

(1980) 05 DEL CK 0023

In the Delhi High Court

Case No : Application Appeal No. 1298 of 1980 and Suit Appeal No. 83 of 1978

B.L. Kapoor

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 23-05-1980

Acts Referred:

Citation : (1980) 18 DLT 378

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : P.N. Kumar and R.N. Tikku, for the Appellant;

Judgement

J.D. Jain, J.

(1) This is an application under Order 6, Rule 17 read with Section 151 CPC for amendment of the plaint.

(2) The facts germane to the disposal of this application, succinctly, "are that on 18th January, 1978, the petitioner moved an application under Sections 8 and 20 of the Arbitration Act for filing the agreement of arbitration in Court and appointment of an arbitrator. He averred that he had entered into a contract for work styled as Road Contract Work with the respondents as far back as June, 1969 but the work could not be executed and completed within the stipulated period due to non-performance of certain contractual obligations by the respondent. So he took up the matter with the respondent vide his letter dated 17th October, 1973 mentioning certain disputes which had cropped up in relation to the contract. Thereafter vide letter dated 12th November, 1973 he made a request to the personnel designata under the agreement of arbitration for appointment of an arbitrator. However, as desired by the respondents, efforts were made to resolve the disputes and long correspondence exchanged between the petitioner and the respondents but nothing concrete came out by way of settlement of the disputes. Eventually vide their letter dated 16th of August, 1977, the personnel designata viz. General Manager, Northern Railway

respondent No. 2 refused arbitration on the plea that the claims were barred by time.

(3) The petition was contested by the respondents, inter alia, on the ground that it was barred by time and as such it was liable to be summarily rejected. It was further contended that even the disputes between the parties were barred by time and no order under Sections 8 and 20 of the Arbitration Act could be passed regarding the same. An issue was accordingly framed by this Court (Sultan Singh J.) as follows :

Issue No. 1 Whether the disputes mentioned in Annexure "A" to the petition u/s 20 of the Arbitration Act are barred by time and the same cannot be referred to the arbitrator ?

(4) Subsequently on the application of the respondents (I.A.1087/80), the said issue was recast by me on 27th March, 1980 in the following manner:

(5) Is the application under Sections 8 and 20 of the Indian Arbitration Act for filing of the agreement of the arbitration and for a appointment of the arbitrator in terms of clause 64 of the "general conditions of contract, regulations and instructions for tenderers etc." barred by limitation and as such is liable to be dismissed ?

(6) Thereupon, the petitioner moved the instant application for amendment of the plaint by insertion of para No. 7 which, inter alia, contains reference to a letter dated 21st July, 1975 written to him by the respondents for signing the final bill for work done. It is intended to be pressed into service for proving acknowledgment on the part of the respondents so as to furnish a fresh period of limitation and bring the main petition u/s 20 of the Arbitration Act within time. The plaintiff has also filed amended petition (as proposed) along with this application.

(7) The application for amendment is vehemently opposed by the respondents on two grounds. In the first instance, it is urged that it does not state the specific amendments which are sought to be made indicating the words of paragraphs, to be added or omitted or substituted in the original plaint/application as required by the amendment introduced by Punjab and Haryana and applicable to Delhi in the shape of sub-rule (2) Rule 17, Order 6. Since the plaintiff has filed an amended plaint incorporating the proposed amendment I do not think much would turn on this objection which is purely hypertechnical in nature; the amended rule having been substantially complied with.

(8) On merits the objection raised by the counsel for the respondents precisely is that the proposed amendment will result in great injustice to them and they cannot be compensated by awarding any amount as costs, inasmuch as a valuable right has accrued to them. by lapse of time. It is contended that the suit i.e. the main petition under Sections 8 and 20 of the Arbitration Act is already barred by time and in case the plaintiff is allowed to introduce letter dated 21st

July, 1975 on record by amendment of the pleadings at this late stage the respondents would be deprived of a very valuable right which has accrued to them by, sheer negligence, delay and default on the part of the plaintiff. In particular it is urged by the learned counsel for the respondents that the plea of limitation having been raised by the respondents in the written statement as far back as April, 1978, it was open to the plaintiff to seek amendment of the plaint and place on record letter dated 21st July, 1975 within three years of the same so as to bring their claim within limitation. However, he not having done so, the suit itself has become barred by time even keeping in view the aforesaid letter and as such it would be highly unjust and improper now to permit the plaintiff to lean against the said letter by allowing amendment of the plaint which will naturally relate back to the date of the institution of the suit. In other words a stage has come when the respondents cannot be compensated by way of costs. Reliance in this connection has been placed by the respondent's counsel on several reported decisions viz. Banta Singh Ganga Singh and Others Vs. Harbhajan Kaur and Others, , Mahant Prem Das Chela Mahant Bhola Das v. Jyoti Parshad I. L. R. 1971 (Vol. I) Del 533 and Smt. Ganga Bai Vs. Vijay Kumar and Others, etc.

