

(2016) 03 BOM CK 0033
In the Bombay High Court
Case No : Writ Petition No. 277 of 2016.

Fr. Ralin De Souza

APPELLANT

Vs

Goa Basketball Association and Others

RESPONDENT

Date of Decision : 03-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Constitution of India, 1950 — Article 227

Citation : (2016) 3 AIRBomR 251 : (2016) 6 BCR 821 : (2016) 4 CivilLJ 592 :
(2016) 5 MhLJ 276

Hon'ble Judges : S.B. Shukre, J.

Bench : Single Bench

Advocate : John Abreu Lobo, Advocate, for the Appellant; Nitin Sardessai,
Senior Advocate with Ms. Gautami Kakodkar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Shukre, J.(Oral) - Learned Counsel for the petitioners seeks leave of the Court to delete respondent no. 2. Learned Senior Counsel for respondent no. 1 has no objection. Leave is granted. Amendment to be carried out forthwith.

2. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. By this Writ Petition, the petitioners have challenged the legality and correctness of the order dated 26.02.2016 passed by learned Civil Judge Junior Division, Panaji in Regular Civil Suit No. 33/2015/D, thereby allowing the amendment application (Exhibit-30) under Order 6, Rule 17 C.P.C. filed by respondent no. 1.

4. It is the contention of learned Counsel for the petitioners that the impugned order ignores the fundamental principles of law, which govern the discretion of the Court in the matter of amendment of pleadings. He submits that although there is a power given to the Court to allow the amendment of pleadings, it

cannot be exercised when the amendment sought changes the nature of the suit or seeks to incorporate subsequent cause of action. He further submits that the impugned order does not take into account the fact that the same Court, while rejecting the application for grant of temporary injunction has found that since respondent no. 1, original plaintiff has not made any prayer for grant of permanent injunction, respondent no. 1 is not entitled to seek temporary injunction so as to restrain the petitioners/original defendants from representing respondent no. 1 in any manner. He also submits that the impugned order is a non speaking order and does not deal with the basic argument that the amendment if allowed, would change the nature of the suit. He therefore, submits that the impugned order be quashed and set aside and this matter be remanded back to the trial Court for deciding the application afresh in accordance with law.

5. Learned Senior Counsel submits that the learned Civil Judge has dealt with all the points, which have now been canvassed during the course of argument advanced on behalf of respondent no. 1. He points out that the order impugned herein passed by the learned Civil Judge has indeed given reasons, which may be short, but, they do indicate proper application of mind to the facts of the case. He further submits that the pleading that cause of action arose on 14.03.2015 cannot be interpreted to mean that the date of 14.03.2015 is itself the cause of action. He submits that the concept of cause of action includes within its fold all those facts and bundle of facts in respect of which the parties are at issue and which require adjudication by the Court. He submits that according to respondent no. 1, the cause of action basically is the averment that the petitioners have misrepresented respondent no. 1 and since the subsequent conduct of the petitioners show that they continue to misrepresent respondent no. 1 without any authority, it has become necessary for respondent no. 1 to aver all these subsequent acts and seek further prayers necessitated by subsequent conduct of the petitioners.

6. He further submits that the significance of date of 14.03.2015 is only related to acquiring of knowledge regarding the misconduct of the petitioners and nothing more. Therefore, he further submits that the amendment sought by respondent no. 1 cannot be considered as changing the whole nature of the suit. He also submits that in any case, amendment of pleadings cannot be considered as causing of miscarriage of justice or prejudice to the other side. He also submits that the supervisory jurisdiction of this Court under Article 227 of the Constitution of India must be exercised only when the order impugned causes grave injustice to parties or is passed in breach of fundamental principles of law or justice.

