

Sunita Negi Vs. M/ Continental Intra-Tech

COMS No. 6 of 2019

2.6.2023

Present: Mr.Anand Sharma, Senior Advocate, alongwith Mr.Karan Sharma, Advocate, for the plaintiff.

Mr.Dibender Ghosh, Advocate, for the defendants.

Mr.Y.P. Sood, Advocate, for the applicant in OMP No. 120 of 2023.

OMP No. 120 of 2023

Reply on behalf of non-applicant/plaintiff stands filed. Reply on behalf of non-applicants/defendants, as prayed, be filed within two weeks.

List for consideration after two weeks.

OMP No.854 of 2022

This application has been filed by defendants seeking amendment in the written statement by proposing insertion of one more preliminary submission as para 6A after para 6 of preliminary objections and by amending para 8 of reply on merit of the written statement, in the following manner:-

“6A. That the present suit for declaration and injunction is barred under the Land Acquisition Act as the suit land was acquired through the Land Acquisition Proceedings in accordance with the provisions of the Land Acquisition Act.

.....

8. That contents of para 8 of the plaint are matter of record and call for no reply. It is submitted that the

facts contained in this para which are contrary to the record are wrong and denied. It is submitted that the land acquired for the construction of the defendant project is used for the same purpose. The suit property was acquired under the provisions of the Land Acquisition Act and as such, the Civil Court has no jurisdiction. The suit for declaration and injunction is thus barred under the Land Acquisition Act.”

Proposed amendment has been opposed by plaintiff on the ground that the issue, related to proposed amendment, has already been adjudicated by co-ordinate Bench in application filed by defendant under Order 7 Rule 11 CPC, which was dismissed vide order dated 4.4.2022.

Learned counsel for the defendants/applicants has submitted that proposed amendment is in consonance with stand already taken in the written statement especially in para 8 of reply on merit of the written statement, wherein it has already been stated that the land acquired for construction of defendant project has been used for the same purpose and on this ground suit is not maintainable.

Application under Order 7 Rule 11 CPC was filed for rejection of plaint on the ground that suit was barred by provisions of Land Acquisition Act and there was no cause of action to the plaintiff to file the suit.

Parameters for deciding an application under Order 7 Rule 11 CPC are different as for deciding such application only averments made in the plaint and documents filed therewith are taken into consideration. Whereas, the issues

framed in the suit are to be decided on the basis of pleadings of the parties and evidence lead by them. Therefore, in order dated 4.4.2022, at the time of deciding application under Order 7 Rule 11 CPC, the Court has already observed that whether or not the plaintiff is entitled to relief claimed in the plaint is a matter of adjudication and in view of issues of cause of action, limitation as also the suit not being maintainable shall be tried and decided by the Court. Therefore, issue of maintainability is to be decided by adjudicating the suit on merits.

Learned counsel for defendants submits that though there is an issue No. 7, framed with respect to maintainability of the suit, but the said issue is restricted in nature but not inclusive of issue of maintainability on the ground proposed to be added in written statement, as it deals with respect to maintainability of the suit in present form only and there is no issue framed with respect to maintainability of suit in light of provisions of Land Acquisition Act or as to whether the suit is barred by law under Land Acquisition Act.

In para 8 reply on merits of written statement, defendants have already taken plea that land acquired for construction of defendant project has been used for the same purpose for which it was acquired and on this ground suit is not maintainable.

I am of the considered opinion that findings returned in order dated 4.4.2022, passed in application under Order 7 Rule 11 CPC, also depicts that issues raised in that

application are required to be adjudicated on merits in the suit and, therefore, rejection of the said application cannot be considered as bar for filing present application for amendment of written statement by adding proposed para 6A in preliminary submissions in the written statement and/or amending para 8 of written statement, which is not a new plea, but only explanatory in nature elaborating the stand already taken by the defendants in para 8 of written statement particularly when the suit is at the stage of examination of plaintiffs witnesses. Therefore, considering the nature of amendment sought and the stage of the suit, I am of the considered opinion that amendment deserves to be allowed.

Accordingly, application is allowed and amended written statement filed with this application is ordered to be taken on record at appropriate place.

The application stands disposed of.

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Replication to the amended written statement, as prayed, be filed within three weeks.

List for consideration after three weeks.

***(Vivek Singh Thakur),
Judge.***

2nd June, 2023
(Keshav)