

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 09.12.2019

Order Passed on : 28/01/2020

W.P.(227) No. 841 of 2019

- Dinesh Kumar S/o Late Shri Sachidanand, Aged About 54 Years Bureau Chief Durg, Central Chronicle, G.E. Road Raipur

---- Petitioner

Versus

1. J. K. Lakshmi Cement Limited Malpurikhurd Village, District- Durg, C.G.
2. Dinesh Kumar Mehta S/o B.R. Mehta, aged about 62 years, Senior Vice President J.K.Lakshmi Cement Limited Malpurikhurd Village, District Durg, Chhattisgarh
3. R. Ajit Former Chief Executive Officer, Central Chronicle, House No. 105, CG Kalpatru, Amlidih Raipur, Chhattisgarh
4. K.N.Kishore Former Resident Editor, Central Chronicle, Housing Board Colony Suddu Raipur, Chhattisgarh

---- Respondents

For Petitioner : Petitioner-in-person along with Ms. Usha Menon, Advocate.

For respondents No.1 & 2 : Mr. N. Naha Roy, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

28/01/2020

1. This petition has been brought challenging the order dated 26.06.2019 in Civil Suit No.6-B/2013 by which the application filed by the respondents praying for amendment in the plaint has been allowed and the application filed by the petitioner under Order 1 Rule 10 of C.P.C. was dismissed.
2. Learned counsel for the petitioner submits that the respondents filed the Civil Suit No.6B/2013 against the petitioner and others respondents

No1, is industry on whose behalf respondent No.2 has filed Civil Suit. He is not holding any power of attorney for filing such suit. The petitioner then moved an application under Order 7 Rule 11 of C.P.C. challenging the maintainability of suit. Subsequent to which, the amendment application was filed by the respondent with a mala-fide intention at a belated stage to counter and nullify the objection raised by petitioner in his application under Order 7 Rule 11 of C.P.C.

3. It is submitted that although the Court has power to allow the prayer of amendment under Order 6 Rule 17 of C.P.C. but this power has to be exercised judicially.
4. Relying on the judgment of Supreme Court in ***Chander Kanta Bansal Vs. Rajinder Singh Anand*** reported in ***(2008) 5 SCC 117***, it is submitted that the Supreme Court has held that amendment may be allowed liberally but it should not cause injustice or prejudice of an irremediable nature to the other party. Therefore, allowing of the amendment by the trial Court in this case has caused injustice to the petitioner.
5. Reliance has also been placed on the judgment of Supreme Court in ***M/s South Konkan Distilleries & Anr. Vs. Prabhakar Gajanan Naik*** reported in ***(2008) 14 SCC 632*** and ***A.C. Narayanan Vs. State of Maharashtra & Anr.*** reported in ***AIR 2014 SC 630***, ***S.P. Chengalvaraya Naidu Vs. Jagannath*** reported in ***1994 (1) SCC 1***, ***L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*** reported in ***1957 AIR 357*** and ***T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Ors.*** reported in ***2004 (3) SCC 392***. It is further submitted that the impugned order is not sustainable which may be set aside and petitioner be granted relief.
6. Learned counsel for the respondent No.2 opposes the submissions

made on behalf of the petitioner and submits that the learned trial Court has not committed any error in passing the impugned order. The petitioner has raised objection regarding the competence of respondent No.2 for filing the Civil Suit on this basis that the respondent No.2 does not have any Power of Attorney, which was simply a mistake in the pleadings made in the Civil Suit, which has been rectified by the amendment sought. The Power of Attorney is dated 11.03.2013 prior to the filing of the Civil Suit. Even otherwise the respondent No.2 being an officer of senior Vice President level has all the authority to file a Civil Suit as required under Order 29 Rule 1 of C.P.C. The Principal Officer is not defined in C.P.C, but it is defined under Income Tax Act, 1965 under Section 35 which include Secretary, Treasurer, Manager of the company of the Associate body or any person connected with management or administration or the legal authority for association of body. Therefore, according to the provision under the code, the respondent no.2 is not required to be empowered by any Power of Attorney for filing a Civil Suit. It is further submitted that no injustice has been caused to the petitioner by allowing of the application. The petitioner is making all pretext and efforts to delay and linger on the proceeding in Civil Suit, whereas, he has all the opportunity to contest the suit, therefore, the petition is without any substance which may be dismissed.

7. I have heard learned counsel for the both the parties and perused the documents placed on records.
8. The main objection of the petitioner is the amendment allowed by the trial Court in the plaint, according to which this pleading was added, that respondent No.2, Vice President is Power of Attorney holder according to the details given, whereas the petitioner had filed an application on 04.08.2017 making this objection that respondent No.2 is not having

entitlement to file the Civil Suit under Order 7 Rule 11 of C.P.C. The application under Order 7 Rule 11 of C.P.C. filed by the petitioner is still pending before the Civil Court. There is no need to make any comment on the objection made by the petitioner which is yet to be decided by the trial Court strictly on the basis of the provision under Order 7 Rule 11 of C.P.C.

9. The power of Court under Order 6 Rule 17 is very wide empowering the Court to allow the amendment of pleading at any stage of the proceedings which may be necessary for the purpose of determining the legal question and controversy between the parties. The amendment brought that the respondent No.2 was given entitlement on the basis of the Power of Attorney which was existing prior to the filing of the suit, can be denied by the petitioner, if he chooses to do so in the written statement. Similarly, the entitlement and empowerment of the respondent No.2 for filing the Civil Suit can also be challenged by the petitioner which has already been challenged in his application under Order 7 Rule 11 of C.P.C. and this opportunity of challenging is still available by making pleading in this respect in his written statement, in case, the case proceeds further. Order 29 Rule 1 of C.P.C. provides, respondent No.2 claims to be a principal officer of respondent No.1 within the scope of definition u/s 35 of Income Tax Act. This claim of respondent No.2 can be considered by the learned Court below, while deciding the application under Order 7 Rule 11 of C.P.C. Therefore, I am of this view that there is nothing to suggest that any injustice has been caused to the petitioner by the impugned order, therefore, this petition is without any substance which is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge