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Court : DRAT Mumbai

Decided On : Mar-30-2005

Reported in : I(2006)BC85

Judge : P Upasani

Appellant : Tempcon Industries and ors.

Respondent : Central Bank of India and ors.

Judgement :

1. This Misc. Appeal is filed by the appellants/original defendants being aggrieved by the order dated 19.5.2004 passed by the learned Presiding Officer of the Debts Recovery Tribunal, Pune on Exhibit No.30 in Original Application No. 220-P/2001. By the impugned order, the learned Presiding Officer allowed the application made by the respondent No. 1 Bank for amending the original application. The defendants were aggrieved and, hence, the present appeal.

2. I have heard Mr. Palande for the appellants and Mr. Thakur for the respondent No. 1 Bank. I have also gone through the proceedings including the original application, proposed amendment, application made by the respondent No. 1 Bank and the impugned order and, in my view, the learned Presiding Officer has correctly passed the order.

3. Submission of the respondent No. 1 Bank before the DRT was that the amendment of the plaint/original application was insisted because there were

many inaccuracies, omissions about particulars, about documents in the plaint and that there were spelling mistakes, grammatical mistakes, etc. It was also submitted that the paragraph No. 5 was not properly and correctly drafted and, therefore, in the interest of justice, their application for amendment be allowed.

The learned Presiding Officer observed that total amount of the claim was not likely to increase by the amendments and that the amendments which were sought, were formal in nature. He further observed that the defendants had not yet opened their defence and, therefore, they were not likely to be prejudiced in any way. He, however, took cognizance of the fact that the application for amendment was belatedly made and though he allowed the said application, he saddled the respondent No. 1 Bank with costs of Rs. 1500/-, which was to be paid as condition precedent.

Mr. Palande, the learned Advocate appearing for the appellants submitted that the proposed amendment would cause prejudice to the appellants. He complained that the proposed amendment was of many pages, was belatedly sought to be made and new cause of action was tried to be introduced. He also made a grievance that the application was time-barred.

4. I have heard both the sides and having gone through the proceedings, in my view, the proposed amendment appears to be only of a clarificatory nature, whereby more particulars are sought to be given because in the earlier application general statements were made and nothing more than that is sought to be introduced. The total claim remains unchanged.

5. As far as the alleged time-barred claim is concerned, the Supreme Court in the case of Pankaja and Anr. v. Yellappa (D) LRs. and Ors.

, has held that amendment application should not be disallowed merely because it is opposed on the ground that it is barred by limitation. It was further observed in the said case that applicability of limitation was an arguable question and the proposed amendment did not introduce different relief.

6. The law is now well settled. As far as amendment application is concerned, liberal approach has to be adopted. The application of amendment can be filed at any stage of the suit and what is not permissible is introducing new cause of action, which would cause prejudice to the other side.

7. In the present case at hand, no new cause of action has been introduced. The proposed amendment is indeed of a clarificatory nature which, in fact, would facilitate more understanding of the matter. As held by the Supreme Court in the case of Ragu Tilak D. John v. S.Rayappan II (2001) CLT 233 (SC) : 2001 (2) SCC 472, "the dominant purpose of allowing the amendment is to minimize the litigation. The plea of limitation being disputed could be made a subject matter of the issue after allowing the amendment prayed for..."

8. Thus, there was nothing wrong when the learned Presiding Officer allowed the application for amendment. He was conscious of the fact that the application was made belatedly and for this purpose, he saddled the respondent No. 1 Bank with costs of Rs. 1500/-.

9. Indeed, no prejudice would be caused to the appellants if the amendment application was allowed. The defendants have not even filed their written statement. All the averments and objections which the appellants are now pleading can be incorporated in their written statement which they have not filed so far, though it is a very old matter. Accordingly, following order is passed: Stay to the proceedings which was continued all along, needless to say, stands vacated.

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