

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.583/2001**

% **5th July, 2011**

M/S A.G.NEOCHEM PVT. LTD. Appellant

Through: Mr. D.P.Chaturvedi, Advocate

VERSUS

SHRI CHANDRA KANT ARORA & ORS Respondents

Through: Mr. Sanjiv Kakra & Mr. Kartik Nagarkatti,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The present regular first appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) challenges the impugned judgment of the trial court dated 30.5.2001 which dismissed the suit for declaration on the ground that consequential relief was available of recovery of money, but the same was not claimed. Simultaneously, by the impugned order, the trial court dismissed an application filed under Order 6 Rule 17 CPC whereby the plaint was sought to be amended to pray for a relief of recovery of money in place

of declaration.

2. The facts of the case are that the respondent no.1/defendant no.1 was a Director of the appellant/plaintiff company. When the respondent no.1 resigned from the directorship of the company, he required that securities in the form of LIC policies given by him to the respondent no.3/defendant no.3 bank be released from the bank and returned to him. The parties agreed to a modality of giving security in the form of goods to the respondent no.1 till the LIC policies were returned by the respondent no.3 bank to the respondent no.1. A Tripartite Agreement dated 21.6.1991 was entered into between the parties and in terms of which, the appellant company gave to the respondent no.1 goods of the value of Rs.2,99,991.12p. The respondent no.1 was to pay for the value of these goods only after release of the LIC policies by the respondent no.3 bank in favour of the respondent no.1. In furtherance of the Tripartite Agreement the appellant received a cheque of the value of the goods and which was to be returned on the respondent no.1 giving a bank draft of the value of the goods and on his LIC policies being returned to him by the Bank. The case as laid out by the plaintiff/appellant in the plaint was that the respondent no.3 bank agreed to release the LIC policies only directly to the respondent no.1 and for which, the appellant company wrote a letter to the respondent no.1 to come and collect the LIC policies directly from the respondent no.3 bank. The appellant/plaintiff company also informed respondent no.1 that if it had any difficulty to

personally collect the LIC policies then it can give the authority letter to the plaintiff company to collect the LIC policies. The requisite correspondence in this regard was entered into between the appellant company and the respondent no.1 during the period from June 1991 to September, 1992. Correspondence was also exchanged with the bank during this period. The position which ultimately emerged was that the respondent no.1 failed to collect the LIC policies from the respondent no.3 bank and also failed to pay the amount due to the appellant company with respect to the goods of the value of Rs. 2,99,991.12p and consequently, the appellant company filed the subject suit for declaration and mandatory injunction against the respondents no.1 to 3/defendants no.1 to 3. Respondent no.2 is the sole proprietorship concern of the respondent no.1. In the suit filed on 10.12.1992, after mentioning the aforesaid facts, and reproducing the clauses of the Tripartite Agreement as also the correspondence, the following reliefs were claimed.

“a) a decree of declaration be passed in favour of the Plaintiff Company and against the Defendants 1 and 2 declaring that the Plaintiff Company is entitled to damages from the Defendants 1 and 2.

b) a decree of Mandatory Injunction be passed in favour of the Plaintiff Company and against the Defendants, directing the Defendants 1 and 2 to comply with the terms and conditions of the Agreement dated 21.6.1991 (twenty first June, nineteen hundred ninty one) and against Defendant No.3 directing the Defendant No.3 bank not to deliver the L.I.C. policies duly released to Defendant No.1 in

the absence of the Plaintiff Company; in other words the L.I.C.policies be released to Defendant No.1 by Defendant No.3 only in the presence of the Plaintiff Company.

c) costs of the suit be awarded to the Plaintiff Company; and

d) such other relief (s) as this Hon'ble court may deem just and proper under the circumstances of the case be granted to the Plaintiff Company."

3. The respondent no.1 at the initial stage itself in the written statement took up a plea as to the maintainability of the suit that the suit was not maintainable by virtue of the proviso to Section 34 of the Specific Relief Act,1963 as the further relief of recovery of money was not claimed. The appellant company however, did not take action, and, it was only on 4.1.2000 that an application for amendment of the plaint was filed to basically substitute the relief of declaration by the relief of recovery of money. The relief of recovery of money claimed was with respect to the value of goods and the interest thereon. The amendments which were sought were as under:-

"A. The following be added in the heading; after the words 'Declaration':
"Alternatively suit for recovery of Rs.7,59,991.00"
After amendment the heading would read as "Suit for Declaration alaternatively suit for recovery of Rs.7,59,991.00 and consequential relief of Mandatory Injunction."

