

N. C. BANSAL

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v.

UTTAR PRADESH FINANCIAL CORPORATION & ANR.

(Civil Appeal No. 882 of 2018)

JANUARY 25, 2018

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

Code of Civil Procedure, 1908 – Or.7, r.14 and Or.6, r.17 – Whether in the pending suit in question, the two Courts below were justified in dismissing the three applications filed by the plaintiff (i) application u/Or.7, r.14 for filing of documents; (ii) application u/Or.6, r.17 seeking amendment in the plaint; (iii) application seeking directions against the respondents for production of some original documents – Held: The two applications filed by appellant under Or.7, r.14 and Or.6, r.17 should have been allowed and he should have been permitted to amend the plaint and file the additional documents – For the reason that Firstly, the suit is still at initial stage, i.e., the trial has not yet begun; Secondly, the proposed amendment sought in the plaint does not change the nature of suit; Thirdly, the applications could not be said to have been filed by the plaintiff belatedly because the suit had been dismissed by the trial Court as not maintainable in its initial stages and for all these years it was sub judice in appeal – It is only after the Appellate court remanded the case to the trial Court for its trial, the appellant filed the applications in the suit – Fourthly, the Courts, in these circumstances, should have been liberal in allowing the proposed amendment – Insofar, as the third application for production of documents is concerned, no argument advanced by the appellant, therefore, order of its rejection upheld.

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Allowing the appeal, the Court

HELD: 1.1 On perusal of the pleadings, it is clear that the two applications filed by the appellant(plaintiff) under Or.6, r.17 and Or.7, r.14 should have been allowed and he should have been permitted to amend the plaint and file the additional documents. [Para 17][357-C]

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1.2 It is for the reason that firstly, the suit is still at the

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A initial stage, i.e., the trial has not yet begun; Secondly, the proposed amendment sought in the plaint does not change the nature of suit; Thirdly, the applications could not be said to have been filed by the plaintiff belatedly because the suit had been dismissed by the Trial Court as not maintainable in its initial stages and for all these years it was *sub judice* in appeal. It is only after
 B the Appellate court remanded the case to the Trial Court for its trial, the appellant (plaintiff) filed the applications in the suit and sought permission to amend the plaint and file certain documents in support thereof; Fourthly, the Courts, in these circumstances, should have been liberal in allowing the proposed amendment.
 C So far as the filing of documents is concerned, this application too should have been allowed on the same grounds. When the suit is still at its initial stage and the trial is yet to begin and when the documents filed are alleged to be that of the respondents themselves having obtained through RTI, there is no reason why
 D the appellant(plaintiff) be not allowed to file them. [Paras 18, 19][357-D-G]

2. So far as the third application for production of documents by the respondents is concerned, no argument was advanced by the appellant. Therefore, the order of its rejection by the two
 E Courts below is upheld. The two applications filed by the appellant(plaintiff), i.e., one filed under Order 7 Rule 14 and the other under Order 6 Rule 17 of the Code are allowed, however, subject to the appellant paying cost of the respondents. [Paras 20, 22][357-H; 358-C-D]

F CIVIL APPELLATE JURISDICTION: Civil Appeal No.882 of 2018.

From the Judgment and Order dated 19.12.2016 of the High Court of Delhi at New Delhi in CMM No.1223 of 2016

Shantanu Bansal, Nitin Bhardwaj, Advs. for the Appellant.

G Shrish Kumar Misra, Adv. for the Respondents.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

H 2. This appeal is filed by the plaintiff against the final judgment and order dated 19.12.2016 passed by the High Court of Delhi at New

Delhi in CM(M) No. 1223 of 2016 whereby the High Court dismissed the petition and upheld the order of the Trial Court dated 21.09.2016 in Civil Suit No.7930 of 2016. A

3. In order to decide the short question, it is not necessary to set out the facts in detail and mentioning of the few facts alone would suffice.

4. The controversy involved in the appeal is whether the two Courts below were justified in dismissing the three applications filed by the plaintiff in a pending suit, namely, (i) application under Order 7 Rule 14 of the Code for filing of documents, (ii) application under Order 6 Rule17 of the Code seeking amendment in the plaint, and (iii) application seeking directions against the respondents for production of some original documents. B C

5. The appellant is the plaintiff and the respondents are the defendants in the suit out of which this appeal arises.

6. The appellant (plaintiff) has filed a civil suit being Civil Suit No. 252/2005 now renumbered as (C.S. No 7930/2016) against the respondents (defendants) in the Court of JSCC-Cum ASCJ-cum-Guardian Judge (West) Delhi. D

7. The appellant's suit is for a declaration and permanent injunction in relation to certain properties (hereinafter referred to as "the suit property"). The appellant has claimed the following reliefs: E

"It is, therefore, most respectfully prayed that the Hon'ble Court be pleased - to pass the decree of declaration as the said property (at the second floor) bearing No.21 NWA Club Road, Punjabi Bagh Extn., New Delhi-110026 is not a collateral security or not a mortgage property under the defendants and also to pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants its agents, servant, attorneys, nominees etc. etc. from taking forcible possession or selling of the said premises bearing No.21, NWA Club Road, Punjabi Bagh Extn., New Delhi-110026 (situated at second floor on plot no.21 in NVVA in the layout plan of the Adarsh Shawan Co-op. House Building Society Ltd. Colony known as Punjabi Bagh Extn. In the area of Viii Madipur, Delhi-110026 as shown in red colour in the

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A **site plan and from creating any interference in the use and enjoyment of the said property, in the interest of justice.**

Any other relief, which this Hon'ble Court may deem fit and proper be also passed in favour of the plaintiff and against the defendants along with the cost of the suit."

