

(2013) 04 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 10725 of 2012

Venco Research and Breeding Farm Ltd.

APPELLANT

Vs

Rastriya Shramik Aghadi and Another

RESPONDENT

Date of Decision : 15-04-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 18
Constitution of India, 1950 — Article 226, 227

Citation : (2013) 3 ABR 1321 : (2013) 5 ALLMR 26 : (2013) 137 FLR 863 :
(2013) 3 LLJ 400 : (2013) 2 LLN 321 : (2013) 5 MhLj 674

Hon'ble Judges : K.K. Tated, J

Bench : Single Bench

Advocate : K.N. Naik and Sujeet P. Salkar, for the Appellant; Nitin A. Kulkarni, Advocate, for the Respondent

Judgement

K.K. Tated, J.—Heard the learned Counsel for the parties. Rule made returnable forthwith. By consent, matter is taken up for final hearing at the stage of admission. By this Petition under Articles 226 & 227 of the Constitution of India, the Petitioner-first party challenges the order dated 8th August 2012 passed by the Presiding Officer, Labour Court, Satara below Exhibit 105 in Reference (IDA) No. 94 of 2005 rejecting the Petitioner's Application dated 17th April 2010 for amendment of the Written Statement.

2. Brief facts of the present matter are, as under:

In the present proceedings, the State of Maharashtra vide its order dated 13th September 2005 made a Reference to the Trial Court. In the said Reference, the Petitioner filed Written Statement dated 19th September 2(X)6 and thereafter they preferred Application below Exhibit 105 for amendment of the Written Statement. The said Application was rejected by the learned Labour Court, Satara on the ground that the Petitioner has made the Application for amendment of the Written Statement after the trial commenced. Respondent led evidence of two witnesses. Thereafter, the Petitioner also examined their

witnesses. At the time of cross-examination of Petitioner's witness Mr. C.G. Shahane, the Petitioner filed an Application for amendment of the Written Statement. There was delay of more than six years in preferring the Application for amendment of the Written Statement. Hence, it was rejected.

3. The learned Senior Counsel for the Petitioner submits that the learned Labour Court failed to consider that the principles of Order 6, Rule 17 of the Code of Civil Procedure, 1908 (CPC) are not applicable in the present case in view of Rule 16-A of the Industrial Disputes (Bombay) Rules, 1957 (the said Rules). He submits that it is specifically stated in Rule 16-A of the said Rules that the Labour Court or Tribunal, may allow at any stage of the proceedings amendments to statements of claims or Written Statements filed by the parties in response to notices served under Rule 16 to such extent as the Labour Court or as the case may be, Tribunal may consider necessary for the purpose of determining the real issues included in the order of reference.

4. He further submits that even the Apex Court in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, , held that an Amendment Application should be allowed, if it is not going to affect the right, title and interest of the opponent. He relies on Paragraph Nos. 53 & 63 of the said judgment, which read thus:

53. In Smt. Ganga Bai Vs. Vijay Kumar and Others, , A sued B in his individual name but afterward sought leave to amend the Plaint to sue as the proprietor of a Hindu Joint Family business. The amendment was granted and the suit was decreed. The High Court, however, reversed the decree observing that the action was brought by a "non-existing person." Reversing the order of the High Court, this Court (per Shah, J., as he then was) made the following oft-quoted observations: (SCC p. 871. Para 5)

5. 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.

(Emphasis Added)

63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the Application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

- (2) whether the Application for amendment is bona fide or mala fide;
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and
- (6) as a general rule, the Court should decline amendments if a fresh Suit on the amended claims would be barred by limitation on the date of Application.

These are some of the important factors which may be kept in mind while dealing with Application filed under Order 6, Rule 17. These are only illustrative and not exhaustive.

5. He also relies on the judgment of this Court in the case of Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt. Ltd., . In this judgment, this Court held that Order 6, Rule 17 of the CPC is a procedural law and not a part of substantive law. Therefore, the amendment can be allowed, even if the trial has already begun. He relies on Paragraph No. 33 of the said judgment which reads thus:

33. From the aforesaid discussion and the judgments the following principles/ guidelines broadly emerge:

(i) the Proviso to Order 6, Rule 17 is procedural and not a part of substantive law. It does not deal with the power of the Court and also does not specifically take away the power of the Court to allow the amendment after the commencement of trial. It only empowers the Court to reject the Application if it comes to the conclusion that in spite of "due diligence", the parties could not have sought the amendment before the commencement of trial.