B. The following be added after Para 6 of the plaint:

"Alternatively the Defendants 1 & 2 are liable to pay a sum of Rs.2,99,991.00 being the value of the goods

to the Plaintiff. The Defendants 1 & 2 accepted the goods supplied by the Plaintiff Co. and did not pay the value of the goods. The Defendants 1 & 2 are also liable to pay interest @ 18% p.a. on the aforesaid amount, amounting to Rs.4,59,000.00; totalling Rs.7,59,991.00”

- C. The following be added in line 12 of para 8 of the plaint, after the words ‘to do so’ and before the words ‘against Defendant No.3’: “and did not make the payment being the value of the goods of the Plaintiff;”

Para 8 of the plaint after addition would read as under:

“8. Cause of action accrued to the Plaintiff Company against the Defendant No.1 on 21.6.1991 when he resigned from the directorship and ceased to be a director of the Plaintiff Company; against Defendants 1 and 2 on 21.6.1991 when they executed the Tripartite Agreement at New Delhi; the Plaintiff Company delivered the goods to them and raised its bill; on all dates when the Plaintiff Company requested the Defendants 1 and 2 to comply with the agreement dated 21.6.1991 and they failed to do so and did not make the payment being the value of the goods to the Plaintiff; against Defendant No.3 on 3.9.1992 when they issued their letter agreeing to deliver the L.I.C.policies duly released.”

- D. Following be added in line 4 of para 9 of the plaint after the words “to be released” and before the words ‘and payment’: “and from where the goods were delivered/supplied to the Defendants 1 & 2”.

Para 9 of the plaint after addition would read as under:

“9. Since cause of action at Delhi, where the agreement dated 21.6.1991 was executed, where the L.I.C. policies were to be released and from where the goods were delivered/supplied to the Defendants 1 & 2 and payment by Defendants 1 and 2 was to be made; this Hon’ble court has jurisdiction to entertain and try the instant suit.”

- E. Para 10 of the plaint be deleted and following be substituted in its place;

“10. Value of the suit for purpose of court fee and jurisdiction is as under:

	<u>Jurisdiction</u>	<u>Court fee</u>
a) Declaration	Fixed @ Rs.200/-	Rs.20/-
b) Mandatory Injunction	Fixed 130/-	Rs.13/-
c) Value of goods including Interest	Rs.7,59,991.00	Rs.9,761/-

on in the alternative Rs.3,00,000/- being the value of the LIC Policies.

- F. The following be added at the end of clause (a) of the prayer clause:

“Alternative a decree for Rs.7,59,991/- be passed in favour of the Plaintiff and against the Defendants 1 and 2 together with pendentilite and future interest @ 18% p.a.”

4. This amendment application was dismissed by the impugned order which also dismissed the suit because of the proviso to Section 34 of the Specific Relief Act, 1963. In dismissing the suit, the trial court heavily relied upon the following observations of the Supreme Court in the case of **Munni Lal Vs. Oriental Fire & General Insurance Co. Ltd. AIR 1996 SC 642**

which are as under:-

“Section 34 of the Specific Relief Act provides that any person entitled to a legal character, or to any right as to any property may, institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make such declaration and the plaintiff need not ask for such relief. However, proviso to the said Section puts the controversy beyond pale of doubt that “no courts shall make any such declaration where the plaintiff,

