

(2001) 10 KAR CK 0027

In the Karnataka High Court

Case No : Civil Revision Petition No. 2306 of 2001

B. Vasudeva Belegar

APPELLANT

Vs

Sri Anjanaya Gas Agency and Another

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Citation : (2002) 3 CivCC 545 : (2002) 3 CivCC 214 : (2001) ILR (Kar) 5655 : (2002) 5 KarLJ 107 : (2002) 4 RCR(Civil) 501

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : K. Prasad Hegde, for the Appellant; K. Raghavendra Rao, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

M.P. Chinnappa, J.—Heard the learned Advocates appearing for both the parties.

2. The petitioner who is the plaintiff filed a suit for mandatory injunction directing the defendant 2 to supply LPG cylinder which was illegally and unauthorisedly suspended by 2nd respondent and also permanent injunction restraining the first respondent herein from suspending LPG supply and imposing restriction of 21 days, etc. and also for cost of the suit. Subsequently, the petitioner has sought for an amendment claiming damages in a sum of Rs. 13,500/-. That application was rejected by the Court below in O.S. No. 31 of 1991 on the file of II Additional Civil Judge (Junior Division), Kundapura. As against the order passed on I.A. No. VII, dated 27-3-2001, this petition is filed.

3. The only ground on which the application was rejected is that the same is barred by time. The learned Counsel appearing for the petitioner submitted that the claim of the petitioner is within time and even otherwise also this is a question to be decided by the Court at the stage of trial and it cannot be dismissed summarily. To substantiate that he has also placed reliance on a decision of this Court in Hoysala Blow Moulders (India) Limited, Bangalore v.

Surath Goods Transport Service, Bangalore 1997(1) Kar. L.J. 303, wherein this Court has held that amendment of plaint seeking relief of damages in lieu of or in addition to injunction and such alternative relief not specifically claimed, can be permitted to be claimed at any stage of proceedings and bar of limitation is not attracted. Further, the Division Bench of this Court in Sri M.R.K. Rau and others Vs. Corporation of the City of Bangalore, , held that bar of fresh suit on amended claim on date of application, factor to be considered in exercise of discretion. However power of Court to allow amendment to do justice, not affected.

In that case also, the amendment was sought for to amend the plaint to claim damages. The Court has allowed that amendment application.

4. In view of these decisions and more so, the plaintiff has claimed damages by way of an amendment, I hold that it should have been allowed by the Court below. It is also made clear that in regard to the question of limitation is concerned, as held by their Lordships of Supreme Court in Ragu Thilak D. John v. S. Rayappan and Ors. (2001)2 SCC 472, the question of limitation shall be considered by the Court below at the appropriate stage and on that ground itself the amendment application cannot be rejected. Therefore, question of limitation is left open for the respondents to urge before the Court below at the appropriate stage.

With this observation, the petition is allowed. The impugned order is set aside. Consequently, interlocutory application is allowed as sought for permitting the petitioner to amend the plaint.