

THE STATE OF BIHAR & ORS.

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v.

MODERN TENT HOUSE & ANR.

(Civil Appeal No.3845 of 2008)

AUGUST 16, 2017

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[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Code of Civil Procedure, 1908 – Or. 6 r. 17 – Amendment of pleadings – Application for amendment in the written statement to the money suit u/Or. 6 r. 17, by the appellants-defendants – Rejection of, by courts below – Justification of – Held: Proposed amendment is sought to elaborate the facts originally pleaded in the written statement; it is in the nature of amplification of the defense already taken; no prejudice would be caused to the respondents-plaintiffs if the amendment is allowed, because the initial burden to prove the case continues to remain on the plaintiffs; and since the trial is not yet completed, it is in the interest of justice that the proposed amendment should have been allowed by the court below rather than to allow the defendants to raise such pleas at the appellate stage – Thus, the application filed by the defendants u/ Or. 6 r. 17 is allowed.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3845 of 2008.

From the final Judgment and Order dated 17.04.2006 passed by the High Court of Patna in C.R. No. 1249 of 2005.

Shreyas Jain, Gopal Singh, Advs. for the Appellants.

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Nagendra Rai, Sr. Adv., Braj Kishore Mishra, Ms. Aparna Jha, Arup Banerjee, Advs. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. This appeal is filed by the defendants against the final judgment and order dated 17.04.2006 — passed by the High Court of Patna in C.R. No. 1249 of 2005 whereby the High Court disposed of the civil revision filed by the appellants herein while giving them liberty to raise such question in appeal in case the decision of the Trial Court goes against them.

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A 2. Facts of the case need not be mentioned in detail except to the extent necessary for the disposal of this appeal.

B 3. The respondents (plaintiffs) have filed a money suit (Suit No.28 of 2002) in the Court of sub-Judge-1 Chhabra against the appellants (defendants) for recovery of Rs.41,59,418/-. The appellants filed their written statement and denied therein the respondents' claim by joining issues on facts. Issues have accordingly been framed on the basis of the pleadings. It appears that the evidence of respondents (plaintiffs) is over and that of the appellants (defendants) remains.

C 4. The appellants filed an application under Order 6 Rule 17 of the Code of Civil Procedure 1908 (hereinafter referred as "the Code") seeking amendment in their written statement by adding two Paragraphs in their written statement. The respondents (plaintiffs) opposed the application.

D 5. The Trial Court dismissed the application and the High Court in revision filed by the appellants upheld the dismissal giving rise to filing of this appeal by the defendants.

E 6. The short question involved in this appeal is whether the two Courts below were justified in rejecting the appellants' (defendants) application for amendment sought in their written statement under Order 6 Rule 17 of the Code?

7. It is not in dispute that the suit filed by the respondents against the appellants out of which this appeal arises is still pending. It is also not in dispute that the evidence of the parties is not yet over. In other words, the trial in the suit is going on.

F 8. We have perused the amendment application filed by the appellants. We find that firstly, the proposed amendment is on facts and the appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defense already taken; thirdly, it does not introduce
G any new defense compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defense already taken nor will result in withdrawing any kind of admission, if made in the written statement; fifthly, there is no prejudice to the plaintiffs, if such amendment is allowed because notwithstanding the defense or/and the proposed amendment, the initial burden to prove
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the case continues to remain on the plaintiffs; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the Courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises. A

9. In view of foregoing discussion, the appeal succeeds and is allowed. The impugned order is set aside. The application (M.A. No.28 of 2002) dated 07.04.2005(Annexure P-4) filed by the appellants under Order 6 Rule 17 of the Code is allowed. The appellants (defendants) are permitted to amend their written statement and incorporate the amendment as prayed in their application. B

10. The respondents (plaintiffs) are also given an opportunity to amend their plaint and adduce any further evidence, if they so desire before defendants are called upon to adduce their evidence. C

11. Since the suit is quite old, we direct the Trial Court to ensure its expeditious disposal in accordance with law preferably within 6 months from the date of parties appearance. Parties to appear before the Trial Court on 04.09.2017. D

Nidhi Jain

Appeal allowed.