

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

...
OWP no.873/2017

Reserved on: 18.08.2021

Pronounced on: 08.10.2021

Aziz

.....Petitioner(s)

Through: Mr M.S.Latief, Senior Advocate
with Mr Zahid Khan, Advocate

Versus

Ghulam Mohammad

.....Respondent(s)

Through: Mr Shakir Mehmood, Advocate

CORAM:

HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE

JUDGEMENT

1. Ghulam Mohammad alias Gulla/Mohamad – respondent herein has filed a civil suit titled Ghulam Mohammad v. Rasool and others, before the court of Munsiff, Charar-i-Sharief (for brevity “Trial Court”). Respondent/plaintiff sought amendment of the plaint. The Trial Court by order dated 12th June 2017 allowed amendment with costs of Rs.1500/- to be paid by plaintiff/respondent to defendants. It is this order, of which petitioner is aggrieved and seeks setting-aside thereof.
2. Heard and considered.
3. According to learned senior counsel appearing for petitioner, impugned order is not in consonance with provisions of Order VI Rule 17 of the Code of Civil Procedure as amendment sought for by respondent was not bona fide as it caused prejudice to petitioner. The order impugned is stated to have been passed in a mechanical and slipshod manner inasmuch as Trial Court has not appreciated the law cited by petitioner.

4. Order VI Rule 17 CPC provides that 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. However, 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.
5. Perusal of impugned order reveals that the Trial Court has made a comprehensive, lucid and eloquent discussion as to subject-matter of the suit as also the amendment sought for by respondent and found that amendment does not change the basic and core issue/controversy or fundamental character of the suit and that amendment will not only help in effective adjudication of core controversy but will also help the parties to prove the pleas taken in a better way. Impugned order does not disclose any perversity, infirmity and is a well reasons and, therefore, does not warrant any interference and as a consequence of which, instant writ petition is liable to be dismissed.
6. For the reasons discussed above, the writ petition is without any merit and is, accordingly, dismissed with connected CM(s). Interim direction, if any, shall stand vacated.
7. Copy along with record, if summoned/received, be sent down.

(Vinod Chatterji Koul)
Judge

Srinagar
08.10.2021
Ajaz Ahmad, PS

Whether the order is reportable: Yes/No.