
(1985) 10 CAL CK 0009
In the Calcutta High Court
Case No : Suit No. 780 of 1983

Britania Industries Ltd.

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 01-10-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 7, Order 6 Rule 17

Citation : AIR 1986 Cal 296

Hon'ble Judges : C.K. Banerji, J

Bench : Single Bench

Advocate : P.P. Ginwalla, for the Appellant; A.C. Bhabra, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Banerji, J.—This is an application for amendment of the plaint taken out by the plaintiff. The suit was filed under Order XXXVII of the Code of Civil Procedure. The defendant No. 1 Punjab National Bank entered appearance to the suit and thereupon the plaintiff took out a summons for judgment against the defendant No. 1. The defendant No. 1 opposed the same -- applying on the said summons taken out by the plaintiff for judgment disclosing a defence and praying for leave to defend. Leave to defend was granted by this Court to the defendant No. 1.

2. Mr. Ginwalla, learned Counsel for the petitioner submitted that after leave to defend has been granted to the defendant No. 1 the suit is no more a suit under Order XXXVII but it has become an ordinary contested suit and he referred to Rule 7 of Order XXXVII of the Code of Civil Procedure. It was urged by Mr. Ginwalla that if the suit remained a suit under Order XXXVII the amendments prayed for could not be pleaded in the plaint as filed inasmuch as those pleadings would be beyond the scope of Order XXXVII. Mr. Ginwalla submitted that the defendant No. 1 co-accepted the bill of exchange and by co-accepting the same it made itself liable on the amount due thereon. It was urged that under the Law Merchant such co-acceptance is recognised and a person co-accepting a bill of

exchange is not named as a drawee or co-drawee in the bill of exchange. The money was received from the plaintiffs bankers by the defendant No. 1 on account of the defendant No. 2 and the same became the money lying in the till of the defendant No. 1 and the defendant No. 1 had use of the same and is now trying to deprive the plaintiff of its lawful dues. Mr. Ginwalla even went so far as to urge that the attitude and conduct of the defendant No. 1 is far from honest. It was submitted that inasmuch as the suit is no more a suit under Order XXXVII of the CPC the plaintiff by the proposed amendments is adding a new causes of action to the plaint which the plaintiff has against the defendant No. 1.

3. Mr. Bhabra, learned Counsel for the defendant No. 1 on the other hand contended that the suit still remains a suit under Order XXXVII of the CPC as will appear not only from the cause title but also from the fact that defendants Nos. 2, 3 and 4 have not been served with the master summons in this application. The plaint cannot be amended piecemeal. The plaint has to be amended as a whole. If the suit was instituted under Order XXXVII and still remains a suit under Order XXXVII, in the absence of the defendants Nos. 2, 3 and 4 the amendments should not be allowed. It was also urged by Mr. Bhabra that the suit did not cease to be a suit under Order XXXVII because leave to defend was granted to the defendant No. 1. Mr. Bhabra also referred to Rule 7 of Order XXXVII of the CPC and submitted that Rule 7 only provides that "save as provided by the said order the procedure under the said order shall be the same as the procedure in suits instituted in the ordinary manner". Thus the suit would be tried in the ordinary manner. Rule 7 does not say that the suit will cease to be a suit under Order XXXVII. Mr. Bhabra also referred to Chapter 38, Rule 34 of the Rules of the Original Side of this Court and submitted that the plaint cannot be amended ex parte as against some of the defendants and it may be amended only to the limited extent as provided in Chapter 38, Rule 34 only for rectifying clerical error in names, dates or sums. It was also urged by Mr. Bhabra that the application for amendment is mala fide. The plaintiff filed the suit under the provisions of order XXXVII of the CPC with intent to snatch a decree but inasmuch as the plaintiff did not succeed to get a decree and leave to defend was granted to the defendant No. 1, the plaintiff has now made this application for amendment of the plaint whereby the plaintiff has given a go bye to its original case in the plaint and in fact an entirely new case has been sought to be introduced only against the defendant No. 1, by the proposed amendments. The plaintiff is not seeking to make all the defendants liable thereon. It was urged that the Court will not permit an amendment which is totally inconsistent with the pleadings in the original plaint. By the proposed amendments the plaintiff has sought not only to introduce a totally new case but also a case which is totally inconsistent with the original plaint Mr. Bhabra referred to the pleadings in paragraph 3(a) of the proposed amendments and submitted that a bill of exchange is governed by the Negotiable Instruments Act, 1881. Any new customary usage which is not recognised by the said Statute can no more be recognised by Court. The only customary usage which is recognised by the said

Statute is contained in Section 1 of the said Act, which relates only to instruments in oriental language. In the present case the instrument, on which the suit was filed, not being an instrument in oriental language no customary usage can be considered by this Court. Mr. Ginwalla, on the other hand contended that whether customary usage would be allowed or not, would be decided at the hearing of the suit. Customary usage dehors the Negotiable Instruments Act had been recognised even by the Privy Council. Mr. Ginwalla also submitted that the mention in the title of the suit the words "Suit under Order XXXVII of the Code of Civil procedure" may be deleted and he is praying for deletion of the said words.

4. The suit no doubt was filed under Order XXXVII of the CPC against all the defendants and the plaintiff also made art application under the provisions of the said order for judgment against the defendant No. 1 but did not succeed in getting a summary judgment. Unfortunately leave was given to defendant No. 1 to defend the suit. It is only after the plaintiff has failed to get a summary judgment against the defendant No. 1 that this application for amendments has been made. The proposed amendments seek to introduce an entirely new cause of action which was not to be found within the four comers of the original plaint This is not a case where the pleading was defective because of ignorance or negligence or inexperience of the learned lawyer. By the proposed amendments the plaintiff is trying to make the plaint filed in this suit entirely a new plaint with entirely new causes of action and inconsistent with or contrary to the pleadings in the original plaint. In my view such amendments cannot be allowed.

5. Accordingly, the application is dismissed. In the facts and circumstances of the case there will be no order as to costs.