

Quality Polly Closures Vs. the Executive Engineer, M.S.E.B. and anr.

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Court : Mumbai

Decided On : Apr-20-2000

Reported in : 2000(3)ALLMR420; (2000)102BOMLR282

Judge : Vijay Daga, J.

Appeal No. : Civil Revision Application No. 1225 of 1997

Appellant : Quality Polly Closures

Respondent : The Executive Engineer, M.S.E.B. and anr.

Disposition : Application allowed

Judgement :

Vijay Daga, J.

1. This revision application is directed against the order dated 17th September, 1997 passed by the Joint Civil Judge, Senior Division, Satara, on Exh. 47 in Special Civil Suit No. 172 of 1994 rejecting an application seeking amendment to the plaint.

2. The facts giving rise to the present revision may be noticed as under:

The plaintiff (applicant herein) has filed suit challenging the bill dated 6th April, 1994 for the electricity consumption charges amounting to Rs. 2,20,300/-. The

plaintiff sought declaration that the said bill dated 6th April, 1994 demanding Rs. 2,20,300/- from the plaintiff was without any authority of law and was not binding on him.

3. On being noticed, the defendants (respondents herein) appeared and filed its written statement contending therein that the bill also includes an amount of interest right from the year 1993. The above suit was posted for evidence from time to time. The plaintiff sought adjournments after adjournments. The Trial Court recorded in its order that the plaintiff sought adjournment by filing applications at Exh. 41, Exh. 43, Exh. 44, Exh. 45 and Exh. 46. Thus, right from the month of September, 1996 to January 1997, the plaintiff sought number of adjournments and thereafter moved an application for amendment of the plaint. The Trial Court, therefore, found that the application was not bonafide. The Trial Court also observed that the claim sought to be included in the plaint was barred by limitation.

4. At this juncture, it would not be out place to mention that challenge to the bill dated 6th April, 1994 demanding an amount of Rs. 2,20,300/- was already set up in the plaint. The amendment has no effect of either reducing the claim or increasing the same. What was being sought by amendment was nothing but the explanation leading to the calculation of the amount already included in the suit claim. Under these circumstances, it cannot be said that there were no seeds of the proposed amendment in the plaint. The plaintiff was trying to clarify and amplify the calculations of the amount of bill which were already included in the subject-matter of the suit. Under these circumstances, it cannot be said that by proposed amendment any claim barred by limitation was being brought within limitation. Consequently, I do not find that the observations made by the Trial Court in this behalf are correct and proper.

5. So far as conduct of the plaintiff was concerned, it was brought on record that after seeking five adjournments the plaintiff had moved an application for amendment and thereby tried to protract the litigation. The learned Counsel for the applicant/original plaintiff pointed out that the applicant himself is interested in seeing that his suit be decided expeditiously as his factory is closed. However, the fact remains that the application for amendment was moved after seeking series of

adjournments right from September, 1996 to January, 1997.

6. Considering the nature of the amendment and the rights of the plaintiff involved in the suit, the interest of justice requires that the plaintiff should be allowed to amend his plaint. The Supreme Court said in *Jai Jai Ram Manohar Lal v. National Building Material Supply* : [1970]1SCR22 that however, negligent or careless may have been the first error or omission the amendment should be Allowed, if it does not cause injustice to others. I am of the opinion that the proposed amendment would not cause any injustice to other side if it is allowed. The Supreme Court in *A.K. Gupta & Sons v. Damodar Valley Corporation* 1996 (1) S.C.R. 796 held:

The general rule, no doubt, is that party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit or new case or cause of action is barred : *Weldon v. Neale* (1987) 19 Q.B.D. 394. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : See *Charan Das v. Amir Khan* AIR 1921 PC 50 : 22 Bom. L.R. 1370 : 57 I.C. 606 and *L.J. Leach and Co. Limited and Anr. v. Jardin Skinner and Co.* : [1957]1SCR438 .

The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistake. Reference is Made in the case *Cropper v. Smith* (1984) 26 Ch. D. 700 and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended in *Kishandas Rupchand v. Rachappa Vithoba ilr*(1909) 33 Bom. 644 approved in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* : [1957]1SCR595 .

7. The purpose and object of Order 6 Rule 17 of the C.P.C. is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Mere delay cannot be a ground to reject the amendment. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interest of justice on the basis of guidelines laid down by the Supreme Court and

various High Courts. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the Courts while deciding such prayers should not adopt hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

8. Under the circumstances revision is allowed by setting aside the impugned order but subject to payment of cost of Rs. 3,000/- considering the conduct of the applicant who tried to protract the suit. The plaintiff to carry out amendment within a period of one month and deposit the cost within six weeks from the date of receipt of the writ from this Court. The amount of cost to be deposited with Maharashtra Legal Aid Authority. If costs are not deposited within stipulated time, the revision application shall stand dismissed automatically without reference to the Court. The Trial Court is directed to expedite hearing of the suit and decide the same as early as possible.

9. In view of the above, the revision application is allowed with no order as to cost.