

R.C.S. No.05/2003  
Kacharu -vs- Wasudeo**ORDER BELOW EXH.145**

Heard Shri Gaikwad Advocate for applicant / plaintiff and Shri Prasad for non-applicant / defendant. Perused the application and say filed on it. The instant application filed by applicant / plaintiff to permit him to make necessary amendment in the plaint as per order passed dated 25.11.2009 on Exh.59. It is submitted that, due to inadvertence of the counsel the amendment was not carried out by the applicant / plaintiff and amended plaint was not filed within stipulated time. The plaintiff and defendants lead and closed their respective evidence. It is further submitted at the time of preparation of arguments, it is transpired that, amendment was not carried out and also amended plaint was not filed. It is submitted that, counsel could not amend the plaint. Therefore, for counsel's mistake the applicant should not be suffered. The present suit is in respect of partition, separate possession of immovable property therefore, plaintiff will suffer heavily, if plaintiff is not allowed the carry out amendment in the suit. On above all circumstances prayed to allow the application and to make necessary amendment. Hence, the application.

2 To counter the application, the defendants filed say and admit the earlier plaintiff filed application for amendment and the same was allowed. It is denied that, due to inadvertence of counsel, plaintiff have not carried out the amendment as per order of this court. It is

submitted that, to carry out the amendment, this court has directed to comply within a stipulated period, but since 25.11.2009 the amendment has not carried out. It is submitted that, plaintiff filed this application up-to 8 years, therefore, now a prayer for carry out the amendment is barred under the provisions of Law. It is submitted that, provision order 6 Rule 18 are clear and mandatory in nature. Therefore, this application cannot be sustained. The plaintiff failed to carry out the amendment within stipulated time and as per order 6 rule 18 for a period of 14 days, at this stage application cannot be allowed and prayed to reject the same.

3                    Heard both counsels at length and perused the record. Ongoing through the order passed by this court at Exh.59 dated 29.11.2009. It is a specific order, in which the Court put a specific time to carry out the amendment the time was for 8 days. The plaintiff never filed any application to extend the same. It is clear from the record that, the defendant filed an application to make consequential amendment at Exh.61 and the same application was filed on 09.12.2009. The record shows that, the copy of that application was received by plaintiff counsel on 09.12.2009 and a specific reply was filed where the application of defendant for a consequential amendment was strongly opposed and prayed to reject. Ongoing through the Exh.61, the plaintiff and his counsel opposed the application by defendant and filed say, therefore, it cannot be inferred that the plaintiff and his counsel inadvertently could not carry out the amendment. It is clear that, plaintiff received the copy and filed say and opposed the application. So, inadvertence cannot be believed. So far as the order of this court dated 29.11.2009 a specific

period of 8 days was fixed.

4 Ongoing through the application Exh.59 a compliance of order regarding payment of cost on 25.11.2009 costs also paid. Therefore, it cannot be said that, due to inadvertence amendment could not be carried out. Apart from this factual aspect, this application have to be considered within the frame work of law i.e. the provision contemplated under CPC i.e. Order 6 Rule 18. On bare reading order 6 Rule 18, it is specified that, if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, of if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court. So far as Rule 18 the mandatory period is fourteen days subject to period extended by the Court. In the instant case no such extension was made. Therefore, this court cannot infringe the statutory period as contemplated under Order 6 Rule 18. It is argued by the counsel for plaintiff as he relied upon some judgment wherein Section 148 of CPC the court have power to enlarge the time. Ongoing through the Sec. 148 where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. As per Section 148 the Code in his discretion enlarge the period, however the limit is 30 days in total.

5 Ongoing through collectively the provision under Order 6 Rule 18 and Section 148 the Court cannot enlarge the time more than 30 days. At the same time, there is no provision by which a delay of 8 years can be condoned with reference to above two statutory provisions. Advocate for applicant relied upon judgment of Hon'ble Apex Court in case of **Smt.Periyakkal and others -vs- Smt. Dakshyani AIR 1983 SC 428**. I have kindly gone through the judgment, the Hon'ble Apex Court discussed the provision of Sec.148 but the case before the Hon'ble Apex Court wherein the execution proceedings were going on and there was a consent decree between the parties. Considering the judgment Cited Supra and the present application, the cited judgment is not applicable to the present application. He relied upon judgment of Hon'ble Apex Court in case of **Jogdhayan -vs- Babu Ram and others AIR 1983 SC 57 and Johri Singh -vs- Sukh Pal Singh AIR 1989 SC 2073**. I have kindly gone through the judgments of the Hon'ble Apex Court held that, a lower appellate Court to grant time for make it payment. Considering the judgments cited Supra and the present application, these are not applicable.

6 During the argument, the counsel for applicant filed pursis that, plaintiff will not lead any evidence or other application when amended the suit. The counsel for defendant submit that, the plaintiff make amendment and new pleading come on record. The defendants have no opportunity to cross the plaintiff on amended plaint. Considering the argument of defendant they will prejudice if the amendment is carried out. Considering the application and the order of this court at Exh.59 passed on

25.11.2009 and this application filed after 8 years. The provision of Code i.e. under Order 6 Rule 18 and Section 148 are clear that Court cannot give time more than 30 days. So, 8 year delay cannot be small period. The aspect of inadvertence of counsel also note no force as discussed earlier. Considering all, the application is devoid of merits and deserves to be rejected. Hence, I pass the following order.

**ORDER.**

- 1) The application Exh.145 is hereby rejected.
- 2) Parties to take note and do the needful.

Date: 19.04.2017

(P.P. Kulkarni)  
Civil Judge, (Jr.Dn.)  
Kuhi.

**CERTIFICATE**

I affirm that the contents of this P.D.F. file of Judgment / Order are word to word, as per original judgment.

Name of Stenographer : Pravin T. Mandale



