

(2015) 10 DEL CK 0166
In the Delhi High Court
Case No : W.P. (C) 3669/2015

Jasbir Singh

APPELLANT

Vs

Y.S. Cooper Cambata Aviation Pvt. Ltd.

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 13 Rule 1, Order 13 Rule 2, Order 6 Rule 17
Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33- 2(b), 33(1), 33A

Citation : (2015) 147 FLR 1056

Hon'ble Judges : Sunita Gupta, J.

Bench : Single Bench

Advocate : N.A. Sebastian, Advocate, for the Appellant; Ashok Kumar Srivastava, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sunita Gupta, J.—Challenge in this writ petition under Article 226 and 227 of the Constitution of India is to the order dated 22nd December, 2014 passed by the Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Kakardooma, Delhi vide which the application moved by the petitioner/workman under Order VI Rule 17 CPC for amendment of his claim u/s 33A of the Industrial Disputes Act, 1947(hereinafter referred to as "ID Act") was dismissed on the ground that the trial has already commenced in the matter.

2. Shorn on unnecessary details, the petitioner filed a complaint u/s 33A of ID Act against the management, inter alia, on the allegation that the management has terminated his services during the pendency of an industrial dispute bearing No. 122/2012 referred for adjudication by the appropriate government vide termination letter dated 9th August, 2013. This termination is in contravention of Section 33(1) of the Act and Section 33- 2(b) of the Act as the management has neither taken permission of the competent authority nor moved a mandatory application for approval before the Court where the industrial dispute is pending.

As such, it was prayed that the termination be declared illegal and unjustified and the workman be deemed to be in service with continuity of service and consequential benefits.

3. The claim filed by the petitioner was contested by the management. During the pendency of the claim, application under Order VI Rule 17 CPC was moved by the workman whereby he wanted to amend the title of the claim. He also wanted to delete para 1, 8, 16, 19, 1st Sub para of the prayer clause and wanted to replace the same with para No. 1, 1(A), 1(B), 1(C), para 6, para 8, 19 and the prayer clause. The application was contested by the management on several grounds. Vide impugned order dated 22nd December, 2014, the application was dismissed primarily on the ground that the issues were framed by the Tribunal on 2nd September, 2014 and the matter was fixed for workman's evidence on 31st October, 2014. However, instead of adducing evidence, the workman moved an amendment application. Reliance was placed on amended provision of proviso to Rule 17 of Order VI CPC which is to the following effect:-

"Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

4. It was observed that in these facts and circumstances, the Court has no jurisdiction to decide the amendment application moved by the workman, as such, the same was rejected.

5. In support of the submission that the application in hand was moved even before the evidence has started, as such, the proviso to Rule 17 of Order VI has no application and, therefore, the Tribunal fell in error in rejecting the application, reliance was placed on Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., and Rajesh Sharma Vs. Krishan Pal and Another, .

6. Per contra, learned counsel for the respondent submitted that by virtue of the present application, the petitioner wants to fill up the lacunas and change the nature of the case. Substantially new pleas are sought to be raised which were already in the knowledge of the petitioner, as such, it was a case of lack of due diligence. By virtue of this application, the petitioner wants to withdraw the admissions, which is not permissible. Moreover, not only various paragraphs are sought to be deleted and replaced but even the original respondent is sought to be deleted and instead management is sought to be impleaded. Under the circumstances, the application was rightly dismissed by the Tribunal.

7. Proviso to Order 6 Rule 17 of the Code of Civil Procedure, to the extent it is relevant, provides that no application for amendment shall be allowed "after the trial has commenced" unless the Court is satisfied that inspite of due diligence, the applicant could not have raised the matter before the commencement of trial.

8. The question as to whether or not the trial can be said to have commenced

when issues are framed and the case is listed for trial or not, came up for consideration before this Court in Rajesh Sharma(supra) where this Court referred to number of decisions rendered by this Court, other High Courts as well as Supreme Court and observed as under:-

8.....In Mohd. Saleem and Others Vs. Naseer Ahmed, , the issues were framed but before the evidence could be led, the Petitioner filed an application seeking to amend the plaint to incorporate the relief of possession; the amendment was disallowed by the trial Court. During the course of the judgment, this Court inter alia observed as under:

"9. In Indian Bank Vs. Maharashtra State Co-operative Marketing Federation Ltd., , the Supreme Court followed its earlier decision in Harish Chandra Bajpai Vs. Triloki Singh, holding that in a limited sense, "trial" means only the final hearing of a petition consisting of examination of witnesses, filing of documents and addressing of arguments.

15. The word "trial" as described in Black's Law Dictionary (7th Edition) at page 1510 means:

Trial: A formal judicial examination of evidence and determination of legal claims in an adversary proceeding.

x x x

13. The matter is really no more res integra in view of the observations of the Apex Court recently made in Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc., .

