
(1979) 09 CAL CK 0016
In the Calcutta High Court

East India Photographic Traders Association

APPELLANT

Vs

Camera Exchange

RESPONDENT

Date of Decision : 18-09-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 15
COMPANIES ACT, 1956 — Section 11, 115

Citation : (1979) 09 CAL CK 0016

Hon'ble Judges : Jyotirmoyee Nag, J

Bench : Single Bench

Advocate : Kashi Kanta Maitra and Alok Kumar Ghosh, for the Appellant; T.P. Das and Parthasarathi Sengupta, for the Respondent

Judgement

Mr. Justice Jyotirmoyee Nag

1. This Rule is directed against an order, being Order No. 25 dated 23.6.79 passed by Sri M. R. Mullick, Judge, City Civil Court, Calcutta, allowing the application for amendment of plaint. Before I deal with the points taken by the learned Advocates on both sides, the facts of the case may be stated as follows:

- The plaintiff opposite party filed a suit for declaration that the defendant petitioner, Association is not entitled to be registered under the Societies Registration Act, 1961 as it is compulsorily registerable under the Companies Act, as such it is an illegal association and, accordingly it is carrying on business illegally. The plaintiff-opposite party also prayed for mandatory and permanent injunction in the suit. The suit, being numbered as Title Suit No. 1523 of 1977, was registered in the City Civil Court at Calcutta. On 30th September, 1977, the plaintiff-opposite party made an application for injunction in the said suit for restraining the defendant petitioner from transacting the business of the said society and/or carrying on its affairs as a society under the Societies Registration Act and for a direction upon the Registrar of Societies to cancel the said registration and to rectify the Register accordingly, and for appointment of a Receiver. Subsequently in the same suit the plaintiff-opposite party made

another application praying for mandatory injunction directing the defendant petitioner to accept the plaintiff-opposite party's membership subscription and the purported distribution cost for 1978 and to maintain the allotment of the opposite party's share of photographic materials imported and allotted by the State Trading Corporation Ltd. and cancel or withdraw the defendant petitioner's letters dated 27th and 28th February, 1978 and/or not to give effect or further effect to the said letters. The said application for mandatory injunction was heard by the learned Judge, 2nd Court, City Civil Court, on 6th March, 1978 and the said learned Judge by his order dated 7.3.78 was pleased to reject the said application for mandatory injunction holding inter alia that a party shall not be allowed to blow hot and cold at the same moment and if the plaintiff thought that he was liable to be prosecuted for being a member of the said society for non-registration of defendant, Association u/s 115 of the Companies Act, 1956, the Court cannot pass an order on the defendant to accept from the plaintiff membership subscription for the year 1978 so as to allow the plaintiff to be prosecuted in a Criminal Court. The plaintiff opposite party preferred an appeal against the said order in this Court and M. M. Dutt and Sharma, JJ. were pleased to dismiss the appeal, but their Lordships were pleased to observe that "The plaintiff may pray for the amendment of the plaint in accordance with law". After ten months of passing of the order passed by their Lordships the opposite party filed an application for amendment of the plaint in Title Suit No. 1523 of 1977 pending before the learned City Civil Court, Calcutta, praying for amendment of the plaint by adding the following paragraphs: -

27A (a) During the pendency of this suit membership subscription of the plaintiff for 1978 fall due and on or about 2nd January, 1978 the defendant No. 1 sent its bill to the plaintiff for payment of the same.

(b) By letter dated 24.1.1978 the plaintiff tendered to the defendant No. 1 by cheque Rs. .60.00 being its said subscription demanded as aforesaid without prejudice to the plaintiff's rights and contentions in the suit.

(c) On or about 2nd January, 1978 the defendant No. 1 by its Memo No. 91 allotted to the plaintiff the plaintiff's quota of 50 units and requested to pay Rs. 450-00 being the distribution cost therefore. By letter dated 30.1.1978 the plaintiff duly tendered to the defendant No. 1 the said sum.

(d) The said two payments were made by cheques and were received by the defendant No. 1 on 24th and 30th January, 1978 respectively.

(e) By letters dated 27th and 28.2.1978 the defendant No. 1 wrongfully returned the said cheques to the plaintiff falsely and wrongfully alleging, inter alia, that the defendant No. 1 treated the said letter of the plaintiff dated 24.1.1978 as a letter of resignation of its membership and that since the plaintiff had eased to be member of the Association there is no question of the plaintiff's participation in the said quota and thereby purported wrongfully to terminate the plaintiff's membership and to deprive the plaintiff of his said quota.

