

(2005) 09 CAL CK 0056

In the Calcutta High Court

Case No : C.S. No. 19 of 2002 and G.A. No. 992 of 2005

Shipping Corporation of India Ltd.

APPELLANT

Vs

Lee Muirhead Ltd.

RESPONDENT

Date of Decision : 05-09-2005

Acts Referred:

Civil Procedure Code Amendment Act, 1999 — Section 16, 16(1), 16(2)
Civil Procedure Code Amendment Act, 2002 — Section 16(2), 7
Civil Procedure Code, 1908 (CPC) — Order 16 Rule 17, Order 6 Rule 1, Order 6 Rule 15, Order 6 Rule 17, Order 6 Rule 18
General Clauses Act, 1897 — Section 6

Citation : (2006) 3 CHN 566

Hon'ble Judges : Aniruddha Bose, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Aniruddha Bose, J.—The present Master's summons has been taken out by the plaintiff for amendment of the plaint. The original dispute out of which the present proceeding arises relates to certain sums of money alleged to have been made as excess payment by the plaintiff to the defendant in connection with transshipment of goods from the Kolkata Port to Nepal. The suit, in essence, is for recovery of the said sum and certain ancillary sums of money. The stage at which the amendment is sought for is after the framing of issues.

2. A preliminary point has been taken by the defendant while resisting the application for amendment is that sufficient cause has not been indicated in the application for amendment as to why this amendment is made. At this stage, it has been submitted by Mr. Tilak Basu, learned Counsel for the defendant that nothing has been demonstrated before this Court from which it could be inferred that the plaintiff could not have noticed the materials which are sought to be introduced by way of amendment at an earlier stage if due diligence was exercised.

3. It has also been contended by Mr. Basu, that the trial of this suit has already commenced upon framing of issues and the proviso to Rule 17 of Order 6 of the CPC specifically prohibits allowing, such application.

4. I am first to examine in the present case, while adjudicating this preliminary point as to whether the proviso to the said Rule is applicable in the present case. This proviso, as it stands now, was incorporated in the CPC under the Amendment Act, 2002. Section 7 of the said Act i.e. the CPC Amendment Act, 2002 described henceforth as the said Act) is relevant for this purpose which is reproduced below

7. Amendment of Order 6.?In the First Schedule, in Order 6, for Rules 17 and 18 [as they stood immediately before their omission by Clause (iii) of Section 16 of the CPC (Amendment) Act, 1999 (46 of 1999)] the following rules shall be substituted, namely:

17. Amendment of pleadings.?The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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

18. Failure to amend after Order.?If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

5. Mr. Pradip Ghosh, learned senior Advocate, however, has brought to my notice the provisions of Section 16 of the said Act which stipulates the time as to when the said amendment so far as Order 16 Rule 17 shall come into effect. This provision, contained in Section 16(2)(b) of the said Act is reproduced below:

16. Repeal and savings.?(1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or High Court before the commencement of this Act shall, except in so far as such amendment or provisions are consistent with the principal Act as amended by this Act, stand repealed.

(2) Notwithstanding that the provisions of this Act have come into force or repeal under Sub-section (1) has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897 (10 of 1897):

(a)...

(b) the provisions of Rules 5, 15, 17 and 18 of Order 6 of the First Schedule as

omitted or, as the case may be, inserted or substituted by Section 16 of the CPC Amendment Act, 1999 (46 of 1999) and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the CPC Amendment Act, 1999 and Section 7 of this Act.

6. It is the case of the plaintiff that the expression "pleading" as contained in the aforesaid provision implies pleading as defined in Rule 1 of Order 6 of the Code.

