
(2013) 11 MAD CK 0228

In the Madras High Court

Case No : C.R.P. (PD). No. 1351 of 2013 and M.P. No. 1 of 2013

M/s. Ferani Hotels Private Limited

APPELLANT

Vs

M/s. K. Raheja Development Corporation (K.R.D.C.) and M/s.
K. Raheja Hotels and Estates Pvt. Ltd.

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 2 CTC 655 : (2014) 2 LW 271

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Judgement

S. Tamilvanan, J.—This Civil Revision has been preferred under Article 227 of the Constitution of India, challenging the order, dated 13.02.2013 made in I.A. No. 1152 of 2012 in O.S. No. 747 of 2009 on the file of the I Additional Subordinate Court, Coimbatore. It is seen that the suit in O.S. No. 747 of 2009 was filed by the respondents herein against the petitioner, seeking declaration, mandatory injunction and other relief's, wherein I.A. No. 1152 of 2012 was filed by the respondents herein under Order 6 Rule 16 & 17 of the Code of Civil Procedure, seeking an order to amend the plaint to include the prayer, as stated in the petition. The details of the amendments sought for is as follows:

1. Delete in Para No. 13 next to the Rs. 1,01,000/- the sum and insert the following Rs. 1,02,000/-.
2. Delete in Para No. 13 next to the Rs. 7,576.50/- the sum and insert the following Rs. 7,652/-.
3. In Para 13 (c-1), the following c-1 For the relief of mandatory injunction, the plaintiffs the suits at Rs. 1,000.00 Court fee paid under Sec. 27(c) of the Tamil Nadu Court Fees and Suits Valuation Act Rs. 75.50 Total Rs. 1,02,000/- Rs. 7,652.20
4. Add in Para 14(c-1), the following prayer: 14(c-1) Mandatory Injunction directing the Defendant to produce all documents which include correspondence,

electricity bills, Municipal receipts, Telephone bills, Insurance policies and other records belonging to the plaintiffs, which are lying in the suit property when the same was illegally demolished by the Defendant and its henchmen.

2. It is not in dispute that the Court below, by the impugned order, dated 13.02.2013, allowed the application, permitting the respondents/plaintiffs to amend the plaint and granted the relief, as sought for in the Interlocutory Application, aggrieved by which, this Civil Revision has been preferred by the petitioner/defendant.

3. Mr. P.S. Raman, learned Senior counsel appearing for the petitioner submitted that the relief sought for by way of the amendment was already barred by limitation, on the date of filing of the application, seeking permission to amend the plaint and hence, the impugned order passed by the Court below is against law. It is further argued that the Court below has taken a liberal view, merely by stating reason to avoid multiplicity of proceeding, which is legally not maintainable and the order of the trial court, allowing the petition is beyond the pleading of the respondents/plaintiffs. According to the learned Senior counsel for the petitioner, the trial Court has not followed the settled principles of law, whereby erroneously permitted amendment to the plaint and the same would prejudice the rights of the petitioner/defendant, hence, the Revision has been preferred under Article 227 of the Constitution.

4. Per contra, Mr. T.V. Ramanujam, learned Senior counsel for the respondents/plaintiffs submitted that authorised representative for the second respondent was appointed by the Company Law Board (CLB), Chennai Bench as Administrator to take over all the assets and affairs of M/s. K. Raheja Hotels & Estates (P) Ltd., by virtue of the order, dated 10.08.2011 made in C.A. No. 9/2011 in C.P. No. 72/90. In order to attend the work, take care, manage and look after the affairs of the company, which shall, inter-alia, embrace, taking care of the offices at Bangalore, Chennai, Coimbatore, steps were taken to retrieve the records, which had been there at the Coimbatore property. Learned Senior counsel for the respondents/plaintiffs argued that in view of the order passed by the Company Law Board, it was obligatory to ensure that the second respondent has to take appropriate steps for retrieval of the company records, which were kept at the suit property and therefore, seeking amendment became necessary.

