

IN THE HIGH COURT OF JAMMU & KASHMIR AND LA DAKH
AT SRINAGAR

Reserved on:16.03.2023
Pronounced on: 31.03.2023

CM(M) No.96/2022 and
CM(M) No.73/2022

Mohammad Abdullah Bhat

... Petitioner(s)

Through: -Mr. M.I.Qadiri, Sr. Advocate with
Mr. Avees Geelani, Advocate.

Vs.

Nazir Ahmad Bhat and Ors

...Respondent(s)

Through: -Mr. S.N.Ratanpuri, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. By this common order, afore titled two writ petitions under Article 227 of Constitution of India, filed by the petitioner/plaintiff, are proposed to be disposed of.
2. Vide CM(M) No.73/2022, the petitioner/plaintiff has challenged order dated 26.03.2022, passed by the learned Sub Judge Chadoora (hereinafter referred to as 'the trial Court'), whereby application of the petitioner for amendment of the plaint has been partly declined.
3. Vide CM(M) No.96/2022, the petitioner/plaintiff has challenged order dated 30.04.2022 passed by the learned trial Court, whereby the petitioner's right to file the amended plaint has been closed.

4. Briefly stated the facts of the case are that the petitioner/plaintiff filed a suit for permanent injunction against the respondents/defendants before the trial Court seeking a decree of permanent injunction restraining the defendants from infringing upon his rights and restraining them from raising the level of the suit property and the plinth therein over and above the level of the land and plinth of the plaintiff.
5. In the original plaint the petitioner/plaintiff has pleaded that he is owner in possession of land measuring 1 kanal 8 marlas under khasra No.263, situated at Alamdar Colony Bugam Batapora Tehsil Chadoora and that he has constructed a residential house on the said land. It has been pleaded that the defendants have started construction of two residential houses in the land measuring 1 kanal 14 marlas under khasra No.264 situated at Bogam Batapora Tehsil Chadoora and for this purpose they have commenced raising construction of two plinths.
6. It has been alleged that construction of two residential houses by the defendants in their property is detrimental to the rights and interests of the plaintiff, as the defendants have started to raise the level of their property by constructing the plinths of their residential houses over and above the level of land and plinth of residential house of the plaintiff. According to the petitioner/plaintiff this act of the defendants would cause damage to his property and infringe upon his rights, as it would result in

percolation of rain and drain water towards the land and residential house of the plaintiff, which is located at lower level.

7. The suit has been contested by the defendants by filing their written statement. In their written statement the defendants have contended that the land of the plaintiff is not adjacent to the land of the defendants and that there is a road in between the properties of the parties.
8. During the pendency of the suit, the petitioner/plaintiff filed an application seeking amendment of the plaint. In the said application it has been submitted that during the pendency of the suit, defendant Nos.2 to 4 have completed the construction of their plinths of their proposed houses and raised its height to more than 6 feet from the ground level, which is at par with the existing level of the road. It has been submitted that the said construction is required to be demolished, so as to restrict its height to 3 feet. On this ground it has been urged that the plaint needs to be amended.
9. Another amendment that has been sought by the petitioner/plaintiff in the said application is that during the pendency of the suit a compromise with respect to the subject matter of the suit has been entered into by the parties. According to the petitioner/plaintiff the said compromise was drafted by the counsel for the defendants and was signed by the counsel of both the parties. However, due to paucity of time the compromise

could not be placed on record. It has been submitted that the dispute between the parties has been settled on 21.10.2021 but the defendants have retracted from the said compromise. Accordingly, the plaintiff has sought permission to plead these facts in the amended plaint with a relief of demolition of the construction raised by the defendants.

10. Learned trial Court vide the impugned order has partly allowed the application of the plaintiff. While allowing the amendment to the extent of incorporation of subsequent events relating to raising of construction during the pendency of the suit, the learned trial Court has declined to allow the amendment incorporating the facts relating to the settlement between the parties.

11. The petitioner/plaintiff has challenged the impugned order and contended that whole of the amendment sought by the petitioner deserves to be allowed and that the learned trial Court was not justified in disallowing amendment to the extent of incorporation of facts relating to compromise arrived at between the parties.

12. It has been contended that it was incumbent upon the learned trial Court to allow the application of the petitioner/plaintiff as a whole, so as to determine the real controversy between the parties. It has further been submitted that the reasons assigned for declining the permission regarding amendment pertaining to

incorporation of facts relating to compromise between the parties are not cogent and that the same are not sustainable in law.

13. It appears that while the proceedings challenging order dated 26.03.2022 were pending before this Court, the learned trial Court passed order dated 30.04.2022, whereby right of plaintiff/petitioner to file the amended petition was closed in terms of Order VI Rule 18 of CPC. The said order has been challenged by the petitioner by contending that he was prosecuting a bona fide remedy before this Court with the hope that his petition shall be allowed and he will be permitted to amend the plaint in terms of the amendment sought by him and consequently he did not file the amended plaint before the trial Court within the stipulated time. It has been submitted that the trial Court should have allowed further time to the petitioner/plaintiff to file the amended plaint and waited for the decision relating to challenge laid by him to order dated 26.03.2022 passed by the said Court.

14. I have heard learned counsel for the parties and perused the record of the case including the record of the trial Court.

15. As already noticed, the petitioner/plaintiff sought amendment of the plaint on two counts. One, that he should be permitted to incorporate subsequent event of raising construction of plinth to the height of 6 feet during the pendency of the suit and the second, that during the pendency of the suit a compromise has

been arrived at between the parties but the same could not be placed before the Court as the defendants resiled from the same. So far as first part of the amendment sought is concerned, the same has been allowed by the trial Court and it is not under challenge before this Court. So we are only concerned with the 2nd part of the amendment sought by the petitioner.

