
(1998) 11 BOM CK 0079

In the Bombay High Court

Case No : Civil Revision Application No. 37 of 1998 and Civil Revision Application No. 748, 750, 751 and 1170 of 1997

Ravindra Vasantrya Bhingarkar

APPELLANT

Vs

Bank of Maharashtra and others

RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

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

Citation : (1999) 3 BomCR 30 : (1999) 2 MhLj 393

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : D.R. Irale Patil for G.N. Patil, for the Appellant; A.B. Baik for B.K. Bhonde and N.G. Kale, for the Respondent

Judgement

R.J. Kochar, J.—Heard both the learned Advocates at length. Since the present civil revision applications can be disposed of at this stage itself, by consent of both the learned Advocates I am disposing of the same finally. Since the issues involved in all these civil revision applications are common, the same are disposed of by this common judgment.

2. Rule. Rule returnable forthwith.

3. The petitioner is the original defendant in the special suit filed by the respondent Bank against the petitioner for recovery of loan amount. The suit was filed on 11-3-1991 by the respondent Bank. It is the case of the petitioner that the respondent Bank moved an application dated 9-1-1997 for amendment of the plaint and sought to amend the plaint by adding the following paragraph:

"Plaintiff submits without prejudice to what is stated above that the defendant wrote a letter dated 12-7-1988 to the plaintiff Bank under his signature and in the said letter defendant has in most clear terms admitted that fact of the plaintiff Bank having given the loan as mentioned in the plaint to the defendant and defendant having availed it. So also, vide letters and correspondence from

time to time the defendants having admitted the liability to repay amount. Plaintiff further submitted the liability to repay amount. Plaintiff further submits that by the said letter the defendant unconditionally and in express terms promised to pay the amount due to the plaintiff Bank and also admitted indebtedness and liability in writing and under its signature. Plaintiff submits that in view of the promise to pay in writing and under its signature on 12-7-1988, the plaintiff Bank is entitled to claim the benefit of that letter in the present suit for the recovery of the suit claim due and as such plaintiff is claiming the same."

4. The Bank has also sought to produce on record a letter dated 12-7-1988 claiming that the said letter was written by the petitioner to the respondent Bank admitting and confirming the amount due and payable by the petitioner. The said proposed amendment was vehemently opposed by the petitioner before the trial Court inter alia on the ground that the proposed amendment is a belated amendment and is proposed beyond the period of limitation for filing of the suit and that the Bank was trying to bring the suit within the period of limitation by producing such letter, allegedly written by the petitioner and that the petitioner had never written such letter and that was only a forged and fabricated document. The petitioner, therefore, seriously pleaded that the proposed amendment would cause grave prejudice to his right.

5. As against the aforesaid factual admitted position, it was submitted on behalf of the respondent Bank that by the aforesaid proposed amendment the Bank was merely seeking to place on record the letter dated 12-7-1998 which was found and traced much after filing of the suit as the old records were dumped in record room and with great efforts the aforesaid letter was traced and, therefore, by way of abundant precaution and to keep the petitioner on guard and to enable him to have an opportunity to meet the said letter, the said amendment was sought. It was also argued on behalf of the Bank that there is no question of limitation or prejudice that would be caused to the petitioner by allowing the said amendment. The Bank has particularly met the argument of the petitioner that the suit was barred by limitation and that by the said letter dated 12-7-1988 the Bank was trying to bring the suit within the limitation. It was pointed out that by an earlier letter dated 14-3-88 the petitioner had already accepted and confirmed the account and therefore, the suit that was on 11-3-1991 is well within limitation. In the aforesaid circumstances, according to the Bank, the letter dated 12-7-1988 will not affect the limitation of the suit in any way as the suit was already filed within the period of limitation. As far as the contents of the said letter or its admissibility is concerned, the same would be considered by the trial Court on the merits when evidence will be recorded. The bank was merely seeking an amendment to insert the above quoted paragraph in relation to the said letter and permission to produce the same on record. It is also pointed out that the letter dated 14-3-1988 confirming the balance and the accounts of the petitioner with the Bank was already pleaded :in para 9 which appears not to have been seriously disputed.

6. The learned trial Judge has, by his order dated 7-8-1997, allowed the amendment application and by his another order of the same date, has allowed the production of the said document on record. The learned Judge has recorded the reasons for passing the said orders. He has rightly considered the submissions of the respondent Bank that by mere production of the said letter, no prejudice will be caused to the petitioner as the suit was well within limitation period and the said letter will not any way extend the limitation period. The learned Judge has rightly observed that the Bank cannot be deprived of submitting the additional evidence to substantiate its claim, particularly when the document was traced and found and was available during the pendency of the suit itself. As far as the contents of the said letter and the allegation that the said letter is forged and fabricated are concerned, it will be open for the petitioner to prove his allegations to that effect by adducing required cogent evidence before the trial Court and it will also be open to the Bank to prove the truthfulness of the said letter. Since at this stage, the only question of allowing the amendment and production of the document is being considered, according to me, there is absolutely no reason to interfere with the aforesaid orders passed by the learned Civil Judge, Sr. Division, Ahmednagar.

7. The learned Advocate for the petitioner has relied on a judgment of the Supreme Court in Radhika Devi Vs. Bajrangi Singh and others, . There is absolutely no quarrel with the ratio laid down in the said judgment. The facts in the said case are different from the present case. In the case before the Supreme Court, the plaintiff was trying to question subsequently, the legality and validity of the gift deed which was pleaded by the defendant in his written statement. After the written statement was filed, the plaintiff tried to say by way of amendment that the said gift deed was illegal. In the said judgment the gift deed was a registered document whereby the right, title and interest of the defendant were created and he has specifically pleaded about the same in his written statement. Since the written statement was filed on June 15, 1988 with the aforesaid specific pleadings, and since the plaintiff did not take any steps till November, 1992, the Supreme Court has observed that even the suit for declaration within the limitation of three years from the date of knowledge had got time barred. By way of amendment, the plaintiff was subjecting the defendant to serious prejudice and, therefore, the amendment was not allowed by the Supreme Court. The principles of law of amendment are succinctly stated in the judgment of the Supreme Court in Laxmidas Dahyabhai Kabarwala Vs. Nanabhai Chunilal Kabarwala and Others, which is reproduced in the aforesaid judgment cited by the learned Advocate for the petitioner, which is thus,-

"It is no doubt true that save in exceptional cases, leave to amend under O. 6, R. 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But, this rule can apply only when either fresh allegations added or fresh reliefs sought by way of amendment. Where, for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance

add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading. The present is a fortiori so. The defendants here were not seeking to add any allegation nor to claim any fresh relief which they had prayed for in the pleading already filed".

8. In the present case, the respondent Bank has not, in any way, changed the nature of the suit or was not seeking to add any allegation nor was it claiming any fresh relief which it had prayed for in the plaint. As I have already held that there was no question of extending the limitation period, by the aforesaid amendment and the production of the said letter, there is absolutely no prejudice that would be caused to the petitioner. It does not, in any way, add to or alter the cause of action. The respondent Bank is merely producing the document which it found and traced from the record room subsequently, in support of its case.

For the aforesaid reasons, the civil revision applications stand dismissed with no order as to costs.

9. Application dismissed.