

(2009) 02 MAD CK 0059

In the Madras High Court

Case No : Original Side Appeal No. 197 of 2007

SICAL Logistics Limited, (formerly known as South India Corporation (Agencies) Limited)

APPELLANT

Vs

Marg Constructions Limited and The State Bank of India

RESPONDENT

Date of Decision : 03-02-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14(1), Order 6 Rule 17
Transfer of Property Act, 1882 — Section 52

Citation : (2009) 02 MAD CK 0059

Hon'ble Judges : M. Sathyanarayanan, J;D. Murugesan, J

Bench : Division Bench

Advocate : AR.L. Sundaresan, SC for AL. Ganthimathi, for the Appellant; T.R. Rajagopalan SC for S. Raghunathan, for R1 and Satish Prasaran, for the Respondent

Judgement

D. Murugesan, J.—The appellant M/s. SICAL Logistics Limited (hereinafter referred to as ""SICAL"") is the first defendant in C.S. No. 811

of 2004 and the first respondent M/s. Marg Constructions Limited (hereinafter referred to as ""Marg Constructions Limited"") is the plaintiff in the suit.

2. M/s. Marg Constructions Limited is a company registered under the Indian Companies Act. SICAL and Marg Constructions Limited entered

into two sale agreements dated 27.07.2004 and 02.08.2004 in respect of A & B Plot Schedule properties. The total extent of the land covered

under the agreements is 46.915 Acres situate at Sholinganallur Village. The sale consideration was Rs. 19,00,000/- (Rupees Nineteen Lakhs only)

per acre. Pursuant to the sale agreements, a sum of Rs. 2.00 Crores was paid as advance in the form of Fixed Deposit, drawn on State Bank of

India, Bazullah Road Branch, T. Nagar and the Fixed Deposit Receipt was handed over to Mr. P.B. Ramanujam, learned Counsel for Marg

Constructions Limited. Though Marg Constructions Limited expressed their willingness to complete the sale, SICAL failed to perform their part of

contract. Hence, Marg Constructions Limited approached this Court by filing the suit for specific performance of contract of agreements of sale

dated 27.07.2004 and 02.08.2004 in respect of plaint A & B Schedule Properties and for other reliefs. Along with the suit, Marg Constructions

Limited also filed an application for grant of interim injunction restraining SICAL from entering, alienating, leasing or developing or handing over

possession of the scheduled mentioned properties in favour of any third party. The said application was dismissed by the single Judge and the

Original Side Appeal preferred as against the said order was also dismissed and ultimately the SLP at the instance of Marg Constructions Limited

was also dismissed.

3. Thereafter, Marg Constructions Limited filed an application in Appln. No. 2521 of 2006 for the following amendments:

A. Insert the following in Paragraph 9 of the plaint:

There was a concluded contract between the plaintiff and the 1st defendant in respect of the suit property at a consideration of Rs. 19 lacs per

acre as set out above. Thereafter, the plaintiff and the 1st defendant agreed to an enhanced consideration computed at the rate of Rs. 21 lacs per

acre. The plaintiff, vide its letter dated 18.08.2004, wrote to the 1st defendant recording in alia, the agreement for sale consideration for the A and

B schedule properties at Rs. 21 lacs per acre. The 1st defendant wrote a letter dated 21.08.2004 to Mr. P.B. Ramanujam, Advocate, Chennai,

informing that the 1st defendant expected the sale consideration of Rs. 9,97,50,000/- (calculated at the rate of Rs. 21 lacs per acre for 46.915

acres) to be paid in single instalment within from the 1st defendant obtaining a No Objection Certificate from the 3rd defendant for the sale of A

and B schedule properties. The 1st defendant also instructed Mr. Ramanujam to advise Mr. G.R.K. Reddy, the Managing Director of the plaintiff,

accordingly.

B. Add the following words to the next sentence in paragraph 9 of the plaint after the words ""Sholinganallur Property

... as soon as the 1st defendant gets a clearance/No objection Certificate from the 3rd defendant.

C. Insert the following in Paragraph 9 of the plaint.

The plaintiff is entitled to the specific performance of its contract with the 1st defendant for the sale of A and B Schedule Properties pursuant to the contract finalized on 27.07.2004, 28.07.2004, 02.08.2004 and 02.09.2004 for a consideration of Rs. 8,91,41,500/- (at the rate of Rs. 19 lacs per acre for 46.915 acres). Without prejudice and in the alternative, the plaintiff is entitled to the specific performance of the contract evidenced by the letters dated 18.08.2004, 21.08.2004 and 02.09.2004 for a consideration of Rs. 9,97,50,000/- (at the rate of Rs. 21 lacs per acre for 46.915 acres)

D. Insert the following in para 11 of the plaint:

In the event that this suit is decreed for the sale consideration of Rs. 9,97,50,000/- the plaintiff is ready and willing to pay the difference in Court Fees on such amount.