27B. The plaintiff states and contends that the said letter of the defendant No. 1 and its contention that the plaintiff was no longer a member, is illegal, inoperative and null and void by reason, inter alia, of the following: -

(a) The plaintiff did not resign and by letter dated 2nd March, 1978, it is requested the defendant No. 1 to withdraw the said letter and to accept the plaintiff's subscription and distribution costs against his quota both however without effect.

(b) There are no provisions to expel the plaintiff from membership as purported to have been made in the articles of the defendant No. 1 or its rules and regulations, nor have such rules regarding expulsion been complied with.

(c) There are no provisions under which the plaintiff could be so expelled and/or his membership terminated and/or to discontinue the membership terminated and/or to discontinue the membership of an existing member. The plaintiff cannot be lawfully expelled from the said Association and his membership of the said Association.

27C. The plaintiff was and is always ready and willing to pay its subscription and to avail of its quota rights.

27D. The plaintiff reasonably apprehends that the said letters 27th and 28th February, 1978, if left outstanding may cause the plaintiff serious injury and the plaintiff is entitled to have the same adjudged void, delivered up and cancelled.

27E. In any event, the said letter was issued to render the suit nugatory and to non-suit the plaintiff.

27F. (a) The plaintiff states that there is an obligation existing in its favour whereby the defendant No. 1 is obliged not to interfere with or disturb the plaintiff membership and/or its rights to receive the said quota pending determination of this suit and the plaintiff is entitled to enjoy the benefits thereof and the defendant No. 1 has invaded the same. It cannot do so.

(b) There exists no standard for ascertaining the actual damage caused or likely to be caused by the said invasion.

27G. By reason of the premises, it is necessary to compel defendant No. 1 by a mandatory injunction to withdraw and/or not to give effect to the said letters dated 27th and 28.2.78.

2. The prayer was also sought to be amended as follows: -

(1a) Adjudication of the rights and liabilities of the parties.

(1b) A declaration that the letters of the defendant No. 1 dated the 27th and 28th February, 1978 are void and should be declared and cancelled by the learned Court.

(1c) An injunction be passed restraining the defendant No. 1 its servants and/or

agents from giving effect to and/or acting in terms of the said letters dated 27th and 28th February, 1978.

(1d) A mandatory injunction be passed directing the defendant No. 1 to issue to the plaintiff its said quota against payment of the said sum of Rs. 450/-.

3. The petitioner put in an objection to the application for amendment of the plaint on two grounds, firstly that the application for amendment is not a bona fide one and that it will change the nature and character of the suit. The petitioner also contended that declaration sought for cannot be allowed inasmuch as the same was contradictory and the plaintiff opposite party cannot at the same time claim such contradictory relief's. The matter was heard by the learned Judge who after hearing the learned Advocate of both the parties was pleased to allow the application for amendment by Order No. 25 dated 23rd June, 1979. It is against this order that the petitioner has come up in revision. It is contended on behalf of the petitioner that by allowing the amendment the plaintiff opposite party has been allowed to change the entire character of the suit and thereby the Court has assisted the plaintiff to establish a new cause of section. It is further submitted on behalf of the petitioner that in view of the case set up in the original plaint that the petitioner, Association be declared an illegal Association no relief can be granted to the opposite party by an illegal Association by making a prayer for incorporating the paragraphs quoted above and thus by allowing the amendment the learned Judge erred. It is further urged by the learned Advocate for the petitioner that in view of the frame of the suit that the defendant petitioner is an illegal body, the proposed amendment would certainly change the nature and character of the suit and that the opposite party who would be liable to be prosecuted for being the member of an illegal Association cannot at the same time claim the relief's by way of amendment of the plaint from that illegal Association and the Court should not assist him in getting the relief's prayed for by him by amending the body of the plaint and the prayer to the plaint. On the other hand, Mr. Das appearing for the opposite party has submitted that this application u/s 15 of the CPC is not maintainable as the learned Judge had the jurisdiction to allow or not to allow the amendment and no relief by way of revision can be given to the petitioner against the order passed by the learned Judge allowing the amendment of the plaint of the opposite party. If the Court had jurisdiction to allow the amendment then it does not come within any of the provisions of section 115 of the Civil Procedure Code.

