

(1966) 08 PAT CK 0019
In the Patna High Court
Case No : Civil Revision No. 8 of 1966

Union of India(UOI)

APPELLANT

Vs

Binod Behari Singh

RESPONDENT

Date of Decision : 23-08-1966

Acts Referred:

Limitation Act, 1963 — Article 119

Citation : AIR 1967 Patna 144

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

Bench : Single Bench

Advocate : K.D. Chatterji, Chunni Lal and A.K. Bose, for the Appellant; J.C. Sinha, S.N. Misra and Sudama Singh, for the Respondent

Final Decision : Allowed

Judgement

G.N. Prasad, J.—The petitioner, the Union of India as owner of Eastern Railway Administration, had entered into a goods handling contract with the opposite party in December, 1957. The contract contained an arbitration clause, and certain disputes having arisen between the parties, they were referred to the arbitration of the Deputy General Manager of the Railway. In due course, the arbitrator made an award, whereby the opposite party was found to be entitled to receive from the petitioner a sum of Rs. 82,100 in full satisfaction of his dues under the contract. The award which was given on 26-2-1965 was filed in Court on 25-5-1965, and the notice contemplated by Section 14(2) of the Arbitration Act was served upon the petitioner's lawyer on 28-6-1965. Within thirty days thereof, viz., on 24-7-1965, the petitioner filed an objection to the award challenging the same as vitiated on various grounds, such as misconduct, or having been made beyond the scope of the reference to arbitration.

Subsequently, two applications were filed on behalf of the petitioner seeking amendment of its original objection petition dated 24-7-1965. The first amendment petition was filed on 23-9-1965, praying for the insertion of certain additional grounds of attack against the award. The second application was filed

on 6-11-1965 for the insertion of some more grounds. Both the applications for amendment were opposed on behalf of the opposite party. Ultimately, after hearing the parties and considering the amendment petitions, the learned Additional Subordinate Judge rejected the amendment petitions by his order dated 27-11-1965. It is that order which is sought to be assailed by the petitioner in this civil revision application.

2. At this stage, it would be proper to state the precise grounds which have weighed with the learned Judge for refusing the two amendment petitions. In paragraph 3 of his order the learned Judge has observed that having gone through the amendment petitions, there can be no doubt that they raised fresh grounds of objection which were sought to be added to the grounds already mentioned in the original objection petition dated 24-7-1965. Secondly, the learned Judge referred to the provisions contained in Article 119(b) of the Limitation Act, 1963, and held that the objection petition filed by the petitioner on 24-7-1965 was governed by the thirty days limitation period provided by the said Article of the Limitation Act, the computation being made from the date of service of the notice of the filing of the award. Since however, both the amendment petitions have been filed beyond the period of thirty days mentioned above, the learned Judge felt that to allow the amendment petitions would be tantamount to giving the petitioner an opportunity to raise fresh grounds of objections beyond the period of limitation. The learned Judge, therefore, concluded:

"As the amendment petitions seeking to add fresh grounds of objections have been filed beyond thirty days from the notice of filing of the award, I would hold that the prayer of the opposite party to amend the original petition of objection is not fit to be allowed."

3. So far as the applicability of Article 119(b) of the Limitation Act, 1963, is concerned, there can be no dispute, having regard to the decision of a Full Bench of this Court in *Seonarain Lal Vs. Prabhu Chand*, . There, it was clearly laid down that an objection to an award which has been filed in Court in accordance with the provisions of Section 14 of the Arbitration Act must be preferred within the period of thirty days prescribed by Article 158 of the Limitation Act of 1908, which was the provision corresponding to Article 119(b) of the present Limitation Act. In other words, the objection could be filed within a period of thirty days from the date of service of the notice of the filing of the award. Therefore, the learned Additional Subordinate Judge was right in holding that the two amendment petitions had been filed by the petitioner beyond the period of thirty days mentioned in Article 119(b) of the Limitation Act.

4. The question is whether merely because fresh grounds of objections were sought to be added to the original objection petition beyond the aforesaid period of thirty days, was the learned Judge competent to reject the amendment petitions? On behalf of the petitioner, Mr. K.D. Chatterji contended before me that merely because fresh grounds of objections were sought to be added to the

original objection petition beyond the period of thirty days, it was not open to the learned Judge to have refused the prayers for amendment. In doing so the learned Judge has overlooked the well-established principles which have been laid down in several cases, in accordance with which amendment petitions filed beyond the period of limitation ought to be dealt with. In support of his contention, Mr. Chatterji relied upon *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others*, and *A.K. Gupta and Sons Vs. Damodar Valley Corporation*, .

