



IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 6th OF JANUARY, 2025

MISC. PETITION No. 5911 of 2024

THE STATE OF MADHYA PRADESH

Versus

***SMT SARITA AGRAWAL (DIED) W/O SHRI ANIL KUMAR AGRAWAL
THROUGH LRS (A) DHRUV AGRAWAL AND OTHERS***

Appearance:

Shri G.K. Agrawal - Government Advocate for petitioner/State.

*Shri H.K. Shukla and Shri Rajeev Shrivastava- Advocates for respondent No.1 (a),
(b) and (c).*

ORDER

This Miscellaneous Petition, under Article 227 of the Constitution of India, has been filed seeking following relief(s):

- (i) That, the impugned order dated 08.08.2024 (Annexure P/1) Ld. 2nd Civil Judge Junior Division, Jaura, District Morena (M.P.) in Original Civil Suit No.138A/2021 may kindly be set aside and quashed and the application for amendment in written statement, filed under Order 6 Rule 17 and section 151 of CPC, may kindly be allowed.
 - (ii) That, other relief which is just and proper in the facts and circumstances of the case may also be granted.
2. It is submitted by counsel for petitioner that an application filed by petitioner



under Order VI Rule 17 CPC for amendment in the written statement has been rejected, primarily on the ground that application was filed belatedly and no explanation has been given for delay in filing the application.

3. Challenging the order passed by the court below, it is submitted by counsel for petitioner that delay in filing application cannot be a ground to reject the application. The application for amendment should be decided after considering relevancy of the proposed pleadings. The State Government has to be defended by its functionaries. The initial written statement was filed in a most casual manner. The will on which the plaintiff is relying has been challenged by petitioner by filing application for amendment in the written statement. It is further submitted that even otherwise it is for the propounder of the will to prove genuineness of the will. Therefore, it is clear that the amendment which was proposed by petitioner was necessary for just decision of the case.

4. *Per contra*, the petition is vehemently opposed by counsel for respondent No.1 (a), (b) and (c).

5. The Supreme Court, in the case of **Life Insurance Corporation of India Vs. M/s. Sanjeev Builders Private Limited and another** reported in **2022 SCC Online SC 1128**, has held as under :-

"70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall" in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and



- (ii) to avoid multiplicity of proceedings, provided*
- (a) the amendment does not result in injustice to the other side,*
- (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
- (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).*
- (iv) A prayer for amendment is generally required to be allowed unless*
- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
- (ii) the amendment changes the nature of the suit,*
- (iii) the prayer for amendment is malafide, or*
- (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.*
- (vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation*
- (viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.*
- (x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.*
- (xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to*



bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).

Thus, it is clear that delay in filing application for amendment cannot be a sole ground to reject the application. The plaintiff has filed a suit claiming title on the basis of will. It is well established principle of law that it is for the propounder of will to remove all the suspicious circumstances attached to the will.

6. Under these circumstances, if petitioner wanted to incorporate the pleadings thereby challenging the will then it cannot be said that those pleadings were not necessary for just decision of the case. Under these circumstances, this Court is of the considered opinion that the trial court has committed a material illegality by rejecting the application filed under Order VI Rule 17 CPC.

7. Consequently, order dated 08.08.2024 (Annexure P/1) passed by 2nd Civil Judge Junior Division, Jaura, District Morena (M.P.) in RCSA No.138/2021 is hereby set aside. Application filed by defendant for amendment in written statement is hereby allowed. Let necessary amendment be carried out within the period so stipulated by the Trial Court.

8. With aforesaid observation, petition is finally *disposed of*.

(G.S. Ahluwalia)
Judge