
(2003) 09 AHC CK 0123
In the Allahabad High Court
Case No : F.A.F.O. No. 80 of 1982

Fertilizer Corporation of India Ltd.

APPELLANT

Vs

Prabha Kirana Stores

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Specific Relief Act, 1963 — Section 7

Citation : AIR 2004 All 82 : (2003) 6 AWC 5108

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant; Sidheshwari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—The present appeal is directed against the order dated 9-11-1981 passed by VIth Additional District Judge, Gorakhpur in Civil Appeal No. 171 of 1981 arising from the Original Suit No. 165 of 1976.

2. The plaintiff-respondent filed suit for specific performance of contract No. GP/Cont/GCS/75-E/95 dated 6-5-1975 for the direction to the appellant to purchase the good specified in annexure No. 1 to the affidavit during the period from 6-5-1975 to 3-5-1976 and for rendition of accounts. The suit was filed on the ground that the plaintiff-respondent was registered partnership firm and was carrying on business of general merchandise goods. The defendant-appellant was operating a canteen and hospital issued a tender for the purchase of certain items for which the quotation was given by the plaintiff-respondent which was approved. The plaintiff-respondent had also made supply for the goods in respect of which the payment was made but subsequently, the orders were not placed by the defendant-appellant and the goods were not purchased and therefore, the suit was filed. The defendant-appellant filed the written statement, in which it has been stated that the period of supply has expired, therefore, no direction

could be issued for specific performance of contract and the plaintiff-respondent could only file a suit for damages. Thereafter, amendment application (paper No. 43/A2) dated 30-3-1977, annexure No. 1 to the affidavit was filed for amendment in the plaint with the relief that the relief No. 1 be deleted and the relief No. B numbered as 1 and relief Nos. C and D numbered as Nos. 3 and 4 and the relief No. B to be added as "in case plaintiff is not found entitled to the relief No. 1 the plaintiff be awarded Rs. 10.000/- or any other sum against the defendant by way of damages on account of breach of contract by the defendant." The objection was raised by the defendant-appellant and after hearing both the parties; amendment application (paper No. 43/A2) was rejected on 5-4-1977. Thereafter, the revision was preferred against the said order to the Court of District Judge, Gorakhpur which was rejected by order dated 28-4-1977 summarily as according to District Judge revision does not satisfy the requirements of the proviso added to Section 115, C. P. C. by the amending Act of 1996. Learned District Judge has not considered the merit of the case. No further revision was preferred against the order of the District Judge. The defendant-respondent further moved the amendment application (paper No. 97/A2) almost after two year on 28-4-1979. The copy of the application is annexure No. 3 to the affidavit. The said application has been rejected vide order dated 23-8-1999 on the ground that the amendment application (paper No. 97/A2) dated 28-4-1979 is almost identical to the amendment application (paper No. 43/A2), which was already rejected and the order of rejection had become final. Thereafter, vide order dated 30-5-1981, the suit was dismissed. The plaintiff-respondent filed the appeal against the judgment and decree dated 30-5-1981. The appeal has allowed vide order dated 9-11-1981 and the judgment and decree passed by the learned Munsif was set aside and the case was remanded back to the trial Court with the direction to allow the plaintiff-respondent to incorporate the amendment proposed through amendment application (paper No. 97/A2) and thereafter, file additional written statement. The appellate Court has allowed the amendment application (paper No. 97/A2). Aggrieved by it, the present appeal has been filed. The appeal was admitted and the plaintiff-respondent was directed to file counter affidavit but no counter affidavit has been filed. On 14-8-2003 case the listed for hearing. List revised but no one appears on behalf of respondent. Learned counsel for the appellant was present and heard.

3. The contention of the learned counsel for the appellant is that learned District Judge has committed an error in allowing the amendment application and the appeal. The amendment application (paper No. 97/ A2) has already been rejected and against which no revision was filed. It is further submitted that identical amendment application (paper No. 43/A2) was moved in the year 1977, which was rejected and against the said order, the revision was also rejected by the learned District Judge. Therefore, second amendment application (paper No. 97/A2), which was on the identical ground and proposing the identical amendment has been rightly rejected by the learned Munsif vide order dated

23-8-1979, against which no revision has been filed. The order of the Vth Additional District Judge, Gorakhpur is illegal and liable to be set aside.

4. Having heard learned counsel for the appellant I have perused the record of the case and the impugned order.

5. In my view, there is no infirmity in the order passed by the appellate Court. The orders rejecting the amendment application were only interlocutory orders. The revision against the order dated 5-4-1977 was rejected summarily without any consideration of the merit of the case. In my view interlocutory orders can be challenged while challenging the final order passed in the suit. In the case of Banaras Education Society, Varanasi v. Vth Additional District and Sessions Judge, Varanasi, reported In 1980 ALJ 695. And during the pendency of the suit, order was passed striking off defence. Such order was not challenged. Subsequently, it was challenged along with final order. This Hon''ble Court held that such interlocutory order can be challenged along with final order. It was further observed as follows (at p. 698 of All LJ) :--

"The above dictum completely covers the controversy in my judgment. The order striking off the defence was an interlocutory order and was at best a finding given at intermediate stage. It partook the character of interlocutory orders, which are merely steps towards the decision of the dispute between the parties, These orders do not have the force of a Judgment disposing of either the suit or any controversy touching substantive rights of the parties. The order striking off the defence had, therefore, only a provisional finality and not being appealable, the petitioners cannot be held barred by any principle from raising its correctness in a petition filed against the final decree."