The principle which these decisions seem to lay down is that the Court has jurisdiction to allow an amendment of the pleadings within certain limits, e.g., no amendment ought to be allowed where the effect would be to convert the original pleading into a new pleading by substituting an entirely new case. Another principle to be borne in mind in such cases is that the amendment should not be such as to deprive the opposite party of some valuable legal right which has accrued to him or of it by reason of efflux of time, though no amendment should also be allowed where the effect of allowing it would be to cause to the opposite party a loss which cannot be compensated by costs. In an old Bombay case, *Kisandas Rupchand v. Rachappa Vithoba* ILR (1909) Bom 644 Batchelor. J., enunciated the principles which apply to such a case in the following terms:

"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, but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendment 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. It is merely a particular case of this general Rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side or can it not?"

In AIR 1921 50 (Privy Council) the Privy Council had to consider the propriety of an amendment of a plaint which was allowed in a second appeal upon its refusal by the two Courts below in the following circumstances. The plaintiffs had sued for declaration of their right of pre-emption over certain land. The suit being one for mere declaration was hit by Section 42 of the Specific Relief Act; Thereupon, the plaintiffs sought to amend the plaint by adding a relief about possession over the disputed land. The Courts below refused the amendment on the ground that at the time when it had been sought for, the suit to enforce the right was barred. The second appellate Court, however, allowed the amendment, and the question

before the Privy Council was whether the power had been rightly exercised by the second appellate Court. In that context, Lord Buckmaster observed:

"That there was full power to make the amendment cannot be disputed, and though such a power should not as a Rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases See for example *Mohummud Zahoor Ali Khan v Mt. Thakooranne Rutta Koer* (1867)L.R. 11 I.A. 468 where such considerations are outweighed by the special circumstances of the case, and their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one."

The principles laid down by Batchelor, J., in the Bombay case and by Lord Buckmaster in the Privy Council case have received the approval of their Lordships of the Supreme Court as well. It would, thus, appear that what the learned Additional Subordinate Judge has to investigate was not merely that fresh grounds of objections were sought to be introduced in the original objection petition but also whether the proposed amendments were of such a character that by allowing them beyond the period of thirty days would work injustice to the other side or would have the effect of taking away some legal right which has accrued to the opposite party by lapse of time. The learned Judge had to enquire whether the fresh grounds of objection introduced a totally new case, for which no foundation was to be found in the petition of objection dated 24-7-1965.

It is manifest that the learned Judge has not approached the question from the aforesaid points of view. He has been led away merely by the consideration that the grounds of objections were fresh and the period of thirty days had expired. Unless the grounds of objection were fresh, there would have been no sense in insisting upon the proposed amendments. Therefore, the crux of the matter was not whether the grounds were fresh, but whether by allowing the amendment some right of the opposite party was likely to be affected or a fundamentally new case would have been introduced of which opposite party had no prior notice. Sometimes amendments may be necessary for the purpose of bringing out the real questions in controversy between the parties, and in such cases the Court would be justified in allowing an amendment, even if applied for beyond the period of limitation.

5. Mr. J.C. Sinha for the opposite party put forward the contention that the principle of the general law relating to amendment of pleadings ought not to be extended to proceedings under a special Act, like the Arbitration Act. Mr. Sinha drew my attention to Clause (a) of Section 41 of the Act which provides that the provisions of the CPC would be applicable to the proceedings before the Court under the Act, subject to the provisions of the Act and of rules made thereunder. It was pointed out that there is a similar provision in Section 90 of the Representation of the People Act, and the principles applicable to amendments of pleadings in election cases laid down by their Lordships of the Supreme Court in certain cases, such as, *Harish Chandra Bajpai Vs. Triloki Singh*, and *S.M. Banerji*

Vs. Sri Krishna Agarwal, must also be deemed to apply to petitions or amendments of pleadings under the Arbitration Act.

In the case of Harish Chandra Bajpai Vs. Triloki Singh, aforesaid, the amendment of the election petition was held to be unjustified on the ground that the amendment was sought for which would have the effect of substantially altering the case, as laid down in the original election petition, and that could not be permissible long after the expiry of the period of limitation prescribed for filing election petition. Upon a review of authorities, including the Privy Council decision in 47L.R. I.A. 255: AIR 1921 50 (Privy Council) their Lordships laid down two propositions thus (1) u/s 83(3) of the Representation of the People Act the tribunal had power to allow particulars in respect of illegal or corrupt practices to be amended provided the election petition itself specified the grounds or charges, and this power extended to permitting new instances to be given; and (2) the tribunal has power under Order 6, Rule 17 of the CPC to order amendment of a petition, but that power cannot be exercised so as to permit new grounds of charges to be raised or to so alter the character of the petition as to make it, in substance, a new petition, if a fresh petition on those allegations will then be barred. Upon the peculiar circumstances of the particular case, their Lordships came to the conclusion that the amendment sought for after the expiry of the period of limitation did not fall within the ambit of the two principles mentioned above.