"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 Code of Civil Procedure provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in the proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 Code of Civil Procedure which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

Allowing the petition filed by the Petitioner, this Court concluded as under:

14. The conspectus of the aforesaid pronouncements and definitions as to when a commencement of trial takes place leaves no manner of doubt that it refers to

a stage after framing of issues and after the hiatus period thereafter where steps have to be taken to start the trial by examination of witnesses whether in the form of filing of affidavits or otherwise.

15. In view of the aforesaid position, it cannot be said that on framing of issues itself the trial has commenced and thus the proviso to Rule 17 of Order 6 of the said Code would come into play."

9. In *Link Engineers (P) Limited Vs. Asea Brown Boveri Limited and Others*, , the issues were framed on 28th August, 2006 and on the same date, the parties were directed to file their list of witnesses within six weeks and the plaintiff was directed to file affidavits of witnesses within eight weeks. 4th December, 2006 was fixed for recording of evidence. The facts of the case are almost identical to the facts of the case before this Court. The plaintiff in that case filed an application on 17th November, 2006 seeking amendment of the plaint. The application was opposed by the defendants on the ground that in view of the proviso to Order 6 Rule 17 Code of Civil Procedure, the plaintiff could not be permitted to amend the plaint at that stage. After considering the decision of Supreme Court in *Baldev Singh and Others Etc. Vs. Manohar Singh and Another Etc.*, , *Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others*, and *Ajendraprasadji N. Pande and Another Vs. Swami Keshavprakeshdasji N. and Others*, and also the decision of this Court in *Mohd. Saleem (supra)*, it was held that the trial did not commence on 28th August 2006 when the issues were framed and as per the practice of the Court, directions were passed for filing of list of witnesses and affidavits of examination-in-chief. The Court was of the view that if the affidavits of examination-in-chief are not to be filed but the witnesses are to be examined, the date for appearance of the witnesses itself would be the date for commencement of the trial, but the position would be different in a case where the evidence is to be filed by way of affidavit. The court felt that it would not be appropriate to shut out the plaintiff from seeking amendment of the plaint on the ground that there is commencement of trial since the date for filing of the affidavits of evidence had expired though the date for appearance of the witness was yet to be come.

10. In *Smt. Basanti Satapathy and Others Vs. Rakesh Kumar Satapathy*, the High Court was of the view that the expression "where the trial has commenced" occurring in the proviso to Order 6 Rule 17 of Code of Civil Procedure should be read in a strict sense and can also have a restricted meaning namely where the taking of evidence is started. The Court was of the view that considering the object sought to be achieved by conferment of power to allow amendment of pleadings, the restriction imposed by the proviso on that power, should be limited to cases where the trial as it is generally known viz. the examination of witnesses has commenced. In *Neelakandan Nair Vs. Parameswara Kurup*, , the Court was of the view that in a narrower sense trial would mean only the stage of actual adducal of evidence - documentary or oral and in the context of Order 6 Rule 17 Code of Civil Procedure, it means the commencement of actual trial or actual

adducal of evidence.

11. In *Rajesh Sharma (supra)* also the question for consideration was whether a trial has commenced when the application for amendment was moved. Issues were framed on 13th November, 2009. The parties were directed to file list of witnesses within four weeks and the plaintiff was directed to file evidence by way of affidavit for examination-in-chief within eight weeks. Thereafter an application under Order 13 Rule 1 & 2 CPC was moved by the defendant which was disposed of. The Joint Registrar directed for listing the matter for plaintiff's evidence on 18th August, 2010. Affidavit by way of evidence was not filed by the plaintiff for that date, instead an application for amendment was moved. It was held by a Single Judge of this Court that when the Court fixes dates for recording evidence, these are the dates when the trial is scheduled to commence, but, actual commencement of the trial takes place only when either the witness appears in the Court for giving evidence or the affidavits of the witnesses are filed by way of their examination-in-chief. In any case, considering the observations made by Supreme Court in *Baldev Singh (supra)*, where the Court noticing that documentary evidence have not been filed, took the view that the trial had not commenced within the meaning of proviso to Order 6 Rule 17 of Code of Civil Procedure. Therefore, the trial in a case where evidence is to be recorded on affidavits does not commence before filing of one or more affidavits by way of evidence.

12. In the instant case also, after the framing of issues on 2nd September, 2014, the matter was adjourned for workman's evidence for 31st October, 2014. Instead of adducing evidence, the application was moved which was rejected relying upon the proviso to Order VI Rule 17 CPC.

13. In view of the aforesaid discussion, since the evidence was yet to start, the application is not hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure.

14. While rejecting the application, learned Tribunal did not go into the averments made in the application as to whether a case for amendment of the plaint was made out or not. Under the circumstances, the impugned order is set aside. The matter is remanded to the Industrial Tribunal to decide the application under Order VI Rule 17 CPC moved by the petitioner afresh after affording parties an opportunity of being heard. Parties are directed to appear before the Industrial Tribunal on 30th October, 2015.

15. Copy of the order be sent to the Tribunal immediately for information and compliance.

16. The writ petition stands disposed of.