E. Insert the following in paragraph (a-1) in paragraph 12 of the plaint:

a-1 Without prejudice and in the alternative, for the specific performance of the contract of sale entered into between the plaintiff and defendants 1 and 2 on 18.08.2004, 21.08.2004 and 02.09.2004 for the A and B schedule properties by directing the defendants 1 and 2 to execute and register the sale deeds in favour of the plaintiff.

F. Insert the following in the list of documents under the Order VI, Rule 14(1) of the CPC.

7 18.08.2004 Letter from the plaintiff Copy

to the 1st defendant

8 21.08.2004 Letter from the 1st Copy

defendant to

Mr. Ramanujam

4. The said application was filed on the ground that on 18.08.2004 Marg Constructions Limited, pursuant to the conversation expressed their willingness to pay a total sum of Rs. 9,97,50,000/- towards sale consideration thereby at Rs. 21 lacs per acre. In response to the said letter,

SICAL by their letter dated 21.08.2004 had informed that they were willing to adjust the face value of FDR in a sum of Rs. 2,00,00,000/- and

receive the balance sale consideration of Rs. 7,97,50,000/-. On 02.09.2004 Marg Constructions Limited further expressed their willingness to get

registration of the documents. As those communications were not referred to in the plaint, the amendments in the plaint as referred to above were

sought. The said application was allowed by the learned single Judge by order dated 30.10.2006 which is challenged in this original side appeal.

5. While the Original Side Appeal is pending Marg Constructions Limited took out an application in M.P. No. 2 of 2008 seeking direction to

implead one M/s. Haciendaa Infotech Realtors (P) Limited as the 6th defendant in the suit and consequently permit them to carry out the

consequential amendment. The very same company also took out another application viz., M.P. No. 3 of 2008 seeking further amendment of the

plaint in the suit, while M/s. Haciendaa Infotech Realtors (P) Limited took out applications viz., M.P. No. 4 of 2008 seeking interim order of

injunction restraining SICAL as well as Marg Constructions Limited from in any manner dealing with the plaint B Schedule Property pending

disposal of the suit and M.P. No. 5 of 2008 seeking direction to exempt the lands forming part of the plaint A-Schedule transaction between

themselves and SICAL from the rigours of Section 52 of the Transfer of Property Act.

6. We have heard Mr. ARL Sundaresan, learned senior counsel for the SICAL, the appellant, Mr. T.R. Rajagopalan, learned senior counsel for

Marg Constructions Limited, the 1st respondent and also Mr. Satish Parasaran, learned Counsel for the petitioner in impleading petition.

7. Mr. AR.L. Sundaresan, learned senior counsel for the appellant viz., SICAL has submitted that as the suit for specific performance of contract

of agreements of sale was filed with the specific averments that the agreements dated 27.07.2004 and 02.08.2004 are concluded contracts; that

the sale consideration was fixed at Rs. 19 lacs per acre. Having failed to obtain an order of injunction right upto the Apex Court in view of the

dismissal of the application for injunction, SICAL is now making an attempt to bring a new case by introducing documents viz., letter

correspondences dated 18.08.2004 and 21.08.2004. In the event, the amendments are allowed, it would amount to pleading a new case before

the Court. Inasmuch as the suit was filed with a definite cause of action that the agreements dated 27.07.2004 and 02.08.2004 were concluded

and the present cause of action is sought to be introduced and therefore, the cause of action itself is changed. Even the sale consideration as put

forth in the plaint in a sum of Rs. 19 lacs per acre is now sought to be put at Rs. 21 lacs per acre. There is a great variance with regard to total sale

consideration in respect of the entire property. The Court Fee was paid only for a total sale consideration as per the alleged agreements dated

27.07.2004 and 02.08.2004 and by virtue of amendments and the variance in the sale consideration, the plaint cannot be entertained due to

insufficiency of court fee as well. As a new case is made out by shifting the grounds, the amendments sought cannot be allowed.