(ii) The Proviso to Rule 17 of Order 6 of the Civil Procedure Code, in the present form and context, is directory and not mandatory. While dealing with the Application under Order 6, Rule 17 Courts can apply the principles/ guidelines laid down by the Supreme Court and High Courts before the Amendment Act of 2002 came into force, if the amendment is found to be necessary for the purpose of determining the real questions in controversy between the parties even after the commencement of trial.

(iii) While dealing with the Application under Order 6, Rule 17 made after commencement of the trial, the Court should, all the time and at all the stages, bear in mind the force, impact and vigour of the provision and see that it is maintained and not nullified and that the Application is not filed to delay the trial.

(iv) The commencement of the trial as mentioned in Proviso to Order 6, Rule 17 of CPC must be understood in the limited sense as meaning the final hearing of

the Suit, examination of witnesses, filing of documents and addressing of documents.

iv) Once a prayer for amendment is allowed the original pleadings should incorporate the changes in a different ink or an amended pleading may be filed wherein with the use of a highlighter or by underlining in red the changes made may be distinctly shown.

(vi) The Applicant should specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. The Applications giving a vague idea of the nature of the intended amendment and then annex a new Written Statement with the Application to be substituted in place of the original Written Statement cannot be and should not be allowed.

(vii) The Applicant, seeking amendment, should offer sufficient and proper explanation mentioning the particular circumstances against which an amendment was sought to enable the Court to reach the conclusion that in spite of due diligence the Applicant could not have raised the matter before the commencement of trial.

(viii) Once a prayer for amendment is allowed the party should incorporate the amendment in the pleadings within the time limited for that purpose or else within 14 days as provided by Order 6, Rule 18 of the Civil Procedure Code. As far as possible the Courts while allowing the amendment should direct the party to carry out amendment within timeframe.

(ix) When one of the parties has been permitted to amend his pleading, an opportunity has to be given to the opposite party to amend his pleading. The opposite party shall also have to make an Application under Order 6, Rule 17 of CPC which, of course, would ordinarily and liberally be allowed. Such amendments are known as "consequential amendments". However, a new plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment.

(x) An amendment of a Plaint and amendment of a Written Statement are not necessarily governed by exactly the same principle. The Plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim. However, adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding altering or substituting a new cause of action. The Courts are, therefore, required to take more liberal view in allowing amendment of Written Statement than of Plaint and question of prejudice is less likely to operate with same rigour in former than in latter case.

(xi) The Courts while deciding the Application for amendment should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Amendment

need to be allowed to avoid uncalled for multiplicity of litigation.

(xii) The Defendant has a right to take an alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favour of the Plaintiff is not withdrawn and it should not result in defeating a legal right accruing to the Plaintiff on account of lapse of time.

(xiii) The delay in filing the Petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the Application for amendment of Plaint or Written Statement.

(xiv) If it is permissible for the Plaintiff to file an independent Suit, the same relief which could be prayed for in a new Suit should be permitted to be incorporated in the pending Suit by way of an amendment. Such amendment would curtail multiplicity of legal proceedings.

(xv) Inconsistent plea, in a given case, can also be allowed to be raised by the Defendants in the Written Statement. However, an inconsistent plea which would displace the Plaintiff completely from the admissions made by the Defendants in the Written Statement, however, cannot be allowed. If such amendments are allowed the Plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the Defendants.

(xvi) 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 should be allowed more liberally than those which are sought to be made after commencement of the trial and after conclusion thereof.

(xvii) The Court can allow amendment of pleadings even at the Appellate stage for the purpose of determining the real question in controversy between the parties or if it is necessary for the effective decision of the case. However, the delay in seeking an amendment must be explained satisfactorily and that it should not cause injustice to the other side or it should not affect the right already accrued to the other side. At appellate stage none of the parties could be allowed to withdraw the admissions or pleadings, if the rights are accrued to the other side.

(xviii) If the Application for amendment is allowed after the commencement of trial and if the proposed amendment has the effect of altering the nature of the defence the Plaintiff can claim re-examination of the witness/es and if he makes such claim the Court should allow such prayer.

(xix) While considering whether an Application for amendment should be allowed, the Court is not expected to go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way

of amendment are not to be adjudged at the stage of allowing the prayer for amendment.

(xx) An Amendment once incorporated relates back to the date of the Suit. However, the Doctrine of "relation-back" in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the Suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the Application seeking amendment was filed.

(xxi) An Application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation. On the contrary. Application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing the amendment in the interest of justice. The plea of limitation being a mixed question of law and fact can be made a subject-matter of the issue after allowing the amendment prayed for.

