

Maitreyee Banerjee

Vs

Prabir Kumar Mukherjee

Civil Appeal No. 806 of 1981

(Syed M. Fazal Ali, O. Chinnappa Reddy JJ)

23.02.1981

JUDGMENT

FAZAL ALI, J. -

We have heard counsel for the parties and have gone through the order of the High Court by which the order of the District Judge allowing the amendment of the plaint has been set aside. After going through the amendment prayed for, we are unable to agree with the High Court that the appellant by virtue of the amendment sought, has altered the entire nature of the case or substituted a new cause of action. The High Court has given a number of reasons which relate to the merits of the case and would have to be considered by the trial court after the evidence is concluded. Hence, we refrain from making any observations on the aspects of the matter which have been highlighted by the High Court. We are satisfied that this is not a case where the amendment would work serious injustice to the respondent. The High Court in its power of revision ought not to have interfered in a case like this as no jurisdictional error was involved. This was not a case where the amendment sought was clearly barred by limitation so as to cause an irreparable injury to the respondent. We, therefore, allow this appeal, set aside the order of the High Court and restore the order of the District Judge allowing the amendment. This order, however, will be subject to payment of costs of Rs 2000 to be paid to the respondent by the appellant within a month from today failing which the order of striking down the amendment by the High Court will stand restored.

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