
(1980) 09 KAR CK 0045
In the Karnataka High Court
Case No : CRP. 33/79

Union of India and Another

APPELLANT

Vs

Scindia Steamship Co. Ltd. and Another

RESPONDENT

Date of Decision : 10-09-1980

Acts Referred:

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

Citation : (1981) 2 KarLJ 233

Hon'ble Judges : G. N. Sabhahit, J

Judgement

1. This civil revision petition is instituted by the plaintiffs and is directed against the order dated 4-9-1978 passed by the Principal Civil Judge, Mangalore, D.K., in O.S. No 39 of 1974, on his file dismissing I.A. No. II filed by the plaintiff under Order VI, Rule 17 CPC for amendment of the plaint.

2. Plaintiff-1 is the Union of India and Plaintiff-2 is the Food Corporation of India. The plaintiffs instituted a suit against the defendants for damages. It was averred in the plaint that defendant-1 (The Scindia Steamship Co. Ltd. Bombay) are the owners of the steamer "Jalavishnu" and are carrying on business at Mangalore through their steamer Agents, the Scindia Steam Navigation Co. Ltd., Mangalore. Defendant-1 in the plaint was described thus: "The Scindia Steamship Co., Ltd., Bombay". According to the plaintiffs, defendant-1 received on Board their vessel "Jalavishnu" at the Port of Constantza on or about 29-12-1972 a consignment of Calcium Ammonium Nitrate-Fertiliser-consisting of 163, 386 polyethylene bags and outer Jute bags of 50 kilograms net, weighing in all 8,300,008 kilograms gross and 8,169,300 kilograms net, in apparent good order and condition, together with 1,634 empty spare bags. In respect of the said consignment, defendant-1 issued a "Clean on Board" Bill of Lading dated Constantza, 29-12-1972, agreeing to deliver the said consignment in like good order and condition to the consignee-Ministry of Agriculture-as consignee-Food Corporation of India, as Agents to the Department of Agriculture or their assigns. The freight was duly paid. The Master of the Steamer certified that the Cargo was received on Board of the said vessel. The Steamer arrived at the Port of

Mangalore on 16-2-1973 and commenced discharge of Cargo on 17-2-1973 and concluded the discharge on 3-3-1973. A considerable number of bags were observed to be wet, stained in all Cargo spaces and the materials were damaged. It is on account of the said damage that the plaintiffs have claimed in the suit damages of Rs. 55,576.16 P. The prayer column reads:

"The plaintiffs, therefore, pray for a decree and judgment against the defendants directing them to pay the plaintiffs:

(i) The sum of Rs. 55,576.16 P. (Rupees Fifty five Thousand Five Hundred and Seventysix and paise Sixteen) only with interest thereon at six percent per annum from this date till date of realisation;

(ii) Costs of this suit"

3. On entering appearance, defendant-2 filed its written statement. Defendant-2 pointed out in para 1 of the written statement that there is no such Company known as "Scindia Steamship Company Limited", as stated in the title to the suit. Further defendant-2 asserted:

"The defendant says that in the premises, the suit is improperly filed against the 1st defendant and is liable to be dismissed. Without prejudice to what is stated above, the Defendant says that Scindia Steam Navigation Co., Ltd. Bombay, at all material times was and still is the owner of the steamship called "Jalavishnu".

4. Thereafter, the plaintiffs realised their mistake that they had wrongly described defendant-1 and gave an application (I.A. No. II) before the Court under Order VI, Rule 17 CPC. to amend the plaint for correctly describing defendant-1. In the application for amendment, the proposed amendment is given as follows:

"1. In the cause title after the name of the 1st defendant add "which is the same as Scindia Steam Navigation Company Ltd., Bombay."

2. In para 2 line 2 after the word "BOMBAY" add "which is the same as Scindia Steam Navigation Company Ltd., Bombay."

5. In support of the interlocutory application, an affidavit was filed and this was opposed by defendant contending that the proposed amendments would change the entire nature of the suit and the cause of action, that it would introduce a new cause of action, that defendant-2 was described as Agent of defendant-1 and the amendment would convert him into the principal himself and that therefore, the amendment should not be allowed.

6. On hearing the arguments, the learned Civil Judge has passed a detailed order on 4-9-1978 dismissing I.A. No. II-the amendment application. It is against that order that the present revision petition is filed.

7. Shri S.A. Hakim, the learned Central Government Pleader vehemently argued that the learned Civil Judge totally misconceived the scope of the amendment,

that what was sought by the amendment was only to correct the description and address of defendant No 1 being enlightened by the written statement of defendant-2, that the mistake had occurred due to description given in the "Charter Party" and, hence, the learned Civil Judge was not justified in coming to the conclusion that the proposed amendment would change the cause of action in the suit. Hence, he submitted that the revision petition was entitled to succeed.

8. As against that, Shri K. Seetharama Rao strenuously urged that the learned Civil Judge was perfectly justified in coming to the conclusion that the proposed amendment, if allowed, would change the very nature and cause of action in the suit and, hence, the learned Civil Judge was justified in rejecting the amendment.

9. The sole point, therefore, that arises for my consideration in this revision petition is: "Whether the learned Civil Judge was justified in rejecting the proposed amendment under I.A. No. II holding that that would, if allowed, change the very nature of the suit by introducing a new cause of action?"

