

Sajjankumar Nathamal Agarwal and Anr.] ... Petitioners

Versus

Kirti Sarojkumar Agarwal and Ors.] ... Respondents

Smt. Swati Sawant for Petitioners.
Ms. Hemani Jhariya for Respondent No.1.
Smt. Jyoti Thakkar for Respondent No.2.

CORAM :- M. S. SONAK, J.
DATE :- APRIL 06, 2015

P. C. :-

1. The learned Counsel for Petitioners states that service is complete in the present matter.
2. Rule. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. This petition challenges the Order dated 17/11/2014 by which the City Civil Court has dismissed Petitioners' Chamber Summons seeking amendment to the Written Statement.

4. The Chamber Summons came to be dismissed primarily on the following grounds :-

- (a) That issues in the present case came to be framed on 06/12/2013 and the Chamber Summons seeking leave to amend was taken out on 25/02/2014. Therefore, under the proviso to Order 6 Rule 17 of the CPC, the Chamber Summons seeking amendment after the commencement of the trial cannot be allowed;
- (b) That the Written Statement in the present case was a joint Written Statement filed on behalf of three Defendants. The Chamber Summons seeking to amend the joint Written Statement has been taken out by only Defendant Nos.1 and 3. Relying upon the decision in the case of *Narendra Singh Vs. Bhartendra Singh and & Ors.*¹, the learned City Civil Judge has said that it is impermissible for only some of the Defendants to apply for amendment to a joint Written Statement filed by all the Defendants.

5. Insofar as the first ground is concerned, the learned City Civil Judge is not right. In this case, the issues may have been framed on 06/12/2013. However, the Affidavit in lieu of examination-in-chief came to be filed only on 19/03/2014. Before the said date, which ought to be regarded as the date for commencement of trial, the

¹ 2000 (1) ALL WC 719

Petitioners had already taken out Chamber Summons on 25/02/2014, seeking leave to amend. In such circumstances, there does not arise any question of the applicability of the proviso to Order 6 Rule 17 of the CPC.

6. Insofar as the second ground is concerned, however, the learned City Civil Judge is right. In this case, admittedly, joint Written Statement had been filed on behalf of Defendant Nos.1, 2 and 3. It appears that there is some change in the position of the Defendants, *inter se*, and the interests of Defendant Nos.1 and 3 are now adverse to the interest of Defendant No.2. In such a circumstance, it is not permissible for Defendant Nos.1 and 3 to seek leave to amend the joint Written Statement. Perhaps, the remedy would be leave to file either independent Written Statements or seek other remedies, as permissible under the law.

7. Under such circumstances, although the impugned order will not be interfered with, liberty is granted to the Petitioners to take out appropriate proceedings within four weeks from today before the learned City Civil Judge. In case such proceedings are taken out, the learned City Civil Judge shall decide the same on their own merits and in accordance with law, without going into the question that the Affidavit in lieu of evidence has been filed in the meanwhile. Such application, shall be disposed of by the learned City Civil Judge on its own merits and in accordance with law and as expeditiously as possible and in any case, within a period of two months when the same is made.

8. It is clarified that this Court has not examined the matter on its merits and therefore it will be for the Petitioners to take out appropriate proceedings in the matter.
9. All contentions of all parties are kept open.
10. With the aforesaid observations, the present Writ Petition is disposed of. There shall be no order as to costs.
11. All parties to act on the basis of authenticated copy of this Order.

(M. S. SONAK, J.)