
(2017) 01 BOM CK 0095
In the Bombay High Court
Case No : Writ Petition No.2822 of 2016

HDFC Bank Ltd.

APPELLANT

Vs

Ashapura Minechem Ltd.

RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17
Recovery of Debts Due To Banks And Financial Institutions Act, 1993 — Section 19

Citation : (2017) 2 AIRBomR 303 : (2017) 3 ALLMR 723 : (2017) 2 BC 515 :
(2017) 3 MhLJ 511

Hon'ble Judges : R.M. Borde and A.S. Gadkari, JJ.

Bench : Division Bench

Advocate : Mr. Zubin Behramkamdin, Senior Counsel a/w Mr. Sahil Saiyed, Mr. Nikhil Apte i/b Wadia Ghandy and Co, for the Petitioner; Mr. Pradeep Sancheti, Senior Counsel a/w Ms. Savita Nangare and Ms. Pooja Tated i/b ALMT Legal.

Final Decision : Allowed

Judgement

R.M. Borde, J.(Oral)—Heard.

2. Rule. With the consent of the parties, petition is taken up for final hearing at the admission stage.

3. The petitioner is objecting to the Order passed by the Chairperson of the Debt Recovery Appellate Tribunal rejecting the appeal preferred by the petitioner-original applicant challenging the Order passed by the Debut Recovery Tribunal dated 28.12.2014 rejecting application seeking leave to amend the pleadings. The original-applicant, petitioner herein presented the application bearing No.29 of 2011 to the Debt Recovery Tribunal at Mumbai under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (R.D.D.B. Act) claiming a decree against the respondent-original debtor entitling the applicant to recover a sum of Rs.27,23,33,693.34 together with interest. There are certain other reliefs also claimed in the application which need not be recorded here. During the pendency of the proceedings, the application came to

be tendered by the original-applicant seeking leave to amend the original-application. By virtue of the amendment application, applicant seeks to incorporate prayers claiming recovery of arrears i.e. sum of Rs.64,25,64,810.23 due and payable by the debtor towards monthly settlement from 26.2.2010 to 30.11.2012 under the said derivative transactions. The application tendered by the original applicant has been turned down by the Debt Recovery Tribunal by Order dated 6 October 2016, mainly on the ground that the proposed amendment under which the recovery of additional amount is claimed does not relate back to the date of presentation of original-application. The Tribunal has also taken view that the proposed amendment is based on a new cause of action and shall be effective from the date of the proposed amendment or the proposed amendment introduces a further claim. It is recorded in the Order that original application must be tried only on the original cause of action which is a settled principle of law and that the proposed amendment would relate back to the original application. The adverse order passed by the Debt Recovery Tribunal was subject matter before the Appellate Court where the appeal has also been rejected. It is the contention of the petitioner that the proposed amendment thus relates to the subject matter of the suit and it does not necessarily change the character of the same.

4. Our attention is invited to the pleadings contended in para- (xii) of the original application No.29 of 2011, wherein it is averred by the original-applicant/petitioner herein that the payments under the various other settlement dates have not yet fallen due and hence the applicants (petitioners) have not claimed any other amounts under the said derivative transaction. However, the applicants reserve their rights to alter, amend and/or modify their claim or initiate any further recovery proceedings in respect of the amounts falling due under the remaining monthly settlement dates. It is contended by the petitioner that the claim is raised by way of amendment under the other settlement dates which did not fall due on the date of presentation of the original-application. The cause of action is continuing one. If the amendment, as proposed, is not allowed, it will lead multiplicity of the proceedings. It is also contended that the continuing cause giving rise to claim during the pendency of proceedings can be a matter for consideration in the pending original-application presented by the petitioner. It is true that the petitioner does have an option of presenting the separate recovery proceedings in respect of amount claimed under the amended pleadings, however, it cannot be controverted that the additional claim raised by introducing amended pleadings is part of the same transaction or series of transaction which is subject matter of the original application. The parties before the Tribunal are one and the same. The subject matter i.e. the controversy before the Tribunal is relating to same set of transaction the additional sum that has been claimed under the amended application is part of the same series of transactions, which is the subject matter of the proceedings.

5. In view of the above, we are of the considered opinion that since the proposed amendment does change the character of the suit, the same can be allowed. It is

also not contended by the respondent that the proposed amendment defeats the defence of limitation. Even in the event of raising question of limitation, it can also be a matter of issue before the Trial Court, as has been held by the Apex Court in the matter of Raguthilak D. John v. S. Rayappan & Ors., reported in (2001) 2 SCC 472. In the aforesaid judgment, the Apex Court has observed that the dominant purpose of allowing the amendment is to minimise the litigation. In the reported matter since the plea of limitation was raised, the Apex Court observed that the same can be made subject matter issue after allowing the amendment as prayed for.

6. In the matter of Mount Mary Enterprises v. Jivratna Medi Treat Private Ltd, reported in (2015) 4 SCC 182, the Apex court in para-7 has held that the amendment application should be normally granted unless by virtue of the amendment nature of the suit is changed or some prejudice is caused to the defendant. As held above, in the instant matter the nature of the suit or the proceedings pending before the Debt Recovery Tribunal does not undergo any change, even if the amendment as requested by the petitioner is allowed. Permitting such amendment causes no prejudice to the other side. The principles governing the amendment of the pleadings has been considered in the matter of North Eastern Railway Admn v. Bhagwan Das reported in (2008) 8 SCC 511 wherein para-16 of the judgment, the Apex Court has observed thus:

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6, Rule 17 of CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6, Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil [AIR 1957 SC 363: (1957) 1 SCR 595] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

The learned counsel for the respondent placed reliance on the judgment in the matter of Dena Bank v. Gautam Ratilal Shah & Ors. reported in AIR 1988 Bom. 1. In view of judgment of Supreme Court referred to above, reliance placed on judgment of Bombay High Court is of little assistance for respondent. Even if it is assumed that proposed amendment if permitted would relate back to date of suit or original application, since the defence of limitation is neither raised nor is likely to be defeated in original application, aforesaid objection for consideration of application for amendment of pleadings is of little consequence and does not deserve consideration. It is also permissible for Courts to declare, while permitting amendment of pleadings, that such amendment shall not relate back to date of suit.

7. In our opinion, on consideration of the aforesaid legal proposition, the amendment application tendered by the petitioner original applicant ought to be allowed. It would be open for the respondent to raise all defences permissible in law while opposing the reliefs sought by way of amended pleadings. The claim raised in the original application by the petitioner until the date of presentation of the original-application and the claim raised by virtue of the amendment after presentation of such application is separable and it would be open for the respondent to raise objections touching the merits of the claim before the Tribunal and the question of permissibility to grant the claim raised by way of amended pleadings.

8. The petition thus succeeds. The Order dated 28.8.2014 rejecting application seeking amendment to original application and the Order dated 6.10.2016 passed by the Debt Recovery Appellate Tribunal confirming the said Order are quashed and set aside. All defences available in law for the respondent are specifically kept open. It would be open for respondent to present written statement controverting amended original application.

9. The application tendered by the petitioner/original-applicant seeking amendment to the pleadings/original application stands allowed. In case, under the relevant regulations the petitioner-original applicant is required to pay the additional Court fees, it would be open for the Debt Recovery Tribunal to direct the petitioner to pay the same and it shall be obligatory on the part of the petitioner/original-applicant to comply with such directions. The learned counsel for the petitioner may make a request to the Debt Recovery Tribunal for expeditious disposal of the pending proceedings.

10. Rule made absolute in the aforesaid terms. No costs.