

(1997) 11 MAD CK 0150

In the Madras High Court

Case No : C.S. No. 45 of 1994 Application No. 3002 of 1997

M/s. Ravi Varma Traders, Erode

APPELLANT

Vs

M/s. Hindustan Photo Films, Manufacturing Limited and City
Union Bank Ltd.

RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:

Citation : (1997) 11 MAD CK 0150

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : V. Narayanaswamy and G. Shankar, for the Appellant; King and Partridge, V. Krishnan and R. Subramanan, for the Respondent

Judgement

B. Akbar Basha Khadiri, J.—The applicant/plaintiff has filed the suit against the defendants seeking permanent injunction to restrain the first

defendant from invoking or collecting payment under the Bank Guarantee No. 30/89-90 dated 22.07.1989 and also for a permanent injunction

restraining the second respondent Bank from paying any amount to the first defendant under the Bank Guarantee. Subsequently, the

applicant/plaintiff filed Application No. 5777 of 1994 for amendment of the plaint and the following amendments were allowed:

6(a) The plaintiff is filing its statements of accounts as per the books of the plaintiff maintained in the ordinary course of business at its three

branches at Ooty, Pondicherry and Madras according to which as on 31.3.1994 the first defendant would be liable to pay to the plaintiff the sum

of Rs. 21,49,523.52 as per the statements of accounts between the parties on a proper accounting basis"".

6(b) ""The plaintiff submits that as per the statement of account as per the

books of the plaintiff firm, the outstanding amount due and payable by the first defendant to the plaintiff is Rs. 21,49,523.52.

The plaintiff also submits that the first defendant is liable to pay to the plaintiff the sum of Rs. 4,70,631.38 representing the cost of defective materials supplied thereby causing loss and damage to the plaintiff. Thus the total amount due and payable by the first defendant to plaintiff comes to Rs. 26,20,154.87.

New para 9 in the place of old para 9;

a) in respect of the relief of permanent injunction... Rs. 4,585.00
the plaintiff values the sum of Rs. 1,00,800/-.

Court fee paid and payable-

b) in respect of prayer for the amount of Rs. ... Rs. 25,021.00
21,49,523.52. Court fee paid and payable

c) in respect of relief of Rs. 4,70,631.35. Court ... Rs. 8,232.00
fee paid and payable

Total Rs. 37,838.00

Total Court fee paid under Appendix 1A of the High Court Rules read with Section 27-C of the Tamil Nadu Court Fees and Valuation Act: Rs. 37,838/-.

(iv) Additional Court fee paid in excess of Court fee in Original Plaint - (37,838 - 4,585 = Rs. 33,253/-) new paragraphs 10(c) & 10(d) to existing paragraph 10(b) and to re-number the old paragraph 10(c) and 10(d) as 10(a) and 10(f).

Paragraph 10(c) - The first defendant to pay to the plaintiff the sum of Rs. 21,49,523.52 together with interest thereon at 18% per annum from the date of plaint till date of realisation.

Paragraph 10(d) directing the first defendant to pay to the plaintiff the sum of Rs. 4,70,631.35 towards the cost of complaint materials together with interest thereon at 18% p.a. from the date of the plaint till date of realisation.

Now, the applicant/plaintiff has come forward with the instant application for further amendment of the plaint seeking the following amendment;-

1) Add a new paragraph No. 6(c):

The plaintiff states that the order of interim injunction granted by this Hon''ble Court in favour of the plaintiffs in O.A. No. 44/94 was vacated by

order dt. 11.8.95. Against the said order, the plaintiffs preferred O.S.A. No. 199/95 which was also dismissed by the Division Bench of this

Hon''ble Court by order dated 12.9.95. Consequently, the first defendant invoked the suit guarantee against the second defendant who has paid

the sum of Rs. 25 lakhs to the first defendant payable under the suit claim guarantee on behalf of the plaintiffs. The plaintiffs submit that the suit

