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(2013) 3 ILR(Allahabad) 1448 : (2014) 32 LCD 1684

**ALLAHABAD HIGH COURT**

SINGLE BENCH

SAHNAZ PARVEEN — Appellant

Vs.

ADDL. DISTRICT JUDGE — Respondent

( Before : Shri Narayan Shukla, J. )

Writ Petition No. 1516 (M/S) of 2006.

Decided on : 23-10-2013

**A. Civil Procedure Code, 1908 (CPC) — Order 6, Rule 17 — Amendment of pleadings — "Commencement of trial" — Interpretation of — The proviso to Order 6 Rule 17 restricts amendments after trial commences unless due diligence is shown — The definition of "trial" signifies a judicial examination of facts or law to determine an issue. (Paras 6, 7, 8, 10, 11)**

**B. Civil Procedure Code, 1908 (CPC) — Order 6, Rule 17 — Commencement of trial — Framing of issues versus recording of evidence — The Supreme Court's pronouncements in Baldev Singh and Vidyabai indicate that "commencement of trial" for the purpose of Order 6 Rule 17 proviso occurs when evidence is set to be recorded, not merely upon the framing of issues. The trial commences only when the case is set down for the final hearing, examination of witnesses, filing of documents, and addressing of arguments. (Paras 8, 11, 12)**

**C. Civil Procedure Code, 1908 (CPC) — Order 6, Rule 17 — Amendment of written statement — Application filed after issues framed but before evidence recording — Such an application is considered to be made before the actual commencement of trial, thereby permitting the amendment under Order 6 Rule 17. (Paras 4, 5, 8, 11, 12)**

### Counsel for Appearing Parties

*Surya Kant, Advocate, for the Petitioner; C.S.C, A.R. Khan, Aasif Razzaque Khan and Ravi Nath Tihari, Advocates, for the Respondents*

### JUDGMENT

**Shri Narayan Shukla, J.**—Heard Mr Surya Kant, learned counsel for the petitioner as well as Mr A.R. Khan, learned counsel for the respondents.

2. This writ petition is directed against the order dated 1.3.2006, passed by the Additional District Judge, Lucknow in Civil Revision No. 374 of 2005. By means of order impugned the petitioner's revision filed against the order dated 6th July, 2005, passed by the Civil Judge ( Senior Division ) has been rejected with the direction to the trial court to dispose of the application for amendment A-30 as per direction issued by the revisional court.

3. The facts of the case, in brief, are that the petitioner filed a regular suit no. 573 of 2004 for declaration and mandatory injunction on 21/23.8.2004 in the court of Civil Judge (Senior Division), Lucknow. The respondent - defendant filed written statement on 13.10.2004. Thereafter the petitioner - plaintiff filed replication on 29th November, 2004. Thereafter on 24th January, 2005 after hearing the learned counsel for the parties the trial court framed five issues for determination and fixed the matter to lead the evidence by the parties on 28.2.2005.

4. On the next date fixed on 28.2.2005 the respondent no. 1/defendant no. 1 filed an application under Order 6, Rule 17 read with Section 151 C.P.C. for amendment of the written statement on the ground that inadvertently due to incidental slip he could not mention the facts of the proposed amendment in his written statement. The trial court by means of order dated 6.7.2003 rejected the application for amendment saving certain clerical amendments on the ground that the application for amendment was presented after commencement of trial. Further the respondent/defendant no. 1 has failed to establish that he was diligent but could not raise these pleas before the commencement of trial due to inadvertent mistake. The trial court further observed that in the matter the issues have been framed and thus the trial has commenced. Aggrieved defendant challenged the order of the trial court before the Court of the District Judge, Lucknow through Civil Revision No. 374 of 2005.

5. Learned revisional court allowed the same on the ground that since the defendant had moved the application for amendment before the date fixed for evidence the same shall be treated as moved before commencement of trial court. He relied upon the decision of Delhi High Court rendered in the case of **Mrs. Suneel Sodhi and others v. M.L. Sodhi and others reported in AIR 2004 Delhi 99**.

6. The petitioner/plaintiff has challenged the said order before this Court by referring the definition of trial in certain dictionaries. The legal Glossary published by the Ministry of

Law Government of India defines it as under;

" Trial" (1) A judicial examination in accordance with law, of a cause either civil or criminal of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it.

(2) These subjugation of a person or thing to test or examination.

Law Lexicon

(1) A judicial examination in accordance with law, of a cause either civil or criminal, of the issues between the parties, whether of law or fact, before a court that has jurisdiction over it. (S.407 (1) (C) (iii) Cr.P.C. (2) The subjugation of a person or thing to test or examination.