being able to ask for other relief than a mere declaration of title, without consequential relief does not provide the needed relief in the suit, it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the Court to refuse to grant the declaratory relief. In this appeal, the appellant has merely asked the loss of the truck in terms of the contract but not consequential relief of payment of the quantified amount, as rightly pointed out by the courts below. The question, therefore, is whether the amendment under Order 6 Rule 17 C.P.C. could be ordered in this background. Section 3 of the Limitation Act speaks of bar of limitation providing that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, after the prescribed period shall be dismissed, although limitation has not been set up as the defence. In other words, unless there is a power for the court to condone the delay, as provided under Sections 4 to 24 (inclusive), every suit instituted after the prescribed period shall be dismissed although limitation has not been set up as the defence. Order 6 Rule 17 C.P.C. envisages amendment of the pleadings. The court may at any stage of the proceedings allow either parties to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question of controversy between the parties. Therefore, granting of amendment on such terms is also a condition for the purpose of determining the real question in controversy between the parties. The amendment to grant consequential relief sought for in this case, is as envisaged in proviso to Section 34 of the Specific Relief Act, 1963. The relief was, however, available to him to be asked for, when the suit was filed.

Admittedly, by the date of the application for amendment filed, the relief stood barred by limitation. The question, therefore, is whether the court would be justified in granting amendment of the pleadings in such manner so as to defeat valuable right of defence of bar of limitation given to the defendant.

On a consideration of this case in its proper perspective, we are of the view that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. He cannot be permitted to amend the plaint after the suit was barred by the limitation during the pendency of

the proceedings in the appellate court or the second appellate court.” (Emphasis added)

5. Before this court, learned counsel for the appellant argued that there was no substitution of the original cause of action and nor there was wholesale substitution of the facts. It was urged that from the same set of facts i.e. of the respondent no.1 resigning from the company, the requirement to release the LIC policies, the goods of the value of Rs.2,99,991.12p having been supplied and not paid for and the respondent no.1 refusing to collect the LIC policies or giving the authority to collect and which continue to be the basic set of facts, only the relief is sought to be substituted by claiming the relief of recovery of money instead of the relief of declaration. It is argued that it is not as if a relief is being claimed which has no co-relation to the existing set of facts. Heavy reliance is placed on the observations of the Supreme Court in the case of **A.K.Gupta & Sons Vs. Damodar Valley Corporation (1996) 1 S.C.R. 796**. In the case of **A.K.Gupta (supra)**, the Supreme Court allowed the amendment of a suit from a suit for declaration to a suit for recovery of money. The suit as originally filed in **A.K.Gupta's case (supra)** was on the basis of contract seeking declaration for recovery of enhanced labour charges. Since the relief originally was for declaration for the claim of enhanced labour charges the same was thereafter sought to be amended/substituted by the relief of recovery of money on the basis of the selfsame contract. It is in this context,

that the following observations were made by the Supreme Court and are relied upon by the counsel for the appellant.

“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) L.R.8 C.P.107,116 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 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.24 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”: *Dornam v. J. W. Ellis & Co. Ltd.* [1962 1 All E.R.303. This also seems 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.

Now, how does the present case stand on these principles? Does the amendment introduce a new cause of action or a new case? We do not think it does. The suit was on the contract. It sought the interpretation of a clause in the contract only for a decision of the rights of the parties under it and for no other purpose. It was the contract which formed the cause of action on which the suit was based. The amendment seeks to introduce a claim based on the same cause of action, that is, the same contract. It introduces no new case or facts. Indeed the facts on which the money claim sought to be added is based are not in dispute. Even the amount of the claim now sought to be made by amendment, was mentioned in the plaint in stating the valuation of the suit for the purpose of jurisdiction. The respondent had notice of it. It is quite clear that the interpretation of the clause was sought only for quantifying the money claim. In the written statement the respondent specifically expressed its willingness to pay the appellant’s legitimate dues which could only mean such amount as might be due according to the rates applicable on a proper interpretation of the clause. The respondent was fully

aware that the ultimate object of the appellant in filing the suit was to obtain the payment of that amount. It was equally aware that the amount had not been specifically claimed in the suit because the respondent had led the appellant to believe that it would pay whatever the court legitimately found to be due. It in fact said so in the written statement. It there was any case where the respondent was not entitled to the benefit of the law of limitation, the present is that one. The respondent cannot legitimately claim that the amendment will prejudicially effect his right under that law for really he had no such right. It is a case in which the claim for money was in substance in the plaint from the beginning though it had not formally been made.

