

Before : J. V. Gupta, A.C.J.

FOOD CORPORATION OF INDIA,—Petitioner.

versus

M/S KRISHNA RICE & GENERAL MILLS, PATIALA,—Respondent.

Civil Revision No. 220 of 1988

4th June, 1990

Code of Civil Procedure (V of 1908)—O. VI rl. 17—Application filed for amendment of plaint in first appeal—Arguments concluded already—Case fixed for pronouncement of judgment—Such application—Whether can be entertained.

Held, the application for amendment of the plaint could not be entertained when the arguments were concluded and the case was fixed for pronouncement of the judgment. An application under O. VI rl. 17, Code of Civil Procedure, can be entertained by a Court only at the stage of the proceedings.

(Paras 4 & 2)

Petition under Section 115 C.P.C. for revision of the order of the Court of M. S. Luna, Addl. Distt. and Sessions Judge, Patiala, dated 21st October, 1987 reversing that of Shri G. S. Dhaliwal, P.C.S., Sub-Judge, 1st Class, Fatehgarh Sahib. dated 20th October, 1986 allowing the proposed amendment subject to payment of Rs. 100 as costs and adjourning the case to 29th October, 1987 for payment of costs. The amended plaint is already placed on the file with the application under disposal. The defendant-appellant shall file written statement on the next date if the costs are paid and amended plaint is received on payment of costs.

Claim : Suit for Recovery of Rs. 14731.88 Ps. on account of rent for the open space and Godown alongwith interest.

Claim in revision : For reversal of the order of lower appellate court.

G. C. Garg, Sr. Advocate with K. L. Malhotra, for the petitioners.

B. P. Singla, Advocate, for the respondent.

ORDER

J. V. Gupta, A.C.J.

(1) This revision petition is directed against the order of the Additional District Judge, Patiala, dated October 21, 1987, whereby the application for amendment of the plaint was allowed in appeal

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and that too after the case was argued and was fixed for pronouncement of judgment.

(2) At the time of the motion hearing, it was contended that the lower appellate Court heard arguments on the appeal on September 23, 1987, and directed the same to come up on September 24, 1987, for orders. Thus, on conclusion of arguments, no proceedings were pending before it. An application under Order VI rule 17, Code of Civil Procedure, can be entertained by a Court only at the stage of the proceedings. In the present case, the application for amendment was moved on September 24, 1987, the date fixed for pronouncement of orders.

(3) The learned counsel for the petitioner submitted that since no proceedings were pending at the time when the application for amendment was made, the same could not be allowed. In support of the contention, the learned counsel relied upon *Madan Mohan Aggarwal v. Smt. Mansadevi* (1). The learned counsel also submitted that there was no ground for allowing the amendment at the appellate stage when the suit was already decreed by the trial Court.

(4) After hearing the learned counsel for the parties, I find merit in the contention raised on behalf of the petitioner. In *Madan Mohan Aggarwal's case* (supra), the party wanted to lead additional evidence after the arguments were concluded. It was held by this Court that the trial Court had no jurisdiction to allow such evidence as no such proceedings can be said to be pending when the arguments had already been heard. Similarly, in the present case the application for amendment of the plaint could not be entertained when the arguments were concluded and the case was fixed for pronouncement of the judgment.

(5) Consequently, the revision petition succeeds. The impugned order is set aside and the application for amendment of the plaint is dismissed with costs. However, since further proceedings were stayed by this Court, the parties are directed to appear before the Additional District Judge, Patiala, on June 14, 1990, for further proceedings in accordance with law.

R.N.R.

(1) (1985-2) Punjab Law Reporter 206.