GAHC010292952019

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP/164/2019

MANASH KUMAR NATH
S/O- JITENDRA KUMAR NATH, R/O- MALIGAON RAILWAY QUARTER NO. 17/B, NEAR RAILWAY HIGHER SECONDARY SCHOOL, P.S.- JALUKBARI, DIST.- KAMRUP(M), ASSAM, PIN- 781012

VERSUS

SABITA KALITA
W/O- LT. ATUL KALITA, R/O- MALIGAON CHARIALI, P.S. JALUKBARI, DIST.- KAMRUP(M), ASSAM, PIN- 781012.

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : MR. K D CHETRI

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT

Date : 29-10-2021

Heard Mr. A Barkakati, learned counsel for the petitioner and Mr. K.D. Chetri, learned counsel for the respondent.

2. By way of this petition under Article 227 of the Constitution, the petitioner has challenged the order dated 17.04.2019 passed by the

Court of the Civil Judge No.1, Kamrup (M) at Guwahati in Title Appeal No.56/2017, whereby the petition filed by the petitioner herein (defendant in the suit) for amendment of the written statement under Order VI Rule 17 of the Code of Civil Procedure was rejected. The facts for the purpose of disposal of the instant proceeding is that the respondent herein, has filed a suit i.e., Title Suit No.119/2016 for ejectment of the petitioner on the ground that he is a defaulter of payment of rent. It may be relevant herein to mention that along with the prayer for ejectment, the respondent herein as plaintiff also sought for realization of arrear rent. The petitioner who is the defendant in the suit filed his written statement averring inter alia that he is not a defaulter and have been paying rent regularly till April 2016, and thereafter have been making the payments of rent before the appropriate Court. The trial Court by the judgment and decree dated 29.07.2017 decreed the suit in favour of the respondent herein, thereby declaring that the petitioner i.e. the defendant in the suit was a defaulter and accordingly liable to be evicted and further to pay to the respondent the arrear rents as sought for.

3. The petitioner being aggrieved by the judgment and decree dated 29.07.2017 filed Title Appeal No.56/2017 before the Court of the learned Civil Judge No.1, Kamrup at Guwahati. In the said appeal proceedings, the petitioner as applicant filed an application under Order 6 Rule 17 seeking amendment of the written statement. In the said petition seeking amendment, the petitioner had alleged that the petitioner had submitted the rent receipts starting from January 2014 to April 2016 to the counsel of the petitioner before the trial Court but

he had failed to incorporate the same in the pleadings, which consequently lead to the passing of the judgment and decree against the petitioner, for which, he seeks the leave to amend his written statement.

4. On a specific query to the counsel for the petitioner as to whether any disciplinary proceeding have been initiated against the counsel who had defaulted in incorporating the pleadings in spite of specific request being made by the petitioner which resulted in the adversarial judgment and decree passed against the petitioner, the counsel for the petitioner submits that there has been no such disciplinary proceeding initiated against such counsel.

5. The respondent submitted their written objection before the Appellate Court objecting to the prayer for amendment. The Court below vide an order dated 17.04.2019, rejected the application seeking amendment as well as also the petition No.3796/2018 seeking leave to submit the challans of the N(j) Cases and fix the appeal for hearing. Against the said order dated 17.04.2019, the petitioner is before this Court under Article 227 of the Constitution.

6. The law as regards granting leave to amend pleadings in a Civil proceeding is contained in Order VI Rule 17 of the Code of Civil Procedure, 1908. The said provision was very liberally construed by the Courts which resulted in enormous delay in the disposal of the civil suits. In order that the suits are expeditiously disposed off, the legislature deemed it appropriate that the said provision i.e., Order VI Rule 17 be completely deleted. This was done so by the Code of Civil Procedure (Amendment) Act, 1999. In this regard reference may be