This, therefore, seems to us to be pre-eminently a case for allowing the amendment. The authorities also lead us to the same view. In *L.J. Leach & Co.'s case* [1957] S.C.R. 438 a suit for damages for conversion was by amendment allowed to be converted into a suit for damages for breach of contract after that claim had become barred, the necessary facts, as in the case in hand, being already in the plaint. In *Charan Das's case* L.R.47. I.A.255 an amendment adding a claim for possession after a suit for such claim had become barred was allowed in a suit which originally had only claimed a declaration of a right to pre-empt. In the last mentioned case, the plaintiff had in spite of warning at the earliest stage refused to make the amendment which he later sought and got. It was, therefore, a case where the plaintiff had initially deliberately refused to make a claim and an amendment being allowed later permitting that claim to be raised after it had become barred. It was in a sense a stronger case than the present one where the plaintiff had omitted to make the claim initially on a wrong notion and a wrong legal advice. Punishing of mistakes is, of course, not administration of justice.

It is true that the plaint does not set out the details of the work done. But there never was any dispute about them. Indeed the respondent had prepared a final bill of the appellant's dues for the work done under the contract and the appellant had accepted that bill as correct except on the question as to the proper rate chargeable under the clause. Strictly, the details of the work done were not necessary in the plaint for it would be a waste of time of a

court to go into them, it not being unusual to direct an enquiry by a Commissioner or a subordinate officer about such details when, as in the present case, the items of work done are innumerable. It would be enough in such cases to file the details before the authority making the enquiry. Besides, in Pirgonda Hongonda Patil's case [1957] S.C.R.595, in a suit for a declaration of title, this Court permitted an amendment setting out the details facts on which the title was claimed after the suit had become time barred. The absence of the details of the work does not furnish a legitimate ground for refusing the amendment.

It may be that as a result of the amendment, if the respondent chooses to raise a controversy about the work done, that is, about the quantity, quality and other things concerning it, which it had never raised so long, the matter will have to be gone into. That again would not justify a refusal of leave to amend. It would not mean any waste of time or money or any duplication of work. That investigation would be made for the first time and nothing done so far would become futile. Such an enquiry was indeed directed in *L.J. Leach & Co.'s case [1957] S.C.R.438*

The amendment sought is necessary for a decision of the real dispute between the parties which is, what are their rights under the contract? That dispute was clearly involved in the plaint as originally framed. All the necessary basis facts had been stated. Only through a misconception a relief which could be asked on those facts had not been asked. It would not have been necessary to ask for it unless the respondent had at a late stage taken the point that the suit should fail without more in the absence of that relief. We find the present case indistinguishable from Charan Das's case L.R. 47 I.A.255."

(Emphasis added)

6. Per contra, learned counsel for the respondents has relied upon, in addition to the judgment of **Munni Lal** (supra) cited by the trial court, the following judgments :-

- (i) ***T.L.Muddukrishana and Anr. Vs. Smt. Lalitha Ramchandra Rao AIR 1997 SC 772***
- (ii) ***Radhika Devi Vs.Bajrangi Singh & Ors. AIR 1996 SC 2358***

(iii) ***K. Raheja Constructions Ltd. & Anr. Vs. Alliance Ministries & Ors. 59 (1995) DLT 3 (SC).***

In the case of ***T.L.Muddukrishana and Anr. (supra)***, the Supreme Court refused to allow the amendment to convert the suit from mandatory injunction to a suit for specific performance. Learned counsel for the respondents relied upon para 8 of the said judgment which reads as under:-

“8. Under these circumstances, it must be held that for the purpose of limitation, what is material is that the limitation begins to run from the date the parties have stipulated for performance of the contract. The suit is required to be filed within three years from the fixed by the parties under the contract. Since the application for amendment of the plaint came to be filed after the expiry of three years, certainly it changed in the plaint. The suit for mandatory injunction is filed and the specific performance was sought for by way of an amendment. The cause of action is required to be stated initially in the plaint but it was not pleaded. It was sought to be amended, along with an application for specific performance which, as stated earlier, was rejected. Under these circumstances, even by the date of filing of the application, namely, November 5, 1992, the suit was barred by limitation. The High Court, therefore, was right in refusing to permit the amendment of the plaint.” (Emphasis added)

7. In my opinion, this judgment can be distinguished because para 8 clearly notes that the cause of action pleaded in the suit was a mandatory injunction and which cause of action was sought to be amended and what was now sought to be pleaded was by converting a suit into the specific performance suit i.e., a cause of action which was not initially pleaded in the plaint. In the facts of the present case, I have already noted above that the entire gamut of facts more or less remains the same except that the relief is being substituted from declaration to that of recovery of money, and which is

an identical position to the case of **A.K.Gupta & sons (supra)** cited above.