7. It is seen from the amendment application that what has been sought by respondent no. 1 to be brought on record effectively relates to certain acts, which were committed, in the opinion of respondent no. 1, by the petitioners subsequent to the filing of the suit. The suit was filed, as seen from the pleadings

in the plaint, with the case that petitioners were representing respondent no. 1- Association Federation although they did not have any authority to represent respondent no. 1 and as it was apprehended by respondent no. 1 at that time that the petitioners would be representing respondent no. 1 in a meeting that was scheduled to be held on 27.03.2015 at Bangalore or Pune, a specific averment in that regard was made and the prayer clauses were moulded to suit such averments. This shows that basically the case of respondent no. 1 is that petitioners do not have any authority to represent respondent no. 1. Such a nature of the suit, I must say, would have to be kept in mind while considering the amendments sought to be made to the plaint by the respondent no. 1.

8. On perusal of the amendment application it becomes clear that respondent no. 1 is seeking to add such pleadings as could only be considered to be made in continuation of what is already averred in the plaint. It may be that the plaint as filed focussed on the meeting to be held in the month of March, 2015, that being the immediate concern which was to be addressed. But, the fact of the matter is that the said concern arose from the conduct of the petitioners which was seen by respondent no. 1 as an attempt to represent it without any authority. The apprehension that the petitioners are even now likely to make similar attempt has still remained there and therefore, respondent no. 1 has found it necessary to bring on record certain acts committed by the petitioners, which have been thought to be in the nature of representation of respondent no. 1 without any authority. This conduct of the petitioners, in the opinion of respondent no. 1, has made it necessary for it to seek further reliefs from the Court. These amendments thus cannot be said to change the nature of the suit. The reliefs now being additionally sought, no doubt, could have been asked for by respondent no. 1 by filing another suit. But, the purpose of allowing the amendment of pleading under Order 6, Rule 17 C.P.C. being to avoid multiplicity of proceedings apart from enabling the Court to determine the real issues involved in the controversy, the respondent no. 1 must be permitted to seek the same in this very suit. That apart, there is no change of or addition of subsequent cause of action, as the cause of action in it's essence lies in the conduct of the petitioners, as discussed earlier. These amendments, therefore, would have to be seen as necessary for determining the real issues in controversy and avoiding multiplicity of proceedings. In this regard, I would like to draw support from the cases of *State of Andhra Pradesh v. Pioneer Builders, Andhra Pradesh*, (2006) 12 SCC 119 and *Revajeetu Builders and Developers v. Narayanaswamy*, (2009) 10 SCC 84, referred to me by learned Counsel for the petitioners.

9. The whole controversy in this case can also be examined from another angle. If the proposed amendments are seen to be causing any prejudice to the case of the petitioners, then this Court would have to reconsider the whole issue. But, that is not the case here, nor anything has been shown to me as causing prejudice or failure of justice to the petitioners by allowing the amendments.

10. In the case of Prem Bakshi and Others v. Dharam Dev and Others, (2002) 2 SCC 2, it has been held by Hon"ble Apex Court that amendments would only serve advance notice of the pleading to the parties, which a party might take up and therefore, it is not possible to envisage a situation where amendment of pleadings, whatever be the nature of such amendment, would even remotely cause failure of justice or irreparable injury to any party. Same can be said here also. Even otherwise, as said earlier, nothing of this sort has occurred in this case nor has been shown to have occurred.

11. As regards the contention that the impugned order is non speaking, I beg to differ with the learned Counsel for the petitioners. It is true that reasons stated in the impugned order are short, but, that is not equal to saying that the order is without reasons or the learned Civil Judge has failed to apply her mind to the arguments canvassed on behalf of both sides. The learned Civil Judge has indeed considered the effect of the amendment and in a short order but covering the basic aspect of the case has said that the proposed amendment does not change the nature of the suit. The learned Civil Judge, no doubt, has not elaborated anything further, though one would have welcomed it. But, that would not give warrant to this Court exercising supervisory jurisdiction under Article 227 of Constitution of India, to interfere with the impugned order. One has to see whether or not the order has resulted in any miscarriage of justice or failure of justice and it is equally an important requirement, while exercising the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, as held by the Hon"ble Apex Court in the case of Prem Bakshi (supra). I have already said earlier that this is not the case where there has been a serious prejudice caused to the petitioners or any failure of justice.

12. In the result, I find that there is no merit in the petition. It deserves to be dismissed.

13. The Writ Petition stands dismissed with no costs.