made to section 16 of the said Amending Act of 1999. Thereupon, the said provision was subsequently reinstated by the Civil Procedure Code (Amendment) Act, 2002 with a caveat that only such amendments which may be necessary for the purpose determining the real question in controversy between the parties would be permitted. A proviso was added whereby it was specified that after the commencement of trial, wherein amendment is sought, it can be permitted only if the applicant seeking amendment shows that inspite of due diligence, he/she could not have raised the matter before the commencement of trial**.** From the above it would be seen that the legislative mandate to the provision of Order VI Rule 17 post the Amending Act of 2002 is that an amendment after commencement of trial can only be permitted if and only if inspite of due diligence, the party seeking amendment could not have raised the matter before the commencement of trial.

7. From a perusal of the impugned order and the application seeking amendment, it does not inspire this Court that the petitioner was diligent enough during the trial proceedings. Had the petitioner been diligent he would have insisted upon his counsel to file an amendment application immediately or even during the course of the trial. However, that was not done. It was only after the passing of the judgment and decree dated 29.07.2017, the petitioner was woken up and now by putting the blame upon the lawyer seeks to show his due diligence. It is very relevant herein to note that an application seeking amendment have been filed at the appellate stage. An application seeking amendment at the appellate state can only be permitted if –

(I) The application is filed bona-fide;

(II) Does not cause injustice to the other side; and

(III) Does not affect the rights already accrued to the other side.

8. The amendment which is now sought to be introduced by introducing paragraphs 11(a) and 11(b) to the written statement, in my opinion would not only cause injustice to the other side but would also affect the rights of the plaintiff which she had accrued on the basis of the decree passed by the trial Court, not to speak of that the application filed at this appellate stage does not inspire this Court to be an application filed bona-fide for the reasons already stated hereinabove. In this regards reference may be made to the judgment of the Hon'ble Supreme Court rendered in the case of ***Peethani Suryanarayana and Another Vs. Repaka Venkata Ramana Kishore*** reported in ***(2009) 11 SCC 308***.

9. Apart from the above, the instant application is an application under Article 227 of the Constitution. The Apex Court in the case of ***Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329***, laid down the following principles in paragraph 49 for the purpose of guidance of the High Court while exercising the powers under Article 227 of the Constitution. The said paragraph 49 is quoted herein below:

> .....
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> *49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdictioin under Article 227 of the Constitution may be*

formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been

repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, `within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the

Constitution Bench of this Court in the case of L. Chandra Kumar vs. Union of India & others, reported in (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt

and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality.

10. From the above quoted paragraph, it would be seen that the power under Article 227 of the Constitution is conferred with the object of superintendence, both administrative and judicial and is to maintain efficacy, smooth and orderly functioning of the entire machinery of justice in such a way, as it does not bring it into any disrepute. The Supreme Court had emphasized that the power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It has been further emphasized in the said judgment that this power conferred

under Article 227 of the Constitution is a reserved and exceptional power of judicial intervention and is not to be exercised to grant relief in an individual case but should be directed for promotion of public confidence in the administration of justice in the larger public interest. Therefore, the power under Article 227 though is unfettered but its exercise is subject to high degree of judicial discipline as with such unbridled power comes the additional duty to see that the power so exercised is done so with great care and caution. The order impugned in the instant proceedings if interfered with at the stage of the appeal would erode the public confidence in the administration of justice as well as would set at naught the legislative mandate of the amendment carried out vide the Code of Civil Procedure (Amendment) Act 2002, whereby, power to amend after the commencement of trial is subject to the limitation set out therein.

11. In that view of the matter, I do not see any ground to interfere with the impugned order. The petition stands dismissed.

12. The above observation, however, shall not affect the petitioner in his appeal pending before the Appellate Court. The interim order passed on 29.11.2019 is vacated and the court below shall proceed with the adjudication of the appeal in accordance with law expeditiously and preferably within a period of 6 months from the date of appearance of the parties before the court below. The parties herein are directed to appear before the court below on 22.11.2021. No costs.

JUDGE

Comparing Assistant