6. In this connection, it is also relevant to refer the Judgment of Hon''ble Supreme Court in the case of Jasraj Inder Singh Vs. Hemraj Multanchand, . In this case, the Apex Court has observed as follows (para 14) :

"Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held In its remand order. It is true that a subordinate Court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other Court of coordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher Court when it comes up in appeal before it. This is the correct view of the law, although Shri Phadke controverted it, without reliance on any authority. Nor did Shri S. T. Desai who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it transpires that in Lonankutty Vs. Thomman and Another, , this proposition has been affirmed. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial Court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject matter is

available for adjudication before us. It, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Otherwise, the whole list for the first time comes to this Court and the High Court's finding at an Intermediate stage goes not prevent examination of the position of law by this Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality. After discussing various aspects of the matter, Chandrachud, J. speaking for the Court in Lonankutty's case observed :-- "The circumstance that the remanding judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment". The contention barred before the High Court is still available to be canvassed before this Court when it seeks to pronounce finally on the entirety of the suit."

7. Now coming to the merit of the case, it is stated that first amendment application (paper No. 43/A2) was rejected on the ground that the amendment would totally change the nature of the suit and if plaintiff wants to recover the damages, he may file fresh suit for the recovery of the damages. Second amendment application (paper No. 97/A2) was rejected on the ground that amendment sought by the said application was identical to the amendment application (paper No. 43/A2).

8. In the present case, the suit was filed for specific performance and the direction to the defendant-appellant to purchase the goods and for the rendition of accounts on the ground that as per the contract the order of purchase was not placed and the same have been purchased from the other party. During the pendency of the suit, the period of contract was expired and in the written statement it has been objected that since the period of contract had expired, there-fore, relief for damages should only be claimed. In these circumstances, the amendment application was filed claiming relief for damages. The cause of action was the same for the relief sought by way of amendment.

9. Order 6, Rule 17, C. P. C. relates to the amendment of pleadings. Rule 17 has further been amended and substituted by the C. P. C. (Amendment) Act, 2002 w.e.f. 1-7-2002. The original Rule 17 was as under ;

"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.

10. Thereafter, by way of amendment, the following has been substituted w.e.f. 1-7-2002.

"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 :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

11. It is a settled law that at the time of allowing of amendment, the Court has only to look as to whether the Ingredients of Order VI, Rule. 17 are satisfied or not. Rule 17 is very much clear it provides that amendment can be allowed at any stage of proceedings on such terms as may be just, there is no quarrel with the proposition that the amendment was sought at the trial stage and that too without changing the nature of the suit.

12. Order 6, Rule 17 has been interpreted by the Hon"ble Supreme Court in various decisions and the Apex Court has given guidelines for the law Courts that the Courts while deciding such prayers should not adopt a hypertechnical view. Aforesaid guidelines have been given by the Apex Court in B.K.N. Narayana Pillai Vs. P. Pillai and Another, . It has also been emphasized in the aforesaid decision that technicalities of law should not be permitted to hamper the Court in administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled multiplicities of litigation.

13. In the case of Ragu Thilak D. John Vs. S. Rayappan and Others, . The suit was filed against the respondent for permanent injunction restraining them from demolishing his compound wall. It has been alleged that during the pendency of the suit, respondents entered his property and demolished the wall on northern, eastern and western sides. The appellant filed the application for amendment of the plaint including incorporation of relief of recovery of damages. The trial Court rejected the application and the revision filed against that order was dismissed by the High Court. The Apex Court observed as follows (Paras 4, 5 and 6 of AIR) :

"In view of the subsequent developments, the appellant filed an application under Order 6, Rule 17 for the amendment of the plaint for adding paras 8 (a) to 8 (f) in his plaint. The trial Court rejected his prayer and the revision petition filed against that order was dismissed by the High Court vide order impugned in this appeal, mainly on the ground that the amendment, if allowed, would result in introducing a new case and cause of action. It was further held that as the appellant was seeking recovery of damages, the amendment could not be allowed, as it would allegedly change the nature of the suit. It was also observed that the amendment sought was barred by limitation.

After referring to the Judgments in Charan Das v. Amir Khan AIR 1921 PC 50 L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., , Smt. Ganga Bai Vs. Vijay Kumar and Others, , Ganesh Trading Co. Vs. Moji Ram, and various other authorities, this Court in Ragu Thilak D. John Vs. S. Rayappan and Others,

"3, The purpose and object of Order 6, Rule 17 CPC is to allow either party to

alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter or right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

If the aforesaid test is applied in the instant case, the amendment sought could not be declined. The dominant purpose of allowing the amendment is to minimise the litigation. The plea that the relief sought by way of amendment was barred by time is arguable in the circumstances of the case, as is evident from the perusal of averments made in paras 8(3) to 8 (f) of the plaint which were sought to be incorporated by way of amendment. We feel that in the circumstances of the case the plea of limitation being disputed could be made a subject-matter of the issue after allowing the amendment prayed for."

14. In the circumstances, stated above, I do not find any error in the order of the appellate Court. The order of the appellate Court needs no interference.

15. In the result, the appeal is dismissed.