4. According to Mr. Das the petitioner cannot avail any of the clauses (a), (b) or (c) of sub-section (1) of section 115 as it cannot be said that the Court had exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity. I however do not agree with this submission of Mr. Das as the petitioner has certainly come up against the order passed by the learned Judge under clause (c) of sub-section (1) of section 115, that the exercise of jurisdiction was with material irregularity. It will be obvious from a reading of the

plaint and the prayer to the original plaint that what the opposite party had prayed for is for a declaration that the petitioner Association is an illegal and invalid association. Therefore, it is strange that the learned Judge should have allowed the amendment by which the opposite party has claimed relief from the said illegal and invalid Association, as has been already observed, the prayer for injunction matter.

5. The opposite party preferred an appeal to this Court which was dismissed with the observation that he may pray for amendment according to law. The opposite party cannot blow hot and cold in the same breath as observed by the learned Judge refusing injunction and if he seeks for a declaration that the petitioner association is an illegal association then he cannot claim any relief under the said Association, when he has already admitted that he is apprehensive of being a member of such an association as he may be made liable to be prosecuted criminally. If he asks for such relief as prayed for a declaration that the Association is an illegal Association not having been compulsorily registered itself u/s. 11(2) of the Companies Act, 1956 his prayer for the subsequent relief"s cannot be granted. It is true that the facts subsequent to the filing of the suit may in normal course be taken into consideration and be brought by way of amendment of the prayer also but as I have already observed the amendments sought for in the body of the plaint as well as the prayer should not be so inconsistent as to make the relief"s inconsistent and absurd. In this contention Mr. Das has cited several cases to support his contention that contradictory prayers may be allowed by way of amendment but, then, that would be by way of alternative prayers. Here, what the opposite had sought for is a prayer not in the alternative but as a substantive prayer for certain relief"s (a) for a declaration that he is still the member of the petitioner Association, (b) that he has written the letters dated 27th and 28th February, 1978 in reply to the petitioner Association"s letter dated 24.1.78 declaring the petitioner to be treated as resigned from the membership of the Association and the letter is illegal and not according to the Rules and (c) that having tendered an amount of Rs. 450/- being the cost of his quota to which the opposite party is entitled and accordingly prayed for mandatory injunction upon the petitioner Association to deliver upto him his quota of photographic materials. He has also prayed for declaration that he had a right to receive the said quota. In case of (1) A.K. Gupta and Sons Vs. Damodar Valley Corporation, it has been held that in the matter of allowing amendment of pleading the general rule is that parties are not allowed, by amendment to set up a new case or new cause of action particularly when a suit on the new cause of action is barred. Where, however, the amendment does not constitute an addition of a new cause of action or raise a different cause altogether but amounts merely to a different or additional approach to the same facts, the amendment is to be allowed even after expiry of the statutory period of limitation. The expression cause of action does not mean every fact which is likely to be proved to entitle the plaintiff to succeed. The expression only means a new claim made on a new basis constituted by new

facts. The words "new cause" means new set of ideas. No amendment would be allowed to introduce new set of ideas in breach of any right acquired by any party by lapse of time. In case of (2) Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others, it has been held that no new case can be made by way of amendment to the original plaint at the instance of the plaintiff on inclusion of facts, changing the cause of action of the suit. In the present case, the plaintiff has tried to make out a completely new case by amendment of the plaint and also by the amendment of the prayer to the plaint by asking for some relief's which are inconsistent with the case set up in the original plaint. The cases that have been cited by Mr. Das (3) Ghulam Mohiuddin and Others Vs. The Official Assignee, Calcutta and Others, , (4) Pasupuleti Venkateswarlu Vs. The Motor and General Traders, and (5) Govind Sahai and Another Vs. State of U.P. and Another, and also (6) Mansa Ram Zade Vs. Hindusthan Steel Ltd. and Others, . So far as the case Ghulam Mohiuddin and Others Vs. The Official Assignee, Calcutta and Others, is concerned, that relates to an amendment of the plaint under Order 6, Rule 17. That was a suit for declaration that the sale of the drums in the purported decree is null and void and for other relief's.