Bank Guarantee has been invoked fraudulently on the basis of improperly kept accounts and for the other reasons mentioned in this plaint. In the

event of the plaintiff proving their case they will be entitled in law to claim the refund of the aforesaid amount Rs. 25 lakhs from D1 together with

interest thereon at 21% per annum from 12.9.95 (viz.) the date of the order of this Hon''ble Court on the basis that on the date of invocation of

guarantee, no amount was outstanding and payable by the plaintiffs to the first defendant and therefore, the suit Bank Guarantee has been invoked

and implemented illegally. The plaintiffs are therefore entitled to recover from the first defendant the following amounts in this regard as follows:-

Principal amount Rs. 25 lakhs

Interest amount at 21% p.a. Rs. 1,02,945/-

thereon from 12.9.95 till date

28.8.97.:

Total Rs. 26,02,945/-

Relief

2) Addition at the end of paragraph 7, the following sentences:

On 11.8.95 when by order of this Hon''ble Court in O.A. No. 44/94, the order of interim injunction was vacated and which was confirmed by the

Division Bench by its order dt. 12.09.95 passed in O.S.A. No. 199/95 and subsequently when the second defendant paid to the first defendant a

sum of Rs. 25 lakhs under the suit Bank Guarantee"".

3) Addition of a new paragraph 9(d) as follows:

In respect of the relief for payment of Rs. 26,02,945/- Court fee paid and payable is Rs. 29,625/-: Total: Rs. 67,463/-.

Relief 2

4) Addition of a new paragraph 10(e) as follow...

Directing the first defendant to pay the sum of Rs. 26,02,945/- to the plaintiff together with future interest on the said Rs. 25 lakhs from the date of the suit till date of realisation.

Old paragraphs 10(e) and (f) 10 be re-numbered as 10(f) and 10(g)"".

2. The respondents/defendants object to the amendment contending that the suit was filed only for bare injunction and not for recovery of any money and that the claim for recovery of money now sought for by way of proposed amendment will completely and fundamentally change the nature, structure and character of the suit. The defendants/respondents had also contended that the earlier application in O.A. No. 5777 of 1994 seeking similar relief was dismissed and therefore, the plaintiff cannot seek the same relief now.

3. I have heard the learned Counsel for the applicant/plaintiff and the Counsel for the respondents/defendants. The objection of the respondents/defendants is that the amendment introduces a new case and therefore, it should not be allowed. The learned Counsel for the applicant/plaintiff cited the decision reported in K.S. Alagarsamy Vs. P. Natarajan and Another, In the decision reported in A.B.T. Parcel Service v. C.R. Vasudevan (1995 (1) M.L.J. 128), AR. Lakshmanan, J. has observed that it is open to this Court to take notice of the events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances and that the respondents' application for amendment should be ordered in view of the changed circumstances and in order to shorten the litigation and also to do complete justice between the parties.

4. In the instant case, though originally the suit as laid was one for grant of permanent injunction which is an equitable relief, subsequently, the plaint has been amended as per order in O.A. No. 5777 of 1994 to include a prayer for recovery of money.

5. A careful perusal of the plaint would go to show that the necessary facts for the relief now sought for have already been pleaded in the plaint.

Further when the plaintiff/applicant has sought for the relief of injunction and when the relief is frustrated by the subsequent events of second defendant making payment to the first defendant, the remedy to which the

plaintiff is entitled is only to seek the refund of the bank guarantee amount. The relief sought for by way of amendment is not a new and fresh cause of action. It is neither foreign to the scope of the suit nor will alter the nature of the suit as contended by the learned Counsel for the respondents/defendants.

6. In K.S. Alagarsamy's case (referred to supra) it has been held that the Court need not go into the question whether or not the proposed claim is barred by limitation, at this stage of amendment, because it is always open to the defendant to put forward all his contention if the amendment is allowed. In the result, the amendment is allowed. The applicant/plaintiff is directed to amend the plaint within fourteen days and to pay necessary Court fee due within fourteen days thereafter.