8. He would further submit that in view of the inconsistent stand, the learned Judge ought not to have allowed the amendment. He would also

submit that in view of the direction for amendment, SICAL is seriously prejudiced as their valuable right to oppose the plaint on the ground that

there was no concluded contract is taken away. In support of the of the above submissions, he would rely upon a series of judgements in

1. Kanda v. Waghu AIR 1950 Pc 768

2. Bhagavatula Gopalakrishnamurthi and Others Vs. Dhulipalla Sreedhara Rao and Another,

3. Bhubaneswar Patel Vs. Janak Patel and Others,

4. Smt. Uma Gupta Vs. Smt. Sushila and Another,

5. Jayaram Mudaliar Vs. Ayyaswami and Others,

6. Modi Spinning and Weaving Mills Co. Ltd. and Another Vs. Ladha Ram and Co.,

7. 2001 AI HCC 2635

8. Bank Kreiss AG Vs. Ashok K. Chauhan and Others,

9. State of A.P. and Ors. v. Pioneer Builders, A.P. 2006 (8) Supreme 3

10. Municipal Corporation for Greater Bombay Vs. Lala Pancham of Bombay and Others,

11. South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Others,

9. Mr. T.R. Rajagopalan, learned senior counsel for the first respondent (Marg Constructions Limited) would on the other contend that the cause

of action has not been sought to be amended. It is the firm case of Marg Constructions Limited that even in the unamended plaint there was

concluded contract pursuant to the two sale agreements dated 27.07.2004 and 02.08.2004. However, by virtue of the amendment, all that, Marg

Constructions Limited seeks only to rely upon those two correspondences viz., letters dated 18.08.2004 and 21.08.2004 which were in existence

and were not in fact disputed. By the order of the learned single Judge permitting the amendment, the character of the plaint is not changed,

particularly the cause of action is not changed, as there was no amendment to the same. He would also submit that the pre-trial amendments should

be liberally construed and the objection as to the new case is made out, is totally misconceived. He would also submit that it is the defence of

SICAL that there was no concluded contract as per agreements dated 27.07.2004 and 02.08.2004 and even after the amendment ordered, the

above defence of SICAL is not taken away and such defence is still available and in fact, in the counter affidavit SICAL had taken a stand that

those two subsequent letters dated 18.08.2004 and 21.08.2004 also do not amount to any concluded contract. Hence, the learned senior counsel

would submit that the challenge to the amendment is liable to be rejected. In this regard, the learned senior counsel would rely upon the following

Judgements in

1. Sampath Kumar Vs. Ayyakannu and Another,
2. Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others,
3. Dr. S.H. Sithik Basha Vs. Fazal Ahmed,
4. Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another,
5. North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs.,

10. The plaint was laid based on the two sale agreements 27.07.2004 and 02.08.2004. There is no dispute that by those agreements a sum of Rs.

19 lacs per acre was agreed as sale consideration. Pursuant to the agreement, a sum of Rs. 2.00 Crores was also kept in the form of fixed deposit

and a receipt was handed over to the counsel for Marg Constructions Limited. The Court Fee also was paid on the basis of the total sale

consideration at the rate of Rs. 19 lacs per acre. By the amendment Marg Constructions Limited is now pleading a case of Rs. 21 lacs per acre

only and has not paid the corresponding court fee. As far as the cause of action is concerned, the plaint could be still prosecuted on the basis of the earlier two documents in addition to the letter dated 02.08.2004 when the Managing Director of SICAL forwarded a draft sale agreement to Marg Constructions Limited on 02.08.2004. The cause of action further refers to a letter dated 03.08.2004 wherein Marg Constructions Limited requested both SICAL and Managing Director of SICAL to obtain No Objection Certificate from the State Bank of India and the handing over of the receipt for Rs. 2.00 crores to Mr. P.B. Ramanujam, Advocate on 02.09.2004. This cause of action is not sought to be amended. Rather in addition to the above, the two correspondence between SICAL and Marg Constructions Limited are sought to be introduced. It is not the case of Marg Constructions Limited, the plaintiff puts up a new case for specific performance, as still it is their case that the specific performance suit is laid on the basis of the earlier two agreements and by virtue of the subsequent amendments all that they would plead is, the increase in sale consideration. We do not find any change of character in the plaint as such by virtue of the amendment sought by Marg Constructions Limited. It must be noted that the two communications sought to be introduced by the amendments are not disputed. In fact, it is argued by Mr. AR.L. Sundaresan, learned senior counsel for SICAL that those two letters would also indicate that there was no concluded contract. The nature and the basis for the suit viz., that there was a concluded contract is not altered by the amendment. Equally the defence that was available to SICAL namely, there was no concluded contract on the basis of the earlier two agreements as well in view of the subsequent correspondence in letters dated 18.08.2004 and 21.08.2004 is not taken away. The evidentiary value of those communications in question could be testified only at the time of trial. In the absence of any prejudice and in the absence of any change in the character of the suit as such, in our opinion, the order in allowing the petition to amend the plaint requires no interference.

12. In this context we may usefully refer the following judgements:

12. (1). In *Rajesh Kumar Aggarwal and Others Vs. K.K. Modi and Others*, the Apex Court observed thus:

18. As discussed above, the real controversy test is the basic or cardinal test and

it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.