5. In the accompanying affidavit filed before the Court below, the respondents herein have stated that the suit was filed by one S. Sundarajan, as the authorised representative of the second respondent/second plaintiff and in the plaint, in paragraph No. 10, it was stated thus:

The plaintiff submit with respect that the defendant along with their henchmen clandestinely and illegally trespassed/entered the suit property and demolished the building and after destroying the properties of the plaintiffs left the suit property. The plaintiffs state that on account of such illegal demolition of the office building, the plaintiffs have lost valuable documents, records including

their furniture, fixtures, fittings etc. The plaintiffs states that the actions of the defendant, i.e., illegally demolishing the building on the suit property, is with a clear intention of destroy records and documentary and other vital evidence, which include correspondence, electricity bills, municipal receipts, telephone bills, insurance policies etc. The plaintiffs submit that the defendant is bound and liable to produce all the documents and other records belonging to the plaintiffs, which were lying in the suit property, when the same was illegally demolished by the defendant and its henchmen.

6. It has been further stated that in spite of the pleading, there was no appropriate prayer for the relief. Soon after the appointment of the second respondent/second plaintiff as Administrator and to the immediate knowledge, more about the present suit and proceeding, the respondents herein took steps to file the petition. As per the petition, the following amendments are sought for:

1. Delete in Para No. 13 next to the Rs. 1,01,000/- the sum and insert the following Rs. 1,02,000/-.

2. Delete in Para No. 13 next to the Rs. 7,576.50/- the sum and insert the following Rs. 7,652/-.

3. In Para 13 (c-1), the following

c-1 For the relief of mandatory injunction, the plaintiffs the suits at Rs. 1,000.00 Court fee paid under Sec. 27

(c) of the Tamil Nadu Court Fees and Suits Valuation Act Rs. 75.50 Total Rs. 1,02,000/- Rs. 7,652.20

4. Add in Para 14(c-1), the following prayer: 14(c-1) Mandatory Injunction directing the Defendant to produce all documents which include correspondence, electricity bills, Municipal receipts, Telephone bills, Insurance policies and other records belonging to the plaintiffs, which are lying in the suit property when the same was illegally demolished by the Defendant and its henchmen.

7. In the suit, the respondents/plaintiffs have sought the relief as follows:

a) Declaring that the defendant has demolished the superstructure of the building in "A" schedule property illegally while the rights of the plaintiffs a tenants/sub-tenants under lease agreement is subsisting and the same continues to subsist even after demolition of the superstructure concerning the vacant land more fully described in "B" schedule property;

b) Mandatory injunction directing the defendant to restore the illegally demolished superstructure, as it was within a time frame, failing which the plaintiff to be permitted to carry out the restoration and collect/claim the cost of such construction from the defendant;

c) Permanent injunction restraining the defendant from trespassing into the suit property and construct any building or carry out any activity on the suit property

and create any third party rights/encumber over the suit property in any manner whatsoever.

8. Learned Senior counsel appearing for the respondent/plaintiff submitted that there is no illegality or infirmity in the impugned order, so as to warrant any interference with the order, invoking Article 227 of the Constitution. Mr. P.S. Raman, learned Senior counsel appearing for the petitioner contended that the aforesaid relief sought for by the respondents/plaintiffs are not legally sustainable, in view of the averments made in paragraph No. 12, relating to the cause of action for filing the suit. As per the plaint averments, on 27.11.2009, the Advocate-Commissioner, who was appointed to inspect the property, as per the order passed in the suit in O.S. No. 699 of 2009 by the Court below, inspected the property and noted down the physical features and also took photographs. On 02.12.2009, the Advocate-Commissioner filed her report before the said Court. It has been stated by the respondents/plaintiffs that the petitioner/defendant had illegally and high-handedly demolished the building causing loss of valuable documents and records of the plaintiffs and also properties, including furniture, fixtures, fittings of the plaintiff, whereby caused irreparable loss and harm to the plaintiffs. Therefore, the aforesaid alleged incident was known to the respondents/plaintiffs, on the date of filing of the suit on 23.12.2009. However, they filed the Interlocutory application only on 14.12.2012, as per the entry made in the docket sheet. Had it been true, nothing could have prevented the respondent/plaintiffs to incorporate the relief sought for in the Interlocutory Application in I.A. No. 1152 of 2012 in the suit.

9. Learned Senior counsel for the petitioner vehemently argued against the amendment sought for in paragraph 14(c-1), whereby the respondents/plaintiffs have sought mandatory injunction, directing the defendant to produce all documents, which would include correspondence, electricity bills, municipal receipts, telephone bills, insurance policies and other records belonging to the plaintiffs, which were lying in the suit property, when the same was illegally demolished by the defendant and its henchmen. Learned Senior counsel for the petitioner argued that there was no such occurrence and that no such document was in the custody of the petitioner/defendant and further submitted that making vague allegations, even without giving any details and filing the Interlocutory Application to incorporate the relief of mandatory injunction is an abuse of process, since according to the respondents/plaintiffs, the occurrence had taken place, even prior to the filing of the suit and the relief sought for is only an after thought.