6. He further submits that by way of amendment, the Petitioner wants to place on record the fact which occurred after making a Reference and thereafter the way in which they employed other persons for their day-to-day activities. On the basis of these submissions, the learned Counsel for the Petitioner states that the learned Labour Court, Satara erred in coming to the conclusion that in view of Order 6, Rule 17 of the CPC, the Application filed by the Petitioner below Exhibit-105 cannot be allowed and the same be rejected.

7. On the other hand, the learned Counsel for the Respondent No. 1-second party vehemently opposed the present Writ Petition. He submits that the Petitioner terminated the services of Respondent No. 1 in the year 2004. Thereafter, the Reference was made on 13th September 2005. Thereafter, the Petitioner filed Written Statement on 19th September 2006. On 23rd July 2007, the first witness of Respondent No. 1 was examined and the same was cross-examined by the Petitioner in the year 2008. Again on 1st March 2008, the witness of Respondent No. 1-second party was examined and the same was cross-examined by the Petitioner on 21st June 2008. He further submits that the first witness of the Petitioner was examined on 7th November 2009 and the same was cross-examined by Respondent No. 1-second party. He further submits that Shri C.G. Shahane, witness of the Petitioner, in his cross-examination specifically admitted that the Petitioner has no objection if Respondent No. 1-second party joins his services, as they never terminated them. He points out that in view of the proposed amendment, the Petitioner wants to do away with the admission given by the Petitioner's witness Shri C.G. Shahane. He further submits that the Petitioner has filed the present Application for amendment on 17th April 2011 i.e. after 5 years from the date of filing of the Written Statement. He further submits that in view of Order 6, Rule 17 of the CPC once the trial commences, the parties are not entitled to amend their pleadings in view of the

amended provisions of the CPC. Therefore, there is no substance in the present Petition and the same be dismissed with costs.

8. Heard both sides at length. I have gone through the copy of the Reference, Written Statement filed by the Petitioner, Application below Exhibit-105 for amendment of the Written Statement and the impugned order dated 8th August 2012 passed by the learned Labour Court, Satara. It is to be noted that the Labour Court, Satara has rejected the Petitioner's Application solely on the ground that once the trial commenced, thereafter in view of Order 6. Rule 17 of the CPC the Court has no power to allow the parties to amend their pleadings. The Trial Court has also observed that the Application filed by the Petitioner for amendment of the Written Statement is just to fill-up the lacuna in the evidence of Shri C.G. Shahane, witness of the Petitioner. After going through the proposed amendment, it is crystal clear that the Petitioner wants to state the true facts which occurred during the period from the date of termination of Respondent's services till the date of amendment. It is to be noted that in view of Rule 16-A of the said Rules, it is crystal clear that the parties can amend their plea at any time, if it is necessary for deciding the real issue between the parties. Rule 16-A of the said Rules reads thus:

16-A Amendment to statements of claims and Written Statement.-- A Labour Court or Tribunal, may allow at any stage of the proceedings amendments to statements of claims or Written Statements filed by the parties in response to notices served under Rule 16 to such extent as the Labour Court or as the case may be. Tribunal may consider necessary for the purpose of determining the real issues included in the order of reference.

It is to be noted that even the Apex Court, in the matter of Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, and this Court in the matter of Bharat Petroleum Corporation Ltd., v. Precious Finance Investment Pvt. Ltd., 2007 (1) Mh. L.J. 331 (Supra) held that an amendment can be allowed at any stage, if it is necessary to decide the issue between the parties finally. Considering these facts and the law laid down by the Apex Court, I am of the opinion that, the Trial Court erred in coming to the conclusion that the Petitioner has not made out a case for allowing them to amend their Written Statement. By way of amendment, the Petitioner is placing on record certain facts of their day-to-day activity Considering this fact, the Writ Petition is allowed with following order:

(a) Order dated 8th August 2012 passed by the Labour Court. Satara below Exhibit-105 in Reference (IDA) No. 94 of 1995 is set aside.

(b) The Petitioner's Application dated 17th April 2011 below Exhibit-105 for amendment of their Written Statement dated 19th September 2006 is allowed.

(c) Amendment to be carried out within eight weeks from today Amended copy of the Written Statement be served on the other side.

(d) Liberty granted to the Respondent to re-examine their witness or recall Petitioner's witness for further cross-examination on the basis of amended Written Statement if they so desire.

(e) The Petitioner to pay cost of Rs. 2,500/- to the Respondents within four weeks from today. Payment of cost is a condition precedent.

(f) Rule is made absolute accordingly.