(1985) 08 OHC CK 0034

In the Orissa High Court

Case No : Civil Revision No. 655 of 1982

Gouranga Charan Sahoo APPELLANT

Vs

Mahesh Chhapolia and Company RESPONDENT

Date of Decision : 03-08-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1908 — Article 158

Citation : (1985) 60 CLT 284

Hon'ble Judges : D.P. Mohapatra, J

Bench : Single Bench

Advocate : Samareswar Mohanty, for the Appellant; P.K. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—This application u/s 115 of the CPC arises out of a proceeding under the Arbitration Act. By the impugned order the Subordinate Judge rejected the Petitioner''s application for amendment of his objection filed in the proceeding (T.S. No. 252/81).

2. On a reference of disputes by opposite party to an Arbitrator an ex parte order was passed against the Petitioner making him liable for a sum of Rs. 25,810/-. An application to make the said award rule of court was filed by the opposite party which is subject matter of T.S. No. 252/81. Therein the Petitioner filed his objection within the stipulated period challenging the award on several grounds. He asserted that he had no transaction with the opposite party which could possibly give rise to a dispute necessitating reference by the latter. He also denied existence of any arbitration agreement between the parties. The matter is pending consideration before the court. By the proposed amendment the Petitioner sought leave to introduce the following averments in his objection:

After para 9, add the following para 9A: That the arbitrator Shri Suresh Chandra Mohanty has acted and appeared as an Advocate for the Plaintiff in a number of cases and the Plaintiff is a regular client of the said Sri Suresh Chandra Mohanty and as such the arbitration proceeding is vitiated by incompetency of the arbitrator and misconduct and the award is void on that ground.

From the above it is clear that the essence of what the Petitioner wanted to allege what that the award was vitiated by bias of the arbitrator since he was the counsel representing the opposite party in several litigations. The court below rejected the prayer on the ground that the prescribed period of limitation, 30 days, for filing objection against the award having expired the amendment could not be allowed. He relied on the decision of the Calcutta High Court in the case of Haji Ebrahim Kassam Cochinwalla Vs. Northern Indian Oil Industries Ltd., .

3. Shri S.S. Mohanty, learned Counsel for the Petitioner has urged that the order of the court below goes against the settled principles in the matter of amendment of pleadings, i.e., a new ground of attack can always be taken by the party by amending his pleadings. It is his submission that by the proposed amendment a new cause of action was not sought to be introduced and hence the question of limitation did not arise. All that was sought to be introduced was to take the additional ground relating to bias of the arbitrator in the objection.

4. The contention has substantial force. It has to be accepted as a settled position that an amendment of pleading seeking to introduce a new ground of challenge can be permitted at any stage of the proceeding if it is relevant, for proper and effective adjudication of the case. The position is also settled that any new cause of action based on new set of facts and any new relief will not be permitted to be introduced by amendment of pleadings after expiry of the period of limitation. The question for consideration is which of the two principles indicated above apply to the present case. As noticed earlier, the purpose of the amendment sought by the Petitioner was to challenge the award on the ground of bias on the part of the Arbitrator. This ground, if the petition for amendment is allowed, would be in addition to the grounds already stated in the objection. It is thus clear that it is only an additional ground which is sought to be taken by the proposed amendments and it is neither a fresh application objection to the award nor introduction of a new cause of action. As such, the question of limitation looses its relevance. In this connection, a reference may be made to the oft quoted decision of the Supreme Court reported in the case of L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., , wherein the Court has clearly laid down that it cannot be taken as a universal rule that in no case the amendment seeking to introduce averments which if filed in the shape of a fresh suit, shall be barred by limitation can be permitted in appropriated circumstances amendment of pleadings permitting introduction of new matters even beyond the period of limitation can be made. The decision of the Calcutta High Court on which reliance was placed by the court below is distinguishable. In that case during pendency of the revision before the High Court a fresh application objecting to the award was filed to which exception was taken on the ground that it is filed beyond the prescribed period of limitation. The decision proceeded on the footing that the

application is to be construed as a fresh objection to the award and the period of 30 days prescribed under Article 158 of the Limitation Act (old) having expired, the Petitioner could not be entertained. The court below erred in applying this decision to the present case wherein only a new ground of challenge was sought to be introduced in the objection.

5. In view of the aforesaid discussions the impugned order rejecting the Petitioner''s application for amendment of the objection is unsustainable and this is to be vacated.

Accordingly, the revision petition is allowed, the impugned order is vacated a.nd the Petitioner''s application for amendment is accepted. The trial court is directed to dispute of the suit within three months from the date of receipt of the records from this Court. Both the parties will bear their respective costs of this proceeding.