10. Mr. T.V. Ramanujam, learned Senior counsel for the respondents, in support of his contention, relied on the decision L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., , wherein the Hon''ble Apex Court, referring Privy Council decision in AIR 1921 50 (Privy Council) , has held as follows:

16. It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation

on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered and does not affect the power of the Court to order it, if that is required in the interest of justice.

11. In AIR 1921 50 (Privy Council) , the Privy Council has observed as follows:

That there was full power to make the amendment cannot be disputed and though such a power should not as a rule be exercised where the effect is to take away from a defendant a legal right, which has accrued to him by lapse of time, yet there are cases where such considerations are out-weighed by the special circumstances of the case.

12. In South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Others, , the Hon''ble Supreme Court has held as follows:

11. Before we deal with the orders of the courts below, as to whether the application for amendment of the written statement and the counterclaim was rightly rejected or not, let us consider the laws on the question of allowing or rejecting a prayer for amendment of the pleadings when the plea of limitation was taken up by one of the parties in the suit. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation.

13. Mr. P.S. Raman, learned Senior counsel appearing for the petitioner relied on the decision in Chinnu Padayachi and Raja Vs. Dhanalakshmi, Senthilnathan and Jeganathan, , wherein this Court (K. Venkataraman, J.), relying on the decisions in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, , Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, , held that the Court below has erroneously allowed the petition filed under Order 6 Rule 17 of the Code of Civil Procedure, without considering the fact that the application preferred by the respondents was not sustainable, on the ground that the claim itself was barred by limitation.

14. In Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, , the Hon''ble Apex Court has held that the amendment sought for should not cause prejudice to the other side. In the said decision, it was viewed that if the amount was allowed, the petitioners therein might not be in a position to raise a defence on the question of limitation, since the amendment would take place to the date of filing of the suit, hence, the same would prejudice the other side.

15. In Pankaja and Another Vs. Yellappa (D) by Lrs. and Others, , the Hon''ble

Supreme Court has held that amendment could be allowed to avoid further litigation, to meet the ends of justice. However, there is no straight jacket formula for allowing or disallowing amendment of pleadings, since the same depends on the facts and circumstances of each case. In the said decision, Paragraph 12 reads as under:

12. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation, an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not to allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. There can be no straight jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

16. It has been made clear by the Hon''ble t Supreme Court that there could be no straight jacket formula in allowing or disallowing the application filed under Order 6 Rule 17 CPC. However, in order to meet the ends of justice, the Court has to decide the same, on the facts and circumstances of each case.

17. It is a well settled proposition of law that when the relief sought for, as per amendment is barred by limitation, the Court cannot permit for seeking such an amendment of the plaint, as held by the Hon''ble Apex Court.

18. In Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, , the Hon''ble Supreme Court has held that if the amendment is not resulting in causing grave injustice and irretrievable prejudice to a party to the suit, the same can be allowed.

19. In K. Raheja Constructions Ltd. Vs. Alliance Ministries and others, , the Hon''ble Apex Court has held that having allowed the period of seven years being elapsed from the date of filing of the suit and when the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, allowing any amendment on the grounds set out, would defeat the valuable right of limitation accrued in favour of the respondent. As the relief sought for was barred by limitation, the plea seeking amendment of plaint under Order 6 Rule 17 of the CPC was dismissed. In the said decision, the Hon''ble Apex Court held that the application for amendment was barred by limitation and accordingly, dismissed the Special Leave Petition.

20. As per the proviso to Order 6 rule 17 of the Code of Civil procedure, as amended by Act 22 of 2002, it has been made clear that no application for amendment shall be allowed, if 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 the trial.

21. In the light of various decisions referred to above, rendered by the Hon''ble Supreme Court, it has been made clear that while allowing the petition filed under Order 6 Rule 17 of the Code, the Court has to consider whether the amendment would cause prejudice to the other party and similarly if the relief sought for is barred by limitation, such an amendment cannot be allowed, as it would prejudice the other side.