16. As per the case of the plaintiff during the pendency of the suit the compromise was arrived at between the plaintiff and the defendants. The terms of the compromise were drafted by the counsel for the defendants and the same were also signed by the counsel, but somehow the defendants resiled from it and it was not placed before the Court. The plaintiff has not even placed on record a copy of the said compromise before the Court though he has pleaded that original of the same is with the defendants. As per plaintiff's own case, the compromise was not signed by the defendants and once the said compromise admittedly was not signed by the defendants. Thus even if it existed, the same is only a piece of paper and does not have any bearing upon the outcome of the suit. In fact learned trial Court has, in its impugned order, recorded that the said compromise may have been arrived at between the parties during the mediation proceedings but the same could not materialize. Whatever has transpired between the parties before the Mediator cannot be subject matter of adjudication before the Court. The proceedings conducted before

the Mediator are confidential in nature and the parties cannot be compelled to abide by what was offered by them during the negotiations before the Mediator. Rule 20 of J&K Mediation and Conciliation Rules 2019, which reads as under:-

“20. CONFIDENTIALITY, DISCLOSURE AND INADMISSIBILITY OF INFORMATION.

a) When a Mediator/Conciliator receives factual information concerning the dispute(s) from any party, he shall disclose the substance of that information to the other party, so that the other party may have an opportunity to present such explanation as it may consider appropriate.

Provided that, when a party gives information to the Mediator/Conciliator subject to a specific condition that it be kept confidential, the Mediator/Conciliator shall not disclose that information to the other party.

b) Receipt or perusal, or preparation of records, reports or other documents by the Mediator/Conciliator, while serving in that capacity shall be confidential and the Mediator/Conciliator shall not be compelled to divulge information regarding those documents nor as to what transpired during the Mediation/Conciliation before any court or tribunal or any other authority or any person or group of persons.

c) Parties shall maintain confidentiality in respect of events that transpired during the Mediation/Conciliation and shall not rely on or introduce the said information in other proceedings as to:

i) views expressed by a party in the course of the Mediation/Conciliation proceedings;

ii) documents obtained during the Mediation/Conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by the parties or the Mediator/Conciliator;

iii) proposals made or views expressed by the Mediator / Conciliator.

iv) admission made by a party in the course of Mediation/Conciliation proceedings;

v) the fact that a party had or had not indicated willingness to accept a proposal;

d) There shall be no stenographic, audio or video recording of the Mediation/Conciliation proceedings.

e) No statement of parties or the witnesses shall be recorded by the Mediator/Conciliator.”

17. Thus, what has transpired between the parties during the mediation proceedings which includes the drafts given by the parties has to remain confidential. The same cannot be used by the parties in court proceedings against each other. Therefore, the alleged draft compromise would not help the trial Court in determining the real controversy between the parties. The learned trial Court has rightly declined the amendment application to this aspect. Thus, there is no illegality, much less gross illegality committed by the trial Court while passing impugned order dated 26.03.2022.

18. That takes us to impugned order dated 30.04.2022, whereby the learned trial Court has closed right of the plaintiff to file the amended plaint. It has been submitted by learned counsel for the respondents/defendants that in an earlier round of litigation the petitioner had invoked revisional jurisdiction of this Court challenging order dated 26.03.2022 but the revision petition was dismissed by this Court in terms of order dated 26.04.2022 being not maintainable, whereafter, the petitioner filed the instant petition under Article 227 of the Constitution challenging the same order. It has been further submitted that during the pendency of this petition an interim order was passed by this Court on 24.05.2022, whereby trial Court was directed to proceed with the trial of the case expeditiously. Thus, according to the

learned counsel for the respondents, the learned trial Court has rightly proceeded further and closed the right of the petitioner to file the amended plaint.

19. It is true that vide order dated 24.05.2022 trial Court was directed to proceed further in the matter but the impugned order has been passed by the trial Court on 30.04.2022 when there was no such direction from this Court. The petitioner was prosecuting a bona fide remedy before this Court laying challenge to order dated 26.03.2022 and was hoping that his petition would be allowed and he would be permitted to amend the plaint in accordance with the application made by him before the trial Court. So under this bona fide belief, the petitioner desired to file the amended plaint only after the decision of his petition under Article 227 of the Constitution, whereby he had laid challenge to order dated 26.03.2022 of the trial Court. Thus, the petitioner cannot be faulted for awaiting decision of the aforesaid petition before filing the amended plaint before the trial Court. The petitioner, therefore, was fully justified in not filing the amended plaint before the learned trial Court within the stipulated time.

20. High Court of Punjab and Haryana in the case *Vinod Kumar Arora v. Smt. Santosh Kumari and another*, reported in AIR 2005 Punjab and Haryana 169, has held that period of 14 days as provided under Order VI Rule 18 CPC is not mandatory in nature. In view of this position of law, it would have been

appropriate for the trial Court to await decision of the petition challenging order dated 26.03.2022 instead of closing the right of the petitioner to file the amended plaint. Order dated 30.04.2022 passed by the learned trial Court is, therefore, not sustainable in law and deserves to be set aside. If the said order is allowed to stand, it would cause grave prejudice to the petitioner/plaintiff.

21. For what has been discussed hereinbefore, the petition challenging order dated 26.03.2022 passed by the trial Court is dismissed and the said order is upheld, whereas, the petition challenging order dated 30.04.2022 is allowed and the said order is set aside. The petitioner is directed to file the amended plaint in accordance with permission granted to him by the trial Court by or before next date of hearing fixed before the trial Court, whereafter the trial Court shall proceed further in the matter in accordance with law.

22. Copy of this order be sent to the learned trial Court.

(SANJAY DHAR)
JUDGE

SRINAGAR
31.03.2023
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes