

(2001) 04 CAL CK 0014

In the Calcutta High Court

Case No : G.A. No. 2241 of 1999 and C.S. No. 149 of 1997

Indian Oil Corporation Ltd.

APPELLANT

Vs

Manav Construction Private Ltd.

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

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

Citation : (2001) 3 CALLT 78 : 107 CWN 734

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Mr. K.S. Roy and Mrs. S. Mukherjee, for the Appellant; Mr. P.K. Roy and Mr. Pramit Roy, for the Respondent

Final Decision : Allowed

Judgement

The Court

1. This is an application, in the nature of Order 6 Rule 17 of the CPC made by the defendant in the aforesaid suit. Order 6 Rule 17 of the CPC provides as follows:

"Amendment of pleadings : The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

2. Two relevant purposes of such Order 6 Rule 17 are necessary to come to an appropriate conclusion i.e., "act at any stage" and "determining the real questions in controversy". Therefore, there cannot be any embargo in ignoring the application only on account of the stage or stages of this proceedings. The guiding factor is determining the real questions in controversy between the parties. The object of this rule is to enable the real questions in issue between the parties to be raised in the pleadings for the purpose of adjudication between the parties. It also prevents multiplicity of suits and shortens litigation. The rule

permits amendment at any stage and it does not matter whether the original omission arose from negligence or carelessness, for the Court exists for the determination of the rights of the parties and for doing substantial justice to them and not for punishing them for either mistakes in the conduct of cases. The powers of amendment vested in Court, under this rule are very wide. No injury will be caused to the respondent. The present suit is made for recovery of loss and damages suffered by it on account of breach of contract. The defendant by filing this written statement has taken various pleas. However, by making this application in effect the defendant wanted to be much categorical in respect of frustration by intrusion or occurrence of an unexpected event and/or supervening impossibility to act, such parts as intended to be incorporated by amendment are available under the red ink under paragraphs 1 A(i), (ii), (iii), (iv) and (v). In opposing such application the plaintiff/respondent has basically taken a plea that the plea of frustration or impossibility was never before in the main written statement, therefore, those are new set of defences. Moreover, those contentions are mutually destructive if the original pleading and the proposed substituted pleadings in the written statement are taken together. In fact he relied upon a judgment reported in *Shiromani Gurdwara Prabhandak Committee Vs. Jaswant Singh*, where it has been held that it is settled law that the defendant can raise mutually inconsistent pleading in the written statement but it is for the Court to consider whether the case can be properly considered in deciding the issue. In explaining the factual position the Supreme Court observed that in the first written statement they have denied the title. Therefore, they cannot set up a title in him and plead gift made in favour of the petitioner-committee. It was further held by the Supreme Court that there is no explanation given as to why they come forward with this plea at the belated stage after the parties have adduced evidence and the matter was to be argued. Under the circumstances, there is no error of jurisdiction or material irregularity in the exercise of jurisdiction warranting Interference. So, If I interpret the judgment two things will come out. Firstly, title was denied and thereafter wanted to set up the title for the purpose of pleading in favour of gift. Secondly, such defence wanted to be taken by incorporation in the written statement when adducing of evidence are closed and the matter is directed to be argued. According to me, there is a justification of such refusal because, the stage in which the application was taken in the referred judgment can be said to be an afterthought. Moreover, actually both the statements are self-contradictory in respect of the title itself which is part material in respect of decision of the Court of law. This is different from the referred case. In the present case, neither witness action has started nor even the issues are framed. Therefore, it cannot be construed as a belated stage at all. So, the remaining part is whether the application for amendment can be allowed in merit or not. It is an admitted position that the suit is made on account of loss and damages arising out of breach of contract. Therefore, the usual defence under the Contract Act is act of God, impossibility to perform, frustration etc. Therefore, it cannot be said that such defence is new defence cannot be taken by the defendant by making application for amendment at all.

Therefore, the remaining question is whether the amendment is mutually destructive pleading or not. I have gone through the written statement. The defendant has categorically stated in the written statement that because of certain Court litigations the defendant was restrained from making construction. It was also been categorically stated that because of the order of the Hon'ble Supreme Court, the defendant was prevented from completing the building. Thus the defendant is not responsible for failure to complete the building and make over the same within the stipulated time to the plaintiff in the facts of the case. Indeed the defendant also suffered substantial loss and injury because of stoppage of construction work in the wake of the orders of Court. The huge money involved in such construction got stuck. At all material times this defendant made all out efforts to complete the project within the stipulated time and incurred unguarding legal expenses for effectively setting at rest the frivolous litigations instituted by the third party, at high speed to fulfil the agreed terms and conditions as stipulated in the said agreement, and that despite his acting with alacrity the litigation opened on myriad fronts drifted, is not because of any laches on the part of the defendant. The plaintiff itself was convicted of the mala fide of the litigation, which were filed for harassing the defendant. Due to the said fact the plaintiff withdrew the decision to invoke bank guarantee by its letter dated 14th December, 1992. The plaintiff also encouraged the defendant to complete the construction work. The aforesaid facts made it clear that the plaintiff was all along interested to acquire the building complex to be completed by the defendant. In paragraph 3(1) the defendant has categorically stated that the entire construction was made according to the specifications supplied by the plaintiff. The building constructed in the manner aforesaid is not easily capable of being sold at market price inasmuch as not being built to cater to the needs to independent owners, and being tailored as residential flats of a community of administrative officers of a particular company, it is not expected to fetch proper price.

3. However, so far this application is concerned, it cannot be said that there was no defence on account of impossibility of being performed or frustration etc. In the defence. Therefore, if the defendant wants to incorporate the particular words of "frustration" or "impossibility" in the additional written statement it will neither make any contradictory stand nor will frustrate the claim of the plaintiff by amendment itself. If the amendment is allowed on any new cause of action now pleaded, it can be construed as mutually destructive in between the former statement and the latter statement which may not be allowed. This is at best can be said pleading of evidence but unless such evidence is proved before the Court of law by witness action can not be said to be accepted. Therefore if now one wants to add such words by amendment of written statement, Court cannot refuse the same as it stands nor the plaintiff/ respondent will be prejudiced. This type of amendment is arising out of the real question of controversy existing in between the parties as such Court can not refuse the same.

4. Two other short aspects are to be discussed hereunder. One is that the

argument of the respondent-plaintiff is that doctrine of frustration in the facts and circumstances of this case presupposes the breach of contract. I can not accept such submission at this stage because such part has to be established by the respondent-plaintiff at the time of hearing of the suit by adducing evidence and by making argument thereon and the Court hearing the Suit will have to be satisfied in that respect. The other Important factor is that scope of hearing suit is very wide unlike applications which are precised under certain sections of a particular act or rules framed thereunder, therefore, in a proceeding when the object of the amendment of pleading is also wide, the same cannot be ignored as proposed.

5. Therefore, taking the totality of the facts and circumstances, I am of the view that the amendment should be allowed. Accordingly, the application stands allowed.

6. Department will carry out the amendment as proposed under the red ink and along with the re-verification of the same, if any, within a period of three weeks from the date of communication of this order. After formalities are completed by the department, a copy of such amended written statement will be forwarded to the plaintiffs immediately so that they can file their counter to the additional written statement in this respect, if any, within a further period of two weeks from the date of receiving the copy of the amended written statement. There will be a cross order for discovery and inspection which will be completed within a period of one month from the date of filing of the additional written statement.

Liberty is granted to mention the matter before the appropriate Court for early hearing after completion of all such formalities.

Xeroxed certified copy of this Judgment will be supplied to the parties within seven days from the date of putting requisites.

All parties are to act on a signed copy minutes of the operative part of this Judgment upon usual undertaking and as per the satisfaction of the officer of this Court in respect as above.

7. Application allowed