8. The decision in the case of **Radhika Devi (supra)** is also liable to be distinguished because the suit was originally for partition and thereafter an additional cause of action for challenging a gift deed on the ground of having been executed illegally and fraudulently was sought to be added. The Supreme Court therefore declined the amendment that a fresh cause of action cannot be pleaded by amendment which was barred when the suit was filed.

9. **K. Raheja Constructions Ltd & Another's case (supra)** is also distinguishable on the same grounds on which the judgments in the case **T.L.Muddukrishana and Anr.** and **Radhika Devi (supra)** have been distinguished because a suit for permanent injunction was sought to be converted into a suit for specific performance i.e. additional set of facts constituting a completely new cause of action was sought to be added by amendment which was barred by limitation and consequently amendment was disallowed.

10. So far as the decision in the case of **Munni Lal (supra)** which has been relied upon by the trial court and the relevant para of which has been reproduced above, the distinguishing feature between the **Munni Lal's (supra)** case and the facts of the present case which requires the applicability of the decision in the case of **A.K.Gupta & Sons (supra)** is that, in **Munni Lal's (supra)** case the Supreme Court declined the

amendment at the appellate stage in the Supreme Court whereas in the present case, the amendment was prayed for at the stage of the original suit itself. In fact, at this stage, it is relevant to refer to the observations of the Supreme Court in the case of **A.K.Gupta and sons (supra)** wherein at page 801 of the S.C.R. report, the Supreme Court while relying upon **Charan Das vs. Amir Khan L.R 47 I.A. 255 (privy council)** has referred to the delay in applying for amendment in the plaint although the defendant in the suit had already put the plaintiff to the notice that the suit was not maintainable in the present form and yet the amendment was allowed after considerable delay. I may note that in **A.K.Gupta's case**, the Supreme Court has relied upon the earlier decision in **L.J.Leach & Co. Ltd. vs. Jardine Skinner and Co. (1957) S.C.R.438** as also **Pirgonda Hongonda Patil vs.Kalgonda Shidgonda Patil (1957) S.C.R.595**, and in both of which cases, amendment was allowed, although, the relief as prayed for in the amendment application was barred by limitation.

11. I am therefore, of the opinion that the appeal has to succeed. The impugned judgment is therefore liable to be set aside because what applies to the facts of the present case is the ratio of the decision of the Supreme Court in **A.K.Gupta's case** as also the decisions in the cases of **L.J.Leach & Co. (supra)** and **Charan Das (supra)**. The ratio of the Supreme Court judgments as cited by the learned counsel for the respondents only applies when suits on one cause of action is sought to be converted into a suit based

on another cause of action; such as of injunction into specific performance; and in which circumstances, the Supreme Court had disallowed the amendment. I may note that specific performance is a discretionary remedy and possibly that could be one of the reasons to deny the conversion of an injunction suit into a suit for specific performance and by disallowing of the amendment application.

12. The impugned order dated 30.5.2001 being set aside and the amendment application of the appellant/plaintiff being allowed, the appellant/plaintiff will file the amendment plaint within a period of six weeks from today in the trial court. The respondents no.1 and 2 will have thereafter an entitlement to file its amended written statement to the plaint. The trial court will thereafter proceed to hear and dispose of the suit in accordance with law. Parties to appear before the District and Sessions Judge, Tis Hazari on 10.8.2011 along with the copy of the present judgment so that the District and Sessions Judge, Delhi will mark the case to an appropriate court for hearing and disposal of the suit in accordance with law. Nothing contained in the impugned order will tantamount to any expression on the merits of the case in one way or the other for and against either the appellant or the respondent. Appeal is accordingly disposed of.

JULY 05, 2011
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VALMIKI J. MEHTA, J.