
(2013) 08 MAD CK 0285

In the Madras High Court

Case No : C.R.P. (NPD) No. 4870 of 2012 and M.P. No's. 1 of 2012 and 1 of 2013

Harish Gopal

APPELLANT

Vs

M/s. Castrol India Ltd.

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2013) 08 MAD CK 0285

Hon'ble Judges : K. Ravichandrabaabu, J

Bench : Single Bench

Advocate : P. Sidharthan, for the Appellant; S. Baskaran, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrabaabu, J.—The present civil revision petition is filed against an order made in C.M.P. No. 888 of 2011 in A.S. No. 517 of 2009 on the file of the III Additional Judge, City Civil Court, Chennai dismissing the application filed under Order 6 Rule 17 C.P.C. seeking to amend the plaint. The petitioner as the plaintiff filed O.S. No. 6345 of 2000 on the file of the City Civil Court, Chennai against the respondent herein for declaration to declare the resignation letter dated 15.02.1999 obtained by the defendant from the plaintiff as null and void.

2. The case of the petitioner/plaintiff is that he was appointed as an employee of the respondent Company on 14.06.1996. It is his further case that the Manager of the respondent Company obtained a letter of resignation from him on 15.02.1999 under coercion. According to him, it was not given with free will and wish.

3. The said suit was contested by the respondent by filing a written statement. The trial court by judgment and decree dated 31.07.2009 dismissed the suit on merits by holding that the plaintiff had miserably failed to prove that he was unduly influenced to give a resignation letter. It was also observed by the trial court that based on a blanket pleading that the resignation letter was obtained

under undue influence, the plaintiff cannot seek for any relief. Aggrieved over the judgment and decree of the trial court, the plaintiff filed an appeal in A.S. No. 517/2009. During the pendency of the above appeal, the plaintiff/petitioner herein filed an application under Order 6 Rule 17 C.P.C. to amend the plaint so as to include the consequential relief of reinstatement in service with full back wages. The said application was resisted by the respondent by filing a counter. The court below rejected the said application on the ground that the plaintiff is not entitled to seek for amendment of the plaint after the commencement of trial in view of the proviso introduced under Order 6 Rule 17 C.P.C. by way of amendment made in the year 2002. It is also observed by the lower court that the petitioner is seeking for amendment after the lapse of nearly 11 years. Thus, the aggrieved plaintiff is before this Court by filing the above civil revision petition.

4. Learned counsel appearing for the petitioner submitted that as the suit is filed in the year 2000, the proviso introduced under Order 6 Rule 17 C.P.C. cannot be applied and therefore, the court below is not justified in rejecting the amendment on that ground. He further submitted that the amendment sought for is not by way of introducing any new cause of action and on the other hand, it is only a consequential relief and therefore, it does not alter the nature of the suit.

5. Per contra, the learned counsel appearing for the respondent submitted that as per proviso introduced under Order 6 Rule 17 C.P.C., no amendment is permissible after the commencement of trial. He further submitted that the amendment is sought for after nearly 11 years. In support of his pleadings, he relied on the following decisions:

(i) Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others,

(ii) J. Samuel and Others Vs. Gattu Mahesh and Others,

6. A perusal of the order passed by the court below would show that the application for amendment was rejected on the main reason that the same is not maintainable or entertainable after the commencement of trial in view of the proviso introduced to Order 6, Rule 17 C.P.C. In support of such conclusion, the Appellate Court relied on the decisions of the Apex Court reported in J. Samuel and Others Vs. Gattu Mahesh and Others, . Thus, it has to be seen as to whether the court below is justified in rejecting the amendment petition on that ground.

7. Admittedly, the petitioner herein filed the suit on 31.08.2000 in O.S. No. 6345 of 2000. Thus, the filing of the suit is before introduction of Act 22 of 2002, whereby the proviso to Order 6 Rule 17 C.P.C. was introduced. Whether such proviso is applicable even in respect of suit filed earlier to such introduction of Act 22 of 2002 is the question which came up for consideration before me in C.R.P. (NPD) No. 1324 of 2010. There also, the very same decision reported in J. Samuel and Others Vs. Gattu Mahesh and Others, relied on by the respondent herein was placed before me in that case. However, after distinguishing the

above decision of the Apex Court and by following the Hon''ble Full Bench decision of this court reported in Dr. S.H. Sithik Basha Vs. Fazal Ahmed, , Hi Sheet Industries, Vellore District vs. Litelon Limited, Hosur and Others, it was held therein that proviso to Order 6 Rule 17 C.P.C. is applicable to the pleadings instituted with effect from 01.07.2012 only and not to the pleadings instituted prior to the said date.