22. In the instant case, in respect of payment of Court fee made, the prayer sought for cannot be said that allowing the petition would prejudice the rights of the petitioner/defendant and the amendment sought for describing the relief sought for as 1 to 3 are relating to payment of proper Court fee, as per Tamil Nadu Court Fee and Suit Valuation Act. As per the plaint averments, the relief sought for are available in the original plaint and therefore, this Court is of the view that allowing the said amendments with regard to Paragraph Nos. 1 to 3 pertaining to Court fee would not prejudice the petitioner/defendant. Hence, the Court has to be reasonable and liberal in allowing the petition in respect of payment of court fee and accordingly, there could be no error or infirmity, so far as the amendment relating to payment of Court fee is concerned.

23. The fourth prayer is for amendment, seeking mandatory injunction directing the defendant to produce all documents, which include correspondence, electricity bills, municipal receipts, telephone bills, insurance policies and other records belonging to the respondents/plaintiffs, which had been in the suit property and the same were illegally demolished by the defendant and its henchmen.

24. As contended by the learned Senior counsel appearing for the petitioner/defendant, in the plaint itself, the respondents/plaintiffs have categorically averred that on 27.11.2009, the Advocate-Commissioner appointed by the Court below had visited the suit property, noted down the physical features and took photographs. Though the respondents/plaintiffs have averred in Paragraph No. 12 of the plaint that the petitioner/defendant had caused loss of valuable documents of the plaintiffs and other evidence, including furniture's, fixtures and fittings and documents/records of the plaintiffs, there was no other relief sought for, as per the plaint, in respect of the same.

25. It is seen that the plaint averments would show that the occurrence was noted down by the Advocate-Commissioner on 27.11.2009, however, there is no bonafide reason as to why the relief sought at present seeking mandatory injunction was not incorporated in the original plaint. Three years after the alleged occurrence, the Interlocutory Application was filed before the Court below only on 14.12.2012 and further, the prayer is also so vague, since there is no details of the documents and registers. Simply it has been stated as correspondence, electricity bills, municipal receipts, telephone bills, insurance policy and other records, without furnishing details of the documents.

26. As contended by the learned Senior counsel appearing for the petitioner/

defendant, even as per the averments of the plaint and the accompanying affidavit filed by the respondent/plaintiff, the amendment sought for is after a period of three years limitation and therefore, in the light of the decisions rendered by the Hon"ble Supreme Court, permitting to make such an amendment under Order 6 Rule 17 CPC would be prejudicial to the rights of the petitioner, as the relief sought for is barred by limitation.

27. On the aforesaid circumstances, to meet the ends of justice, I find it reasonable to partly allow the Civil Revision Petition, confirming the order passed by the Court below, so far as it relates to payment of court fees, relating to paragraph Nos. 1 to 3 and setting aside the order, so far as it relates to paragraph No. 4, seeking mandatory injunction. In the result, this Civil Revision Petition is partly allowed, whereby confirmed the order, seeking amendment so far as the amendment relating to paragraph Nos. 1 to 3 in the application filed before the Court below, as it relates to making payment of additional court fee. So far as paragraph No. 4 of the prayer is concerned, seeking amendment in paragraph No. 14(c-1), for the relief of mandatory injunction, directing the defendant to produce certain documents is negatived, on the ground that the same is barred by limitation and further, there is no specific details of the alleged documents and further, having raised the averments of demolition of the building and failure to incorporate in the plaint, so far as the relief sought for in the application pertaining to mandatory injunction, it would show that there is no bonafide reason for the respondents/plaintiffs, in respect of the said relief is concerned, as contended by the learned Senior counsel for the revision petitioner. Hence, so far as the amendment relating to mandatory injunction is concerned, the impugned order is contrary to the decisions rendered by the Hon"ble Supreme Court, as discussed in the order. Hence, so far as the said relief is concerned, the revision petition is allowed and the said portion of the impugned order is set aside.

Considering the facts and circumstances of this revision petition, the Court below is directed to dispose the suit, within six months from the date of receipt of a copy of this order, after permitting the respondents/plaintiffs to carry-out the amendment in the plaint, as per this order, providing reasonable opportunity for filing amended copy of the plaint by the plaintiffs, additional written statement, if any for the defendant and framing additional issues, if need be and decide the suit, solely on merits, uninfluenced by the findings of this Court, if any in this order, without seeking further extension of time. No order as to costs.