

(1985) 02 DEL CK 0018

In the Delhi High Court

Case No : Interim Application No. 5612 of 1984 and Suit No. 166 of 1977

Bharat Nidhi Ltd.

APPELLANT

Vs

Shital Prasad Jain

RESPONDENT

Date of Decision : 01-02-1985

Acts Referred:

Citation : (1985) 28 DLT 313

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : K.K. Jain, T.K. Jain and O.N. Vohra, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) This order shall dispose of this application of the defendant made under Order 6 Rule 17 of the CPC for the amendment of his written statement. The proposed amended written statement has also been filed along with this application.

(2) The plaintiff Bharat Nidhi Limited, a Public Limited Company, has brought the suit against the defendant Shital Prasad Jain for the recovery of a sum of Rs. 2,85,557 35 on the basis of a promissory note dated 23-12-1974 and the receipt dated 24-12-1974 evidencing the loan amount of Rs 2,00,000.00 . It was vide letter dated 14-12-1974 that the defendant requested the Board of Directors of the plaintiff company for advancing him a loan of Rs. 2,00,000.00 on the company's usual rate of interest and the amount was to be repaid gradually in Installments over a period of about 1" years and the defendant also offered in the said letter to give a demand promissory note for the said amount. The aforesaid loan was sanctioned by the plaintiff company by passing a resolution in the meeting of the Board of Directors of 21-12-1974 and this loan was to repaid with interest at the rate of 17% per annum with monthly rest.

(3) In paragraph 5 of the written statement the defendant narrated the long drawn out history since 1942 of his association with Dalmia Jain Group of

Industries, Sahu Jain Group of Industries and how his relations with Shanti Prasad Jain and his son Ashok Jain were very intimate and they had been helping each other in a large number of financial and commercial enterprises. The defendant had also taken up the plea in that very paragraph regarding his non-liability to pay the amount under the aforesaid promissory note alleging that the same was without consideration and that the payment there under to him was as per the written and oral understanding and agreement given to him by Shanti Prasad Jain and his son Ashok Kumar Jain who were, at the relevant time, respectively the Group Master of Sahu Jain Group and Chairman of the plaintiff company, and who had assured him in those capacities as also in their personal capacities that the amount under the promissory note was not to be repaid by the defendant in view of the valuable services/contributions by him to the plaintiff from time to time, particularly in the context of transfer of its banking business in India to the Punjab National Bank Limited and streamlining the affairs of the plaintiff thereafter then in a large investment in finance company. Paragraph no. 5 was contained in pages 213 46 of the written statement and after hearing the parties the entire paragraph no. 5 of the written statement was struck off by D.R. Khanna J. vide order dated 6-11-1981 under Order 6 Rule 16 of the Code of Civil Procedure, holding the same to be entirely irrelevant, vexatious and unnecessary for the trial of the suit and the clam set up by the plaintiff observing further that he did not see in what manner any understanding arrived at between the defendant on the one hand and Shanti Prasad Jain and his son Ashok Kumar Jam on the other, could defeat the rights of the plaintiff-company which was a corporate body as there was no resolution alleged under which the plaintiff-company agreed not to enforce the promissory note or realise the amount of the loan.

(4) Against the aforesaid order dated 6-11-1981 of D.R.Khanna J. the defendant filed a SLP in the Supreme Court which was dismissed in liming by the Supreme Court on 15-3-1984 though after issuing notice to the plaintiff. Subsequently, an F.A.O. was filed before the Division Bench of this Court by the defendant against the order dated 6-11-1981 but the same was withdrawn probably on the ground that the matter would would be urged, if necessary, in the appeal against the decree in the suit which might be filed against the ultimate decree in the suit.

(5) The proposed amendments seek to revive the defendant's plea of his non-liability to pay the amount under the promissory note in question on account of his valuable services-contributions to the plaintiff from time to time, particularly in the context of transfer of its barking business in India to the Punjab National Bank Limited and streamlining the affairs of the plaintiff thereafter then in a large investment in financial company and the written and oral understanding agreement and assurance given to the defendant by Ashok Kumar Jain Chairman of the plaintiff-company, on behalf of the plaintiff-company as also by his father S.P. Jain who was then the Group Master of the Sahu Jain Group, as also in their personal capacities. It is submitted by the learned counsel for the defendant that the old history narrated in paragraph 5 of the original written statement is not

sought to be revived by the proposed amendments and that the proposed amendments have reference only to the aforesaid plea of non-liability of the defendant in respect of the promissory note in suit.

(6) To reinforce his contention the learned counsel for the defendant has pointed out that there is another suit being Suit No. 907 of 1976 pending between the parties for the recovery of a sum of Rs. 19,55,890.37 on the basis of some other promissory note executed by defendant in favor of the plaintiff" and the same and identical pleas were also taken in paragraph 5 of that written statement tiled by the defendant in that suit and paragraph 5 of that written statement was also struck off by D.R. Khanna J. on the same analogy on which he had struck off paragraph 5 of the written statement in the case in hand, and that in that other suit no. 907 of 1976 D.R. Kanna. J. was pleased to allow similar amendments vide his order dated 14-1-1983. The perusal of that order dated 14-1-1983 D.R. Khanna J. shows that the defendant in that suit was allowed to amend the written statement so as to incorporate pleas regarding the agreement or understanding between Ashok Kumar Jain and S.P. Jain on the one hand and defendant on the other about the non- recoverability of the amount of the promissory note as also the promissory note amount having been paid to the defendant in lieu of the services rendered by him to the plaintiff. It was also urged before Khanna J. that the written assurance given by Ashok Kumar Jain and his father Shanti Prasad Jain that the amount of the promissory note of that case would not be claimed from him but that writing, even though in the possession of the defendant, was unfortunately taken away by a mob on 8-6-1975 when his house was raided in Calcutta. The defendant was allowed in that case by Khanna J. to amend the written statement so as to incorporate these specific pleas and the proposed amendments to written statement were allowed to that extent only.