8. Relevant paragraph Nos. 10, 11 and 12 of C.R.P. (NPD) No. 1324 of 2010 are extracted herein:

10. The learned counsel appearing for the petitioner relied on the decisions reported in D. Ramanujam Vs. R. Panneerselvam, to contend that the amendment of pleadings cannot be allowed after commencement of trial and the parties seeking amendment should exercise due diligence and seek for such amendment before commencement of trial. In both the decisions proviso to Order 6 Rule 17 C.P.C. was taken into consideration and thus the learned Judges found that once the trial has commenced, no application for amendment of the pleadings can be allowed unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial. It is seen that the Proviso to Order 6 Rule 17 CPC was introduced by Act 22 of 2002 and applicability of the Proviso to the case instituted prior to 01.07.2002 was considered by the Hon''ble Full Bench of this Court in a decision reported in Dr. S.H. Sithik Basha Vs. Fazal Ahmed, in which it has been held that Proviso to Order 6 Rule 17 CPC is applicable to the pleadings instituted with effect from 01.07.2002 only and not to the pleadings instituted prior to 01.07.2002. Thus the Hon''ble Full Bench decision of this Court squarely covers the issue on hand since the suit in this case was instituted in 1999. In fact a learned Single Judge of this Court in another decision reported in 2005 (3) CTC 321 considered the very same issue and found that any pleadings filed before 01.07.2002 would not be governed by the Amended Act and the amendment of pleadings is to be decided as per law as it stood prior to 01.07.2002 in respect of such cases. Thus the decisions relied on by the petitioner's counsel are factually distinguishable.

11. The learned counsel appearing for the petitioner also relied on the decision reported in J. Samuel and Others Vs. Gattu Mahesh and Others, Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another, and an unreported decision of this Court made in Kta Raja Chettiar and K. Pandian vs. Tmt. Rajamani and others dated 25.01.2007.

12. In all those decisions, a perusal of the facts of those cases would disclose that respective suits therein were filed after 2002 amendment and therefore in view of the decision made by the Hon''ble Full Bench of this Court referred above the learned counsel appearing for the petitioner is not correct in relying on those decisions in support of his submissions.

9. Thus, in view of the decision rendered by the Hon''ble Full Bench reported in

Dr. S.H. Sithik Basha Vs. Fazal Ahmed, he finding of the court below to the effect that the amendment in this case cannot be sought after the commencement of trial is not sustainable.

10. Thus, it leads me to the next question as to whether the amendment sought at the belated stage that too, after nearly 11 years from the date of original pleading, is sustainable.

11. In this case, the suit was filed on 31.08.2000 seeking for declaratory relief to declare the resignation letter dated 15.02.1999 as null and void. Thus, admittedly, the plaintiff was out of employment on and from 15.02.1999 itself and consequently, the cause of action for reinstatement in service with back wages was very much available to him on the same day when he filed the suit. However, he failed to seek for such relief either at the time of filing the suit or atleast by amending the plaint during the pendency of the suit. On the other hand, when the suit was dismissed on 31.07.2009, he has chosen to file an appeal in the month of November 2009. Even thereafter, he waited for another 1 = years to file the application for amendment. It is to be noted that it is not an alternative relief sought by way of an amendment but on the other hand, it is a consequential relief. Needless to say that the cause of action for consequential relief, if had arisen, even at the time of filing the suit itself, the same should have been sought for along with main relief or atleast immediately within a short time. It cannot be sought after a long number of years especially, when such relief is barred by limitation on the date of application seeking for amendment.

12. An identical issue was considered by me in C.R.P. (NPD) No. 2557 of 2012 dated 27.06.2013 wherein after following the decision of the Apex Court reported in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, it was held therein that if the plaintiff, even by way of filing a separate suit is not entitled to seek the relief, then he is not entitled to seek such relief by way of amending the plaint in the present suit. Paragraph Nos. 13 and 14 of the above decision of mine is extracted hereunder:

13. The Hon"ble Supreme Court in a decision reported in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, while considering the scope of amendment of pleadings has held at paragraph 63 as follows:

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bonafide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

(emphasis supplied)

From the above decision of the Apex Court in the case of Revajeetu Builders and Developers, it is seen that if a fresh suit on the amended claims would be barred by limitation on the date of the application, then the Court should decline amendments.

14. Keeping in mind the above said legal position, if the facts and circumstances of the present case are considered, undoubtedly, it shows that the alternative relief for refund of the advance amount is clearly barred by limitation on the date of the application seeking for amendment. No doubt the question of limitation is a mixed question of fact and law. But at the same time based on the admitted facts, if the court can come to an irresistible conclusion that the relief sought for by way of amendment is barred by limitation on the date of the application, then there would be no purpose in allowing the amendment petition. Therefore, when the plaintiff in this case even by way of filing a separate suit was not entitled to seek for the refund of the advance amount from the defendant as on the date of filing of the amendment petition, in view of the fact that such relief is barred by limitation, certainly, he is not entitled to seek such relief by way of amending the plaint in the present suit as well. When the relief sought for is undoubtedly barred by limitation then permitting amendment would only be an empty formality as it is ultimately not going to serve any purpose.

Thus, by following the decision of the Apex Court and by following my own decision made in the above civil revision petition, I hold that the amendment sought for by the petitioner is not sustainable and consequently, the order of the court below in dismissing the amendment petition does not warrant any interference. Accordingly, the civil revision petition is dismissed. No costs. The connected miscellaneous petitions are also dismissed.