(9) I have bestowed my careful thought and consideration on the contentions raised before me. It is no doubt true that the plea of acknowledgment is sought to be now introduced on the strength of letter dated 21st July, 1975 and no application was made by the plaintiff within time i.e. within three years of the said letter. However, the question for consideration is whether any valuable right has accrued to the respondents on that account and as such amendment if allowed would cause grave injustice, to them. It is well settled that no amendment should be allowed which will work injustice to the opposite party especially when it takes away from that party a right accrued to him by lapse of time. In other words, no such amendment should be allowed as will take away a valid defense under the law of limitation. However, this rule is not universal in application and the fact that the claim is barred is only a factor to be taken into account in exercising Court's discretion as to whether amendment should be allowed and it does not affect the power of the Court to order it if that is required in the interest of justice. In Charan Das v. Amir Khan AIR 1921 P C 50, Lord Buck- master in delivering the judgment of the Privy Council observed as follows :

"That there was full power to make the amendment cannot be disputed and though such a power should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by a lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case."

(10) It is to be noted that the originally plaintiff in that case had sued the vande for simple declaration of his right of pre-emption without asking for consequential relief of possession as he was bound to do u/s 42 of the Specific Relief Act. So when he sought amendment of the plaint by adding relief for

possession, even though at the time of the amendment a fresh suit for pre-emption would have been barred by limitation, prayer was allowed and it was held by their Lordships of the Privy Council that the plaintiff was attempting to assert rights which he undoubtedly possessed, but through some clumsy blundering in a form which the statute did not permit, and that the plaint should, under the peculiar circumstances of the case be allowed to be amended.

(11) In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, , amendment of the plaint was allowed in a suit instituted under Order 21, Rule 103 CPC by introducing some facts by way of better particulars of the claim made in the plaint as regards the title of the plaintiff to the property in dispute and the amendment was allowed by the Court on the ground that the propped amendment did not alter the nature of the relief sought. It was observed by their Lordships that :

"What happened in the present case was that there was a defect in the plaint which stood in the way of the plaint asking for the reliefs he asked for; that defect was removed by the amendments. The quality and quantity of the reliefs sought remained the same."

(12) While approving the principles enunciated by Batchelor Judge in *Kisandas Rupchand and another v. Bachappa Vithoba Shilwant and others*, I. L. R. 33 Bombay 644, their Lordships further observed that "the same principles should apply in the present case. The amendments do not really introduce a new case and the application filed by the applicant himself showed that he was not taken by surprise, nor did he have to meet a new claim set Up for the first time after the expiry of the period of limitation."

(13) These observations to my mind aptly apply to the case in hand. Surely by raising the plea of acknowledgment on the strength of letter dated 21st July, 1975 of the respondents, the petitioner is not introducing a fresh cause of action or a fresh claim different from the one already embodied in the main petition under Sections 8 and 20 of the Arbitration Act and he simply wants to bring facts on record which were somehow left out due to inadvertence or otherwise as alleged by the petitioner.

(14) *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, is yet another authority which squarely applies to the facts of this case. In the said case the suit as originally framed was for damages on the footing of conversion of goods and the same was held to be not maintainable on the facts established on record. Thus the suit was liable to be dismissed but the plaintiffs applied to the Supreme Court for amendment of the plaint by raising in the alternative claim for damages for breach of contract for non delivery of the goods. The applications was resisted on the ground that the amendment introduced a new cause of action, that the suit on that cause of action would be then barred by limitation, that the plaintiffs had ample opportunity to amend their plaint but they had failed to do so and that owing to lapse of time defendants would be seriously prejudiced if the new

claim were allowed to be raised. This contention was repelled by their Lordships with the observation that:

"All the allegations which are necessary for sustaining a claim for damages for breach of contract are already in the plaint. What is lacking is only the allegations that the plaintiffs are, in the alternative, entitled to claim damages for breach of contract by the defendants is not delivering the goods."

(15) Thus having regard to the foregoing authorities .the instant would appear to be a fit case where amendment should be allowed, more so when the proposed amendment does not have the effect of introducing an entirely new or inconsistent cause of action amounting virtually to the substitution of a new plaint. Further it does not alter even the character of the suit. Only recently the Supreme Court ruled in *Ganesh Trading Co. Vs. Moji Ram*, "if any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could some time be viewed as equivalent to an introduction of a new cause of action which, cured of its short-comings, has really become a good cause of action. This) however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even Very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.

(16) Hence, looking from any angle the ends of justice require that the proposed amendment is allowed for determining the real question in controversy between the parties. The rule prohibiting an amendment which takes away an existing right from the defendant, refers to a legal right which has accrued to the defendant and not a bare right to plead limitation. Hence, the respondent can surely be compensated by way of costs. Needless to say that the authorities adverted to by the learned counsel for the respondents are all distinguishable on facts.

(17) As a result, I allow this application subject to payment of Rs. 200.00 as costs. Since the amended petition has already been filed the written statement be now filed by or before 21st of July, 1980 when the parties should appear before the Deputy Registrar for further directions.