6. In S.M. Banerji Vs. Sri Krishna Agarwal, , the position was practically of the same nature. The election petition, as originally presented, was founded upon a ground envisaged by Sub-clause (1) of Section 100(1)(d), of the Representation of the People Act; that is to say, on the ground of improper acceptance of the nomination of the successful candidate. By an application for amendment filed long after the expiry of the period of 45 days mentioned in Section 81 of the Act, two amendments were sought to be made in the election petition. By one of them, it was sought to introduce a statement in support of a ground envisaged by Sub-clause (4) of Section 100(1)(d). The election tribunal refused the prayer for amendment on the ground that it offended against the conditions laid down by their Lordships of the Supreme Court in Harish Chandra Bajpai Vs. Triloki Singh, .

There it had been specifically laid down that amendment will not be allowed after the expiry of the period of limitation, if the effect of it would be to permit a new ground or charge to be raised or to alter its character in such manner as to make it in substance, a new petition. It will, thus be noticed that even under special Acts, like the Representation of the People Act or the Arbitration Act, the Court has jurisdiction to permit amendment of pleading to be made after the expiry of the period of limitation in appropriate cases falling within the two conditions laid down in the case of Harish Chandra Bajpai Vs. Triloki Singh, aforesaid.

Therefore, whether under the general law or under the special law, the Court dealing with an application for amendment of pleadings filed after the period of

limitation has to direct its attention not merely to the fact that the grounds of objection sought to be added are new or fresh, but to go a step further and determine what would be the effect of addition of those new grounds. Would it amount to introducing a fundamental change in the character of the original petition or pleading, so that it would become a substantially new pleading? The Court has to examine the real nature of the amendments sought to be made in the context of the grounds or charges already put forward in the original pleading filed within the period of limitation and to come to a decision whether the new grounds make out an entirely new case in which not even a foundation is to be found in the original pleading. It is after such an examination and scrutiny that the Court has to come to its decision as to whether the proposed amendments are or are not of the type which, upon the authorities, it has power to allow, even though sought for after the period of limitation.

7. Turning to the order of the learned Additional Subordinate Judge in the present case. I notice that though the learned Judge has observed that the grounds of objection sought to be added to the original objection petition are fresh, he does not appear to have made further enquiry about the nature indicated above. There is no finding to the effect that the new grounds are such for which not even a foundation is to be found in the original objection petition. He has also not directed his attention to the question as to whether the effect of allowing the proposed amendments would be to so radically alter the character of the original objection petition as to transform it into an entirely new petition. In other words, it is manifest that the learned Judge did not really exercise the jurisdiction which he had under the law in the matter of dealing with an amendment petition filed beyond the period of limitation.

8. Mr. Sinha then contended that after all it was a question of exercise of discretion of the learned Judge in the Court below, and he chose to exercise his discretion in a certain manner. In such a situation, it would not be open to this Court to interfere with the exercise of that discretion, acting as a revision Court. Mr. Sinha further relied upon the following observations of their Lordships of the Supreme Court in *S.M. Banerji Vs. Sri Krishna Agarwal*, :

"An appellate Court has no doubt an unquestioned right to review or modify the order made by a subordinate Court; but it is undesirable to do so when the subordinate Court made an order in the exercise of its discretion without exceeding the limits of its power, unless it acted perversely or unless the view taken by it is clearly wrong. In this case, the Election Tribunal neither exceeded its powers nor acted perversely; and indeed its order advanced the cause of justice in that it helped to maintain the election of a candidate who was duly qualified and who secured a large majority of votes over all the rival candidates.

After that, their Lordships set aside the order of the High Court which had interfered with the order of the election tribunal. It is perfectly true that if the learned Judge in the present instance had directed his enquiry to the further considerations to which I have already referred and then exercised his discretion

for refusing the proposed amendments, then it would not have been possible for this Court to interfere with such exercise of discretion. But here, the order has been passed substantially on the footing that the proposed amendments seek to introduce new grounds after the expiry of the period of limitation. The learned Judge has not at all directed his attention to the further questions as to the true nature of the amendments sought to be made or of their effect upon the original objection petition, viz., whether it was a case of giving only new instances in support of the ground of objection as originally put forward or whether they were so fundamentally new as to radically alter the character of the original petition by transforming into an entirely new petition. By not going into this matter the learned Judge, in my opinion, has failed to exercise the jurisdiction which law conferred upon him, and, therefore, it cannot be said that it was a case of exercise of discretion of the nature contemplated by their Lordships in *S.M. Banerji Vs. Sri Krishna Agarwal*, .

9. For the reasons which I have given above, I am unable to uphold the order of the learned Judge. The order is set aside and the case is sent back to him with a direction to deal with the two amendment petitions on their merits in the light of the observations made above. It is desirable that the amendment matters should be disposed of as expeditiously as possible. The application succeeds and is allowed, but there will be no order as to costs.