(7) The learned counsel for the plaintiff raised two contentions against the amendment application, viz. (1) that this application was barred by the principles of resjudicata inasmuch as the SLP had been dismissed by the Supreme Court even though the order of dismissal was in the solitary word "dismissed" and in that order all the averments and pleas and contentions raised in the SLP as also in the affidavit deposed to by the defendant and filed therein were to be deemed to have been implicitly decided against the defendant and the proposed amendments also found place in paragraph 5 of the original written statement and consequently those very matters which were struck out under Order 6 Rule 16 of the CPC could not be allowed to the defendant by way of amendments under order 6 Rule 17 and (2) that the amendment application suffered from mala-fides on the part of the defendant.

(8) On the point of resjudicata the learned counsel for both the parties placed reliance on Workmen of Cochin Port Trust Vs. Board of Trustees of The Cochin Port Trust and Another, . Paragraph no. 9 of this authority is relevant for the purpose of deciding this plea of resjudicata raised by the learned counsel for the

plaintiff. In that case the award by the Industrial Tribunal was challenged in the SLP filed in the Supreme Court. The following relevant lines occur in paragraph no. 9 of this authority :

"WHAT is, however, to be seen is whether from the order dismissing the SLP in liming it can be inferred that all the matters agitated in the said petition were either explicitly or implicitly decided against the respondent. Indisputably nothing was expressly decided. The effect of a non-speaking order of dismissal must, by necessary implication, be taken to have decided that it was not a fit case where special leave should be granted. It may be due to several reasons. It may be one or more. It may also be that the merits of the award were taken into consideration and Court felt that it did not require any interference. But since the order is not a speaking order, one finds it difficult to accept the argument put forward on behalf of the appellants that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the award.....".

(9) As already pointed out above the SLP in the case in hand was dismissed in liming by the Supreme Court writing simply "Dismissed" and thus it was a non-speaking order and so in view of the aforesaid authority it would be difficult to accept the argument of the learned counsel for the plaintiff that it must be deemed to have necessarily decided implicitly all the questions in relation to the merits of the order dated 6-11-1981 passed by Khanna J. under Order 6 Rule 16 of the CPC striking out paragraph 5 of the written statement in its entirety, and thus plea of resjudicata fails.

(10) Regarding the mala fides it was pointed out by the learned counsel for the plaintiff that the SLP was filed by the defendant in the Supreme Court shortly after the passing of the impugned order dated 6-11-1981 but the defendant did not pray or press for its early hearing and thereby allowed a long time to elapse and it was only on 13-1-1984 that notice was issued on the SLP to the plaintiff and ultimately it was dismissed on 15-3-1984. This contention cannot be accepted as the defendant was under no obligation to press for the early decision to his SLP and the matter came up in due course before the Supreme Court.

(11) Nothing else was urged against the amendment application.

(12) The proposed amendments in respect of the non-recoverability of the amount under the promissory note in question on the ground of written and oral understanding ,promise and agreement allegedly given to the defendant by Ashok Jain and his father Shanti Prasad Jain in consideration of the defendants past services to the plaintiff from time to time as also the loss of the written agreement in the raid at the defendant's house in Calcutta on the night of Sunday the 8th June 1975 by a large number of armed persons, appear to be necessary to determine the defendant's plea as to his non-liability in respect of the suit amount and thus for the proper decision of the suit.

(13) It was urged by the learned counsel for the plaintiff that if the amendments are to be allowed the same be allowed to the defendant only on the condition of

his either depositing the entire cash amount of the claim in suit or on furnishing the adequate security for the amount or at any rate on payment of onerous costs. Rule 17 of Order 6 of the CPC reads as follows :

"THE Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

(14) It would be seen that putting a party seeking amendment to terms as may be just is confined only to the first part of Rule 17 of Order 6 where the Court exercises its discretionary power to allow amendment in pleadings but it does not extend further to the second part of Rule 17 wherein it is obligatory upon the Court to allow all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties. The aforesaid amendments fall in the second category of Rule 17 and are mandated to be allowed without any terms or pre-conditions. It is also worthwhile to note that the pleas now sought to be inserted in the written statement by way of amendment are nothing new but had already and at the very outset found mention in paragraph 5 of the original written statement and the striking out of the same was for no fault of the defendant.

(15) In view of what has been stated above the defendant is allowed to amend paragraph 5 of his written statement strictly and only to his pleas pertaining to the non-recoverability of the amount under the promissory note in question for the reason of the written and oral understanding, promise and agreement allegedly given to him by Ashok Jain Chairman of the plaintiff- company and his father Shanti Prasad Jain being the Group Master then of Sahujain Group as also in their personal capacities, in lieu of the valuable services allegedly rendered by him to the plaintiff-company from time to time as also the factum of the loss of the written agreement from the residential house of the defendant at Calcutta in the raid by a large number of armed persons on the night of Sunday the 8th June 1975, and nothing else is allowed to be inserted or added by way of amendment.

(16) The amended written statement be filed by the defendant in the light of this order within 3 weeks from today with advance copy to the plaintiff's counsel who shall file the replication within two weeks thereafter. The suit be now listed before the Deputy Registrar on 14-3-1983.