismissed**. Interim order, if any, is discharged.

Order Date: 17.07.2025

Nitika Sri.

(Manish Kumar Nigam,J.)