

(2000) 04 BOM CK 0078

In the Bombay High Court

Case No : Civil Revision Application No. 88 of 2000

Goa Cancer Society

APPELLANT

Vs

Dr. Vital Kamat

RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 115
Limitation Act, 1963 — Section 3

Citation : (2000) 4 BomCR 445 : (2000) 4 MhLj 364

Hon'ble Judges : R.K. Batta, J

Bench : Single Bench

Advocate : Sudesh Usgaonkar, for the Appellant; S.D. Lotlikar, for the Respondent

Judgement

R.K. Batta, J.—Heard. Rule. With the consent of the learned Advocates for the parties rule made returnable forthwith and heard.

2. Learned Advocate for the petitioner submitted that the claim of salary arrears from March 1991 to August, 1999, which are sought to be added by way of amendment, would be barred by limitation except for three years prior to the filing of the said application since, if a fresh suit is filed for recovery of the said arrears, the suit for recovery of salary beyond 3 years would be barred by limitation. In support of his submission he places reliance on Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others, and on Ganesh Trading Co. Vs. Moji Ram, .

3. On the other hand, learned Advocate for the respondent, after placing reliance on Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, and on Vineet Kumar Vs. Mangal Sain Wadhera, , has urged that neither any new case has been made out by way of amendment nor a totally new cause of action has been introduced, since the respondent in the suit had claimed salary upto the date of filing of the suit and the amendment application has been filed to claim the salary from the date of filing of the suit till August 1999.

4. The respondent had sought arrears of salary with interest. By way of amendment, the respondent is seeking relief relating to the salary which he claims has become due during the pendency of the proceedings. Actually neither a new case has been made out by the respondent in the amendment application nor there is a totally fresh cause of action which is sought to be introduced by way of amendment. What the respondent is seeking is recovery of salary which has become due during the pendency of the suit which could otherwise also be granted even without seeking any amendment. Since the Court can take into consideration the developments which take place during the pendency of the suit and in case ultimately it is held that the respondent is entitled to salary, obviously he would be entitled to salary till the suit is decreed or even thereafter depending upon the nature of the order passed at, the time of passing the final decree. In *Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala and others* (supra) my attention has been drawn by learned Advocate for the petitioner to paragraph 14 of the said judgment, which does not in fact help the case of the petitioner. In paragraph 14 it is laid down that if a valuable legal right, which has accrued by lapse of time, is taken away by amendment, the amendment should be refused but the said rule will apply only when either fresh allegations are added or fresh reliefs are sought by amendment. In fact, no fresh relief is sought by the respondent. As I have already stated, the relief was claimed in the plaint and what is sought to be claimed is continuation of the said relief during pendency of the proceedings.

5. Learned Advocate for the petitioner has also drawn my attention to paragraph 5 of the judgment of the Apex Court in *M/s. Ganesh Trading Co. v. Moji Ram* (supra). There also it is stated that if on account of lapse of time remedy is barred on a newly constituted cause of action, then the Court would refuse amendment of pleading. This observation also does not help the case of the petitioner.

6. On the other hand learned Advocate for the respondent has relied upon the rulings of the Apex Court where it is laid down that in cases where there is no new claim made, the amendment should be allowed even if claim is barred by limitation. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others* (supra) the Apex Court approved the observations made in *Kisandas Rupchand v. Rachappa Vithoba* 33 Bom 644 wherein a suit for dissolution of partnership and accounts was initially filed and it was alleged that in pursuance of partnership agreement cloth worth Rs. 4,001/- had been delivered to the defendant. The subordinate Judge had come to the conclusion that no partnership had existed. At the appellate stage the plaintiff abandoned the plea of partnership and prayed for leave to amend by adding the prayer for recovery of Rs. 4001/-. On that date when the leave to amend was sought, the claim for money was barred by limitation but it was held by the Court that the amendment was rightly allowed as the claim was not a new claim.

7. Learned Advocate for the respondent also drew my attention to paragraph 16

of the judgment of the Apex Court in Vineet Kumar v. Mangal Sain Wadhera (supra) wherein it has been laid down that it is well settled that where the amendment did not constitute an addition of new cause of action, or raises a new case, but amounts to no more than adding to the facts already on record, the amendment would be allowed even after the statutory period of limitation.

8. In view of the above position, I am of the opinion that the order of the Civil Judge, Senior Division, Panaji, allowing the amendment does not suffer from any infirmity. There is no question of setting aside the same in the exercise of revisional jurisdiction since the discretion has been properly exercised by the trial Court. The revision is, accordingly, dismissed with costs.

9. Revision application dismissed.