6. The amendment sought was for deleting certain paragraphs and also for alternative relief and also for incorporation of certain facts by deletion and by incorporation of certain additional facts. It was found that it will not affect the character the foundation of the original pleading and the same will continue to be a suit by the owners for declaration that the deed executed or tenancy created by the defendant is null and void and accordingly the amendment was allowed as it was found that the defendant would be compensated by costs and will not suffer any injury. This case, I am afraid, has no application to the facts of the present case as I have sated already that here the relief's sought byway of amendment are contradictory to the case set up in the original plaint. The case of Govind Sahai and Another Vs. State of U.P. and Another, is the case under the Contempt of Courts Act, 1952. A member of the Congress Party filed a suit for declaration that election of the Congress Organisation Body was void due to irregularity. The plaintiff subsequently was expelled from the party membership in the basis of the party resolution which prohibited the members from resorting the Law Courts in regard to party matters. Subsequently he filed a suit. The plaintiff thereafter filed an application for Contempt of Court and it was held that the action taken by the party members in expelling the plaintiff from the membership of the party amounted to Contempt of Court. This case has been cited by Mr. Das to support his contention that the matter introduced in amendment relates to subsequent events and there should be no objection to introducing the subsequent events into the body of the original plaint in order to get the relief prayed for by amending the prayer portion of the plaint as these facts came into existence only after the suit had been filed. So far as this contention of Mr. Das is concerned that it is fit and proper that a new case may be introduced by way of amendment in order that Justice may be done to the

case may be appropriated in a contempt case but so far as the present case is concerned subsequent events sought to be brought on record by way of amendment, as observed by me, are contrary to the case made out in the original plaint and it constitutes a new cause of action and therefore, they cannot be permitted to be so introduced. The object of citing the case reported in Govind Sahai and Another Vs. State of U.P. and Another, is to point to the fact that the object of the petitioner Association was to non-suit the opposite party by declaring him to be a subsequent events by way of amendment to the plaint had become necessary and had been rightly allowed by the learned Judge.

7. In case of Pasupuleti Venkateswarlu Vs. The Motor and General Traders, at 1446 it has been held that where during the pendency of a proceeding under Rent Control legislation by the landlord for permission to evict the tenants, a subsequent change in the facts of the case takes place which has a material bearing on the landlord's right to evict the same may be taken into consideration. The approach of the High Court in revision, in taking recognition of the new developments cannot be said to be wrong and illegal. At page 1410 His Lordship Iyer, J. has observed, when attention was drawn to the supposed illegal approach of High Court in taking recognition of subsequent events as follows: -

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor instituted the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. IF a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a subject of course, to the absence of other disentitling factors or just circumstances.

The recovery of another accommodation by the landlord, during the pendency of the case, has as the High Court twice pointed out, a material bearing on the right to evict, in view of the inhibition written into section 10(3)(iii) itself.

His lordship did not disturb this law or finding of fact in that case. It is not disputed that subsequent events made in the certain circumstances have been taken into consideration if they have a material bearing on the question to be decided in the suit itself. But that approach is not attracted to the facts of the present case as the case pleaded in the original plaint would nullify the effect of introduction of subsequent events and, therefore, the introduction of those events by way of amendment would only help to take away the remedies ought for in the original plaint. The case referred to by the learned Advocate for the opposite party is reported in Mansa Ram Zade Vs. Hindusthan Steel Ltd. and Others, which is also a case under the Contempt of Courts Act. In that case the petitioner had received a notice from his company, H. S. Ltd. that his performance was not useful for the company and he was advised to try for alternative employment elsewhere and it was mentioned in the said notice that

he might be released at any time at his request. The petitioner on receipt of this notice filed a suit before a Munsif at Durgapur against, amongst others, the Chairman of the company for certain relief's. The Chairman of the company terminated the services of the petitioner during the pendency of the said suit as by the act of the opposite party the prayer of the plaintiff became infructuous. It amounted to obstruction or interference with the course of justice on the lawful process of the Court and amounted to contempt of the said Court. Accordingly it was held that the action of the Chairman in terminating the service of the petitioner amounted to obstruction or interference with the due course of justice or the lawful process of the Court and as such an act of contempt of the said Court was committed. This case has also been cited to support the contention by the learned Advocate for the opposite party that subsequent events if necessary may be introduced in the suit by way of amendment as they have bearing upon the question to be decided in the suit. In this case by treating the opposite party as having resigned from the membership of the petitioner Association, the opposite party would be non-suited. These cases relate to offences under the Contempt of Courts Act and the principles governing these cases will have no application to the question relating to amendments in other cases.

8. I must however hold that the amendments as allowed are misconceived and not tenable in law or in any event in the facts of this particular case. In the result, the impugned order dated 23rd June, 1979, is set aside and the Rule is made absolute.