
(1978) 02 CAL CK 0051
In the Calcutta High Court
Case No : Suit No. 56 of 1977

Ratan Chand Khanna

APPELLANT

Vs

Mahendra Kumar

RESPONDENT

Date of Decision : 28-02-1978

Acts Referred:

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

Citation : AIR 1979 Cal 55

Hon'ble Judges : Padma Khastgir, J

Bench : Single Bench

Advocate : A.N. Saraf, for the Appellant;

Final Decision : Dismissed

Judgement

Padma Khastgir, J.—This application has been taken out by the plaintiff for amendment of the plaint. This application has been taken out after the application which has been taken out by the defendant for an order for dismissal of the suit or in the alternative for taking off the plaint from the file was heard by me. The said application was moved on 19th Dec. 1977. In para. 8 of the said petition it has been stated by the plaintiff that there are certain mistakes in calculation which were due to bona fide mistakes and were not known and realised by the plaintiff. As such under the said circumstances the plaint should be amended to rectify those mistakes. It is the plaintiff's further case that although interest has been claimed in the original plaint but through inadvertence the agreement for payment of the interest has not been pleaded in the original plaint. In the premises, the plaintiff craves leave to amend the plaint to include appropriate pleadings to that effect. According to the plaintiff, these amendments are necessary for determination of the real issue between the parties and will not change the character or cause of action of the case, as made out by the plaintiff. Annexure "A" to the said petition which is a copy of the chart which was submitted by the defendant's Advocate would show that the plaintiff's claim in the suit is for Rs. 46.649.39. Mr. A. N. Saraf, appearing on

behalf of the defendant has submitted that on the face of the plaint it will appear on proper calculation that without the aid of any other document or without referring to the affidavit-in-opposition by mere calculation of the figures and the total given by the plaintiff it would show that the plaintiff's claim is Rs. 46,649.39 and not the figure given by the plaintiff in the plaint itself. According to Mr. Saraf, even the calculation of interest at the rate given by the plaintiff is erroneous. Secondly, Mr. Saraf has argued that until and unless the plaintiff works for one year under the terms of the agreement, as set out in the plaint, the plaintiff is not entitled to get leave salary for two months. Moreover, he has submitted that as there is no pleading of any agreement to pay interest, interest cannot be allowed at 12% per annum or at any other rate at all. According to Mr. Saraf, in para. 2 all the terms of the agreement according to the plaintiff have been set out although the plaintiff has pleaded that the plaintiff would get every year equivalent to three months' salary. There was no pleading regarding any agreement for payment of interest in default of payment of bonus. It is the common case of the parties that the plaintiff's service came to an end or stood terminated on and from the expiry of the month of July 1974. Now by proposing to introduce the pleading for payment of interest the plaintiff is trying to introduce a new cause of action and that also beyond the period of limitation. By way of amendment the plaintiff wanted to increase the original figure of Rs. 50,071.14 to Rs. 50,629.81. According to Mr. Saraf, from the particulars as given in the plaint in para. 15, it will be evident that calculating interest on bonus @ 12% would not amount to Rupees 2,704.50 but it would be Rs. 16,069.50 and calculation of interest @ 12% on the sum of Rs. 4,800/- would be Rs. 366/- and not Rs. 624/- as wrongly given therein. According to Mr. Saraf, the question of proportionate leave salary does not arise as the plaintiff has not put in one year's complete service to entitle him to get the proportionate leave salary. Moreover, according to Mr. Saraf, the sum of Rs. 14,804 given in the said column is beyond the period of three years. As such it is time barred. According to Mr. Saraf, if these calculations are correct, the figure will be much less than Rupees 50,000/-. As such from the face of the plaint it will be apparent that calculation made at the rate shown by the plaintiff is wrong. As such this Court has no pecuniary jurisdiction to try this suit.

2. Mr. Saraf has further taken the point that as this Hon'ble Court has no pecuniary jurisdiction to try this suit this Court has no jurisdiction to entertain the application for amendment of the plaint. According to Mr. Saraf, by making the new amendment the plaintiff would be introducing a new cause of action. Moreover, the present application has been made after long delay. As such no order should be passed on this application.

3. In a case reported in Smt. Ganga Bai Vs. Vijay Kumar and Others, it has been held that power to allow an amendment under Order 6, Rule 17 is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding but the exercise of such far reaching discretionary powers is governed by judicial consideration and wider the

discretion greater ought to be the care and circumspection on the part of the Court.

4. In a case reported in L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., where it has been held that-- "It is no doubt true that the Court would as a rule decline to allow amendments if a fresh suit on the amendment claimed would be barred by limitation on the date of the application but that is a factor to be taken into account in exercise of 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."

5. From the series of decisions it would appear that power of the Court to grant an amendment even beyond the period of limitation in proper cases is unfettered. Whether the plaintiff's proposed amendments will introduce any new cause of action or not becomes redundant for the decision of this application in view of the judgment reported in Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others, wherein it has been held by a Division Bench of this Court that where the Court lacks jurisdiction either pecuniary or territorial it cannot grant any amendment of the plaint to bring the case within its jurisdiction. As such in view of my decision in the earlier application holding that this Court has no jurisdiction to entertain the present suit in view of the claim of the plaintiff falling short of Rs. 50,000/- I am not in a position to grant any amendment on the said application. The proper application for amendment may be made before the proper court which has jurisdiction to try this suit.

6. As such I dismiss this application.