Chamber's Dictionary

Examination by a Court to determine a question of law or facts.

In support of his submission he also cited some decisions as under;

**(1) Union of India and others v. Major General Madan Lal Yadav ( Retd.) 1996 Supreme Court 1340.**

7. In this case Hon'ble the Supreme Court has considered the meaning of word " trial commenced". Relevant paragraphs are extracted below;

14. According to Ballentine's Law Dictionary (2nd ed.)' trial means:

" an examination before a competent tribunal, according to the law of the land, of the facts or law put in issue in a cause, for the purpose of determining such issue. When a Court hears and determines any issue of fact or law for the purpose of determining the right of the parties, it may be considered a trial."

15. In Block's Law Dictionary (sixth edition) Centennial Edition, the word " trial is defined thus:

" A judicial examination and determination of issues between parties to action, whether they be issues of law or of fact, before a Court that has jurisdiction... A judicial examination, in accordance with law of the land, of a cause, either civil or criminal, of the issues between the parties, whether of law or facts before a court that has proper jurisdiction.

16. In Webster's Comprehensive Dictionary - International Edition at page 1339, the word" trial is defined thus:

... "The examination, before a Tribunal having assigned jurisdiction, of the facts or law

involved in an issue in order to determine that issue. A former method of determining guilt or innocence by subjecting accused to physical tests of endurance, as by ordeal or by combat with his accuser... in the process of being tried or tested... made or performed in the course of trying or testing."

17. The word 'commence' is defined in Collins English Dictionary to mean, "to start or begin; come or cause to come into being, operation etc." In Black's Law dictionary, it is defined to mean:

"To initiate by performing the first act or step. To begin, institute or start. Civil Action in most jurisdiction commenced by filing a complaint with the court... Criminal action is commenced within statute of limitation at time preliminary complaint or information is filed with Magistrate in good faith and a warrant issued thereon... A criminal prosecution is "commenced".(1) when information is laid before Magistrate charging commission of crime, and a warrant of arrest is issued or (2) when grand jury has returned an indictment.

18. In the "Words and Phrases" (Permanent Edition) vol. 42 A at page 171, under the head "commencement" it is stated that "A 'trial' commences at least from the time when work of empanelling of a jury begins."

19. It would, therefore, be clear that trial means act of proving or judicial examination determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with performance of the first or steps necessary or essential to proceed with trial.

8. Hon'ble Supreme Court in the case of **Vidyabai and others v. Padmalatha and another decided on 12th December, 2008 in Civil Appeal No. 7251 of 2008** has held that the trial is deemed to have commenced when the issues are settled and the case is set down for recording of the evidence. In the case of **Baldev Singh and others v. Manohar Singh and another reported in (2006) 6 Supreme Court Cases 498** the Hon'ble Supreme Court has discussed the principles applicable to the amendment of the written statement. Relevant paragraph 17 is quoted below;

"Before we part with this order, we may also notice that proviso to Order 6, Rule 17 C.P.C. provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6, Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. A noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the

application for amendment of the written statement in view of proviso to Order 6, Rule 17 C.P.C. which confers wide power and unfettered discretion to the court to allow an amendment of the written statement at any stage of the proceedings."

9. In the case of Mrs. Suneel Sodhi ( supra) the trial court on 22.7.2002 the trial court fixed the dates of trial from 22nd to 25th October, 2002 and parties were directed to take steps for filing evidence by way of affidavit etc. The High Court of Delhi expressed the opinion that it can safely be concluded that the actual trial commences from 22nd October 2002 to 25th October, 2002. The present application (application for amendment) was made on 8th October, 2002 and hence would not fall within the prohibition of amended Order 6, Rule 17 C.P.C.

10. Order 6, Rule 17 reads as under:

"Amendment of pleadings: 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.

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 the trial."

11. In the light of the principles for amendment of the written statement as above when I considered the facts of the present case, I find that in the case at hand the issues have been framed and the date was fixed for production of evidence. Meanwhile, the respondent/defendant moved an application for amendment of written statement. The Hon'ble Supreme Court in the cases of Baldeo Singh (supra) and Major General Madan Lal Yadav (supra) has clearly held that the trial commences with an examination of the facts or law put in issue in a cause for the purpose of determination of such issue.

12. In the light of the aforesaid proposition laid down by Hon'ble the Supreme Court, I am of the considered opinion that in the case at hand the trial is yet to commence. Therefore, I do not find error in the order impugned, passed by the revisional court.

13. In the result, the writ petition is dismissed.