(2006) 08 MP CK 0078

In the Madhya Pradesh High Court

Case No : F.A. No. 492/05

Bharat Petroleum Corp. Ltd APPELLANT

Vs

Nakul and Another RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 149

Citation : (2006) 3 MPJR 322

Hon'ble Judges : S.K. Kulshrestha, J;N.K. Mody, J

Bench : Division Bench

Advocate : Dilip Kshirsagar, for the Appellant; G.M. Chaphekar with Mr. D.S. Kale, Advocate, for the Respondent

Judgement

N.K. Mody, J.

This order shall also govern the disposal of interlocutory applications filed by the appellant under Order VI Rule 17 of CPC in the present and connected appeals. The First Appeal numbers and corresponding I.A. numbers are as under:

Sr.No.

FA No.

IA No.

492/2005

1382/2006

494/2005

1385/2006

495/2005

886/2006

496/2005

887/2006

Since in all the above four cases the applications are of identical nature, therefore, the same are being disposed of by one common order.

Being aggrieved by the award dated 21.4.2005 passed by I, ADJ, Indore in LA case No. 30/2003, the present appeal has been filed alleging that the amount awarded is on higher side. By the proposed amendment appellant intends to enhance the valuation and also intends to pay deficit amount of court-fee. The existing valuation and the court-fee paid and also the proposed valuation and the deficit amount of court-fee is shown in the chart mentioned herein below:

Sr.No.

FA No.

Valuation

Court-fee

Proposed valuation Deficit CF

492/05

1,16,031/-

13,840/-

8,53,973/-

81040/-

494/05

1,00,860/-

11,920/-

8,37,870/-

80,074/-

495/05

14,55,833/-

1,03,480/-

26,15,426/-

1,38,265/-

496/05

15,45,167/-

1,06,155/-

26,89,142/-

1,40,476/-

Learned counsel for the appellant submits that the appellant has challenged the award on the ground that higher amount has been paid to the respondent No. 1. It is submitted that inadvertently less amount was mentioned in the appeal which the appellant proposed to amend.

The applications are opposed by the counsel for respondent No. 1 vehemently. It is submitted that the award is dated 21.4.2005. The appeal was filed on 19.9.2005 while the proposed amendment application has been filed on 3.2.2006. It is submitted that by the lapse of prescribed period of limitation the proposed amendment is barred by time and can not be allowed. Shri G.M. Chaphekar, learned senior counsel placed reliance on a latest decision of Hon''ble Apex court in the matter of K.C. Skaria Vs. The Govt. of State of Kerala and Another, , wherein the Hon''ble Apex Court while considering Section 149 of CPC, which relates to payment of deflicit court fee, observed, that, "amendment would depend on limitation and may not be permitted after the period of limitation."

In the above case in a works contract, a suit was filed against the State of Kerala for recovery of Rs. 2 lacs towards the amount due for work done. It was also alleged in the prayer that the appellant also claims proper accounting and prays that if the amount due for the work done was in exercise of Rs. 2 Lacs estimated by him, he may be permitted to pay additional court fee in regard to the actual amount found due. After the trial, the learned trial court found that the amount due towards the work done was Rs. 5,33,560/-, but awarded a decree of Rs. 2 lacs on the ground that the amount claimed by the appellant is only Rs. 2 lacs towards value of work done. This decree was challenged by the appellant as well as by the respondents. Decree was set-aside by the High Court and the matter came before Hon''ble Apex Court.

In this context, the Hon''ble Supreme Court observed that since the claim in the suit was for Rs. 2 lacs and full court fee on Rs. 2 lacs was paid at the time of institution of the suit and during evidence it transpires that amount due to the plaintiff is actually Rs. 5 lacs and not Rs. 2 lacs, the question of permitting the plaintiff to pay deficit court fee at that stage by calling aid of Section 149 does not arise as no court fee became payable at that stage. It was further observed by the Hon''ble Apex Court that, "plaintiff can enhance the claim only by seeking amendment of plaint and paying the additional court fee on the amended claim."

In the present case, the facts are altogether different. The land of the respondent No. 1 was acquired on the instance of the appellant. Order of compensation was passed by the Land Acquisition Officer. Reference was made to the learned court below. Upon the reference by the impugned award, the learned court below enhanced the amount of compensation. Being aggrieved by the award passed by the Reference Court, present appeal has been filed alleging that the award is on higher side. By the proposed amendment the appellant is enhancing the valuation of appeal.

Learned counsel for the appellant submits that otherwise also the case cited by the learned counsel for the respondent No. 1 is not applicable because in that case the question was for enhancement of the valuation and court fee of the suit for which neither any application for amendment was made nor any application was filed for payment of deficit amount of court fee. Learned counsel submits that in the present case, it is an appeal and even if it is found that amendment was barred by time then the appellant is entitled to move appropriate application u/s 5 of the Limitation Act for condonation of delay. While in the suit, Section 5 of the Limitation Act is not applicable. Apart from this learned counsel placed reliance on a decision of Hon''ble Apex Court in the matter of Gokal Vs. State of Haryana, , wherein in a Land Acquisition case where, "the order of compensation was challenged and subsequently court fee to cover entire amount of enhanced compensation and formal petition of amendment of valuation was not filed, three Judges of Hon''ble Apex Court allowed the oral request to amend claim, appropriately."

In the case of Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, , wherein Hon''ble Apex Court held that, "There is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. Since the jurisdiction to allow or not allow an amendment is discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case." In the aforesaid circumstances after taking into consideration the law laid down by the Hon''ble Supreme Court and also the facts of the case, this court is of the view that decision of K.C. Skaria supra is not applicable in the case because firstly it was the suit in which Section 5 of the Limitation Ac: was not applicable, secondly, in that case no application for amendment and enhancement of valuation or payment of deficit court fee was filed and lastly in that case also while laying down the law relating to amendment, the Hon''ble court has used the word ''may'' and not "shall" for allowing the application for amendment.

In view of this, the application for amendment field by the appellant stands allowed, subject to payment of costs of Rs. 5000/- in each case. Appellant shall carry out the necessary amendment in the memo of appeal within a period of one week. However, it is made clear that respondent No. 1 shall be at liberty to oppose this appeal at the time of final hearing on the ground that the amount challenging of award at higher side was barred by law of limitation on the date of filing of amendment application.

With the aforesaid observations, applications stand disposed of.

c.c. as per rules.