10. Under S. 53 of the old Code, the rule as to amendments was more rigid and restricted than it is under the present Code. It was specifically provided by the proviso to that section that no amendment should be allowed which converted a suit of one character into a suit of another and inconsistent character. Though under the present Code there is no such rigid rule as was enacted in the old Code against allowing of the amendment converting a suit of one character into a suit of another and inconsistent character, the whole matter is left entirely to the discretion of the Court in the present Code; still, as a general rule, the Court will not in the exercise of such discretion allow such an amendment converting a suit of one character into a suit of another character in the absence of special circumstances. An amendment must not alter the fundamental character of the suit, i.e., the foundation on which the suit is based and not the prayer in the plaint, (Vide: AIR 1927 PC. 18; AIR 1977 All. 259 and AIR 1950 PC. 68).

11. In *Ma Shew Mya v. Maung Po Hnaung*, AIR 1922 PC. 249, their Lordships of the Privy Council have observed:

"All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose so that full powers of amendment must be enjoyed and should always be liberally exercised; but none the less no power has yet been given to enable one distinct cause of action to be substituted for another nor to change by means of amendment the subject matter of the suit."

12. This proposition is reiterated in a recent decision of the Supreme Court of India in the case of *Ganesh Trading Co., v. Moji Ram*, AIR 1978 SC. 484. Therein, their Lordships, approving the observation made in the ruling in *L.J. Leach & Co. Ltd. v. Jardine Skinner & Co.*, AIR 1957 SC. 357, have observed quoting from the ruling rendered in *A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation*, AIR 1967 SC. 96, thus:

"10. On that occasion, this Court had also referred to Charan Das v. Amir Khan, (AIR 1921 PC. 50) and L.J. Leach & Co., Ltd. v. Jardine Skinner & Co., (AIR 1957 SC 357), to hold that a different or additional approach to the same facts could be allowed by amendment even after the expiry of the statutory period of limitation. It had pointed out that the object of the rules of procedure is to decide the rights of the parties and not to punish them for their mistakes or short coming. It also said that no question of limitation, strictly speaking, arose in such cases because what was sought to be brought in was merely a clarification of what was already there. It said (at p. 98)

"The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke v. Gill (1873-8 CP 107) in a different context; for if it were so, no material fact could ever be amended or added, and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts Such a view was taken in Robinson v. Unicos Property Corporation Ltd., (1962) 2 All. E.R.) and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean new set of ideas, Dornan v. J.W. Ellis & Co., Ltd., (1962) All. ER 303). This also means to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

The Supreme Court has further observed:

"This Court while reversing this hypertechnical view observed:

Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side".

Again in para-16 of the judgment, the Supreme Court has observed:

"We think that the amendment sought does not alter the cause of action. It only brings out correctly the capacity of the plaintiff suing. It does not change the identity of the plaintiff who remains the same."

In that view, the Supreme Court allowed the amendment on setting aside the order passed by the High Court and the trial Court.

13. I would presently proceed to apply the test laid down by the Supreme Court to the facts of this case. As stated above, the suit was instituted against the

owner of the ship describing him as defendant-1 for damages. Since the delivery was given in Mangalore, defendant-2, who gave the delivery, was described as the Agent of the owner. In fact, when the written statement was filed, it was discovered that both defendants 1 and 2 were the same and that it was the Scindia Steam Navigation Company Limited, Bombay, that was the owner of the ship and it was the Agent of that Company in Mangalore who delivered the goods. This mistake, according to the plaintiffs, in the description of defendant-1 was due to the description of the party given in the "Charter Party". That is made clear in the affidavit filed in support of I.A. No. II. Thus, what all that the plaintiffs want to do by I.A. No. II for amendment is to give the correct description of defendant-1 as the owner of the ship "Jalavishnu".

14. The point for consideration is: "Whether this proposed amendment which seeks to properly describe defendant-1, the owner of the ship, would change the cause of action in the suit or would bring in a new cause of action in the sense described by the Supreme Court of India, as quoted above?"

15. On going through the plaint, it is clear that the cause of action in the suit is on account of short delivery and damages to the goods entrusted to the ship "Jalavishnu". That cause of action is not sought to be changed by the proposed amendment. The plaint makes it clear that the owner of the ship is liable for damages. That also is not sought to be changed by the proposed amendment. All that is proposed is the correction of the description of the owner. The owner of the ship was described as "The Scindia Steamship Co., Ltd., Bombay". It was, in fact, The Scindia Steam Navigation Co., Ltd., Bombay, same as defendant-2, that is sought to be corrected. The mistake was bona fide as is made obvious by the affidavit. As pointed out by the Supreme Court of India, a party should not be punished for an inadvertent mistake. Procedure is the handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure by refusing the amendment. Hence, the learned Civil Judge was not justified in holding that the proposed amendment would change the very nature of the suit and that it would bring in a new cause of action.

16. It may be recalled in this context that in the written statement, defendant himself pointed out that there was no such institution described as defendant-1 and that it was defendant-2 who was the owner of the ship "Jalavishnu". That being so, it is obvious that no prejudice would be caused to defendant-2 by allowing the amendment.

17. In fact, the Supreme Court of India has held in the case of *Firm Srinivas Ram Kumar v. Mahabir Prasad*, AIR 1951 SC 177, speaking through Mukherjea, J., in para-9 of the judgment thus:

"...The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the Court to give him relief on that basis. The rule undoubtedly is that the Court cannot grant relief to the plaintiff on a case for

which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But, when the alternative case, which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes....."

18. In the instant case, as pointed out above, defendant-2 has himself come out with a case that he is the owner of the ship. That being so, no prejudice can ever be caused to the defendants by allowing the amendment as even without the amendment relief on the basis that defendant-2 is the owner of the ship, could be granted in the suit on the showing of defendant-2 himself.

19. In the result, therefore, the civil revision petition is allowed. The impugned order of the learned Civil Judge is hereby set aside and I.A. No II given for amending the plaint is hereby allowed. The plaintiffs are permitted to amend the plaint within fifteen days of the receipt of this order by the trial Court. No costs.