7. This provision defines "pleading" to mean plaint or written statement. Admittedly, in this case the plaint was presented prior to the coming into operations of the provisions Section 7 of the said Act. Mr. Ghosh has further submitted that since the plaint in this case was presented on 21st February, 2002 and the Amendment Act came into operation on 6th June, 2002, therefore, the effect of the amendment in this case is to be outside the ambit of proviso to the said Rule. These facts remain undisputed. In support of his submissions he has relied on decision of the Hon'ble High Court of Madras in the case of L. Narayan Reddy in AIR 2005 Mad 66. In paragraph 13 of this decision the Madras High Court held:

Thus it is seen, some of the provisions omitted in Order 6, some of the provisions inserted or substituted by Amended CPC shall not apply to in respect of any pleading filed before the commencement of implementing the amended provisions. In this case, admittedly, the suit was filed in the year 1996 i.e., before the amendments introduced under Act 22 of 2002 and in this view of the matter, I am of the considered opinion, the provision cannot be an impediment or bar in allowing the amendment application, if it otherwise deserves on merit to be allowed, on the basis that the trial has been commenced and, therefore, no amendment shall be allowed after commencement of the trial. Next we have to see whether the proposed amendment deserves acceptance.

8. The basic issue that calls for resolution in the present application is as to whether the expression "pleading" as used in Section 16 of the Amendment Act would be construed in the same manner as defined under Order 6 Rule 1 or a broader meaning shall be applied, so as to bring within the compass of this expression any formal legal document in which a party to a civil proceeding sets forth or responds to allegations, claims denials or defenses.

9. Mr. Basu's contention is that the meaning of the expression ""pleadings" should be given broader interpretation and in the instant case the expression "pleading" should be construed to mean the application for amendment which has admittedly been filed after 1st July, 2002 when the said proviso came into operation. In support of his submissions, Mr. Basu has relied on a decision of Himachal Pradesh High Court, in the case of C.R.P. No. 242 of 2003 Jeet Ram Kishore and Ors. v. Sunder Singh. In this decision the Hon'ble Himachal Pradesh High Court has taken a view contrary to that taken by the Hon'ble High Court of Madras, and held that the proviso to Rule 17 of Order 6, introduced by the said Act was applicable in respect of application for amendment of a Written

Statement, which was filed on 3rd July, 2003, after framing of issues, while the original written statement was filed in the subject suit on 29th September, 1995.

10. Having considered the rival submissions, I am of the view that the expression "pleadings" as used in Section 16(2)(b) of the Act is to receive the restrictive construction as defined in Rule 1 of Order 6 of the Code. I hold so because, in my opinion, since Rule 1 of Order 6 itself defines pleading, while considering the same expression in another Rule in the same Order of the Code, a different interpretation cannot be given.

11. The Hon''ble Madras High Court specifically held that as the suit was filed before the amendments introduced under Act 22 of 2002, the provision could not be a bar in allowing the amendment application. I find to be more acceptable, while construing of Section 16(2)(b) of the Amendment Act of 2002. This takes the present petition is outside the scope of the proviso to Order 6 Rule 17. The scope of allowing amendment of pleading in the first part of the said Rule before the amended provision became operational is much wider and unless a new cause of action is sought to be introduced in a suit which would otherwise not be barred under the law of limitation, amendments ought to be generally allowed as per the said Rule, as it stood originally

12. Having gone through the nature of amendment that is sought to be introduced in the plaint, I am of the opinion that the said amendment does not seek to change the nature or character of the litigation, nor seeks to introduce a fresh cause of action, which would be otherwise be barred under the law of limitation. The amendment sought to be introduced is mostly clarificatory in nature or for correction of minor errors. Learned Counsels for neither of the parties had also addressed me on this aspect. The learned Counsel appearing for the parties had also advanced arguments on two other aspects of the matter as regards the time when trial commences and as to whether the expression "shall" as used in proviso to Rule 17 of Order 6 is mandatory or directory provision. However, I do not consider it necessary to adjudicate on these two issues because in my opinion the proviso to the said Rule after amendment is not applicable in the present case.

13. Under these circumstances, the instant application for amendment is allowed. Let all steps for the purpose of effecting such amendment be taken by the plaintiff within a period of six weeks from the date of passing of this order.

14. Let an urgent xerox certified copy of this judgment be supplied to the parties, if applied for.