B 8. The respondents have filed their written statement and denied the appellant's claim set up in the plaint. The respondents, however, also raised certain legal objections regarding the maintainability of the appellant's suit. The Trial Court upheld the objections raised by the respondent and accordingly dismissed the appellant's suit vide judgment/
C decree dated 20.09.2011 in the initial stage itself as not maintainable.

9. The appellant felt aggrieved and filed appeal being R.C.A. 121/14/11 before the Additional District Judge, Tis Hazari Court, New Delhi. By order dated 20.11.2014, the first Appellate Court allowed the appellant's appeal and while setting aside the judgment/decree of the
D Trial Court remanded the case to the Trial Court for deciding the suit on merits.

10. It appears that the respondents (defendants) did not take up the matter to the High Court against the order of the first Appellate Court and, therefore, the case has now gone back to the Trial Court to
E proceed with the trial in the suit.

11. After remand, the appellant (plaintiff), as mentioned above, filed three applications in his pending suit. One was under Order 7 Rule 14 of Code seeking permission to file some additional documents, second was an application under Order 6 Rule 17 seeking amendment in the
F plaint and the third application was for a direction to the respondents for production of some original documents.

12. The respondents (defendants) opposed the applications filed by the appellant. The Trial Court by order dated 21.09.2016 dismissed the applications filed by the appellant (plaintiff).

G 13. The appellant felt aggrieved and filed writ petition under Article 227 of the Constitution of India in the High Court of Delhi. By impugned order, the Single Judge dismissed the appellant's (plaintiff's) writ petition and upheld the order of the Trial Court.

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14. Against the said order, the appellant(plaintiff) has felt aggrieved and filed this appeal by special leave in this Court questioning its legality and correctness. A

15. Heard Mr. Shantanu Bansal, learned counsel for the appellant and Mr. S.K. Misra, learned counsel for the respondents.

16. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the order of the Trial Court dated 21.09.2016 and also the impugned order of the High Court allow the two applications filed by the plaintiff (appellant herein), namely, application filed under Order 7 Rule 14 and the application filed under Order 6 Rule 17 of the Code. B C

17. We have perused the pleadings and also the two applications under consideration filed by the appellant. In our considered opinion, both the applications filed by the appellant(plaintiff) should have been allowed and he should have been permitted to amend the plaint and file the additional documents. D

18. It is for the reason that firstly, the suit is still at the initial stage, i.e., the trial has not yet begun; Second, the proposed amendment sought in the plaint does not change the nature of suit; Third, the applications could not be said to have been filed by the plaintiff belatedly because the suit had been dismissed by the Trial Court as not maintainable in its initial stages and for all these years it was *sub judice* in appeal. It is only after the Appellate court remanded the case to the Trial Court for its trial, the appellant (plaintiff) filed the applications in the suit and sought permission to amend the plaint and file certain documents in support thereof; Fourth, the Courts, in these circumstances, should have been liberal in allowing the proposed amendment. E F

19. So far as the filing of documents is concerned, this application too should have been allowed on the same grounds on which we have allowed the amendment application. In other words, when the suit is still at its initial stage and the trial is yet to begin and when the documents filed are alleged to be that of the respondents themselves having obtained through RTI, there is no reason why the appellant(plaintiff) be not allowed to file them. G

20. So far as the third application for production of documents by the respondents is concerned, no argument was advanced by the learned counsel for the appellant. We, therefore, uphold the order of its rejection H

A by the two Courts below. In other words, our order is confined to consideration of only two applications mentioned above.

21. We, however, make it clear that we have not expressed any opinion either on the merits of the proposed amendment or on the alleged documents sought to be filed by the appellant. It is for the appellant to
B prove the case set up in the plaint including the amended pleadings so also to prove the documents and its relevance in accordance with law by adducing adequate evidence.

22. In view of forgoing discussion, the appeal succeeds and is allowed. The impugned order is set aside so also the order dated
C 21.09.2016 is set aside to the extent indicated above. As a consequence, the two applications filed by the appellant(plaintiff), i.e., one filed under Order 7 Rule 14 and the other under Order 6 Rule 17 of the Code are allowed, however, subject to the appellant paying a cost of Rs.10,000/- to the respondents. Let the cost be paid by the appellant to the
D respondents within one month.

23. Let the amendment be incorporated in the plaint as proposed by the plaintiff in his application for amendment within one month. The respondent is granted an opportunity to amend their written statement and make consequential amendment in reply to the amended plea of the plaintiff(appellant).
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24. The appellant(plaintiff) is also allowed to file the additional documents, as prayed by him. The respondent(defendant) is also granted an opportunity to file additional documents in rebuttal, if they so desire.

25. The Trial Court will then reframe the issues arising in the case
F in the light of the original pleadings and the amended pleadings and make an endeavor to decide the suit in accordance with law preferably within one year as an outer limit uninfluenced by any observations made by the High Court in the impugned order and our observations in this order.