12.(2). In Sampath Kumar Vs. Ayyakannu and Another, , the Supreme Court has observed thus:

9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

13. The law on the issue as to the allowing of amendment at the pre-trial stage seems to be consistent in view of the law laid down by the Apex

Court.

14. In fact, the very same view was also expressed by the Apex Court in North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das

(D) by Lrs., which reads as under:

15. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 C.P.C. (a it stood at the

relevant time) are concerned, these are also well settled. Order 6, Rule 17 C.P.C. postulates amendment of pleadings at any stage of the

proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and Ors. which still holds the field, it was held that all amendments ought to

be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of

determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in

the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in

costs.

15. While considering the application for amendments at the pre-trial stage, the court must liberally construe such application. Further, the court is

bound to take note that while such amendments are ordered, the character or the basis and the substratum of the plaint is not taken away. In other

words, the Court should also ensure that the plaintiff should not be allowed to put up entirely a new case thereby giving go-by to the earlier case.

The Court is also bound to consider the fact that by such amendments, whether the cause of action for the suit itself is entirely changed. As has

been held in North Eastern Railway Administration case, all the amendments should be allowed subject to the satisfaction that such amendments

do not work in justice to the other side, they are necessary for the purposes of determining the real question in controversy between the parties and

by such amendments an injury which could not be compensated in cost, could occur.

16. Insofar as the prejudice is concerned, factually we do not find any such prejudice as the defence open to SICAL that there was no concluded

contract, is not taken away even if the amendments sought are ordered to be made. Further, the amendments are at the pre-trial stage and in this

regard we may usefully refer to the recent judgement in Rajesh Kumar Aggarwal

and Others Vs. K.K. Modi and Others, , the Apex Court

observed thus:

15. The object of the rule is that the courts should try the merits of the case that come before them and should, consequently, allow all amendments

that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the

other side.

17. In fact, in Rajkumar Gurawara (Dead) thr. L.Rs. Vs. S.K. Sarwagi and Co. Pvt. Ltd. and Another, , the Apex Court while allowing the pre-

trial amendment had also considered the prejudice that may be caused to the party's defence only after the commencement of the trial. In fact, only

by the amendment, if, a new case is sought to be made out, such amendment should not be allowed [see, Municipal Corporation for Greater

Bombay Vs. Lala Pancham of Bombay and Others,]. Inasmuch no new case or new cause of action had arisen in view of the amendments, the

grievance as to the prejudice also cannot be accepted.

18. Order VI, Rule 17 of the Code of Civil Procedure, 1908 consists of two parts. Whereas the first part is discretionary (may) and leaves it to

the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary

for the purpose of determining the real question in controversy between the parties.

19. On the facts of the case we find that by the amendments sought to be made, neither the character of the suit; nor the cause for the suit is

changed. In the event, the amendments are not allowed, the plaintiff would be seriously prejudiced. On the other hand, the defence viz., that there

was no concluded contract is not taken away and therefore, no prejudice is caused to the appellants who are defendants in the suit. By such

amendment no injury, which could not be compensated in terms of cost, is caused. Further, the exchange of letter communications is not in dispute

and the contents in the communications can be the subject matter of challenge only at the time of trial. None of the rights of the appellant (SICAL)

is taken away to effectively defend the suit. In view of the settled law which appears to be consistent, the pre-trial amendments are should be

liberally construed.

20. For all the above reasons, we are of the considered view that the appellant company (SICAL) have not made out any case for interference

with the order of the learned single Judge. There cannot be any dispute as to the above settled law on the issue. The series of judgements relied

upon by Mr. AR.L. Sundaresan, learned senior counsel for the appellant (SICAL) also laid down the very same law, but the decisions were

rendered by taking into the facts of each case. In view of our above findings that the amendments could be ordered on the facts of this case, we

are not inclined to refer each decision relied upon by the learned senior counsel for the appellant (SCAL).

21. For the foregoing reasons, we find no infirmity in the order dated 30.10.2006 made in Appln. No. 2521 of 2006 in C.S. No. 811 of 2004.

Accordingly, the Original Side Appeal is dismissed.

22. Insofar as M.P. Nos. 2 to 5 are concerned, as all these Miscellaneous Petitions have been filed pending Original Side Appeal and that the trial

of the suit was stayed, we are not inclined to consider each of the applications on merits, particularly in view of the order passed in the Original

Side Appeal. Therefore, M.P. Nos. 2 to 5 of 2008 are closed giving liberty to petitioner in the respective petitions to approach the learned single

Judge for similar reliefs by making necessary applications, if necessary and those applications shall be dealt with on their own merits.