

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1521 OF 2006

Narhari S/o Sahebrao Nagargoje,
Age-45 years, Occu-Agriculturist,
R/o Yewalwadi, U/v Patoda, Tal.Patoda,
Dist. Beed.

PETITIONER

VERSUS

1. Shivaji S/o Dharma Dhaval,
Age-42 years, Occu-Agriculture,
R/o Arangaon u/v Dhalewadi,
Tal.Patoda, Dist.Beed,

2. Vitthabai W/o Shivaji Dhaval,
Age-39 years, Occu-Agriculture,
R/o as above,

3. Housrao S/o Narhari Magar,
Age-40 years, Occu-Agriculture,
R/o as above.

RESPONDENTS

Mr.A.N.Nagargoje, Advocate for the petitioner.
Mr.K.N.Farooqui h/f Mr.N.L.Jadhav, Advocate for respondent No.3.
Mr.R.O.Awasarmol, Advocate for respondent Nos. 1 and 2.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 27/07/2015

ORAL JUDGMENT :

1. This matter was admitted by order dated 06/06/2006.
2. The petitioners have challenged the order passed by the Civil Judge, S.D. Beed, Ex-officio, Workmen's Compensation Court dated

14/11/2005 permitting the respondents to amend the claim application/plaint by allowing application Exh.36.

3. Mr.Nagargoje, learned Advocate appearing on behalf of the petitioners vehemently submits as under :-

- a. Respondent Nos.1 and 2 (Original plaintiff Nos. 1 and 2) preferred Application W.M.C No.8/2004 before the Workmen's Compensation Court.
- b. A specific stand was taken that the accident has occurred at land Survey No.483.
- c. There is no whisper of land Survey No.485.
- d. Narration of accident that occurred while carrying out the work of digging a well is in relation to land Survey No.483.
- e. The petitioner filed its written statement in October 2004, specifically taking the stand that they are not owners of land Survey No.483.
- f. It was specifically averred that the petitioners are owners of land Survey No.485 and no accident occurred at the said site.
- g. FIR was registered pertaining to the accident that occurred at land Survey No.483 involving the deceased whose mother and father are the plaintiffs.
- h. Oral evidence was led by the plaintiffs.
- i. In cross-examination, it is specifically admitted by the plaintiff that the accident has occurred in land Survey No.483.
- j. The 7/12 extract of land Survey No.483 is also placed on record and based on the same, the plaintiff claims that the accident has positively occurred in the said land.
- k. It is admitted in cross-examination that the plaintiffs enquired

with the Talathi and after correctly identifying the land, have stated land Survey No.483 as the site of the accident.

- l. After the cross examination was concluded on 23/06/2005, an application was filed on 19/07/2005 below Exh.30 invoking Order 6 Rule 17 of the CPC for amending the claim.
- m. The petitioner vehemently opposed the application by filing its say on 12/08/2005.
- n. By the impugned order dated 14/11/2005, application Exh.30 was allowed.
- o. The proviso below Rule 17 under Order 6 lays down the Law that an amendment is impermissible after the trial has commenced.
- p. It is settled law that once the issues are cast, the trial is said to have commenced.
- q. No circumstances have been narrated in application Exh.36 by which the Compensation Court could have been convinced that despite best efforts and due diligence shown, the plaintiffs could not have amended the claim.
- r. The entire nature of the suit changes since the owner of the land, in which the accident is alleged to have occurred, is also changed.
- s. The site of the accident is also changed by permitting the amendment.
- t. By the impugned order, the defence of the petitioner is weakened.
- u. The police conducted a spot panchnama, by which the accident is recorded as having occurred in land Survey No.483, owner of which land is not even arrayed as a defendant in the suit claim.

- v. The suit suffers from non-joinder of parties.
- w. The impugned order deserves to be quashed and set aside.

4. Mr.Awsarmol, learned Advocate appearing on behalf of respondent Nos. 1 and 2, who are original plaintiffs, submits as under :-

- a. The plaintiffs do not belong to the said village.
- b. They did not have exact knowledge about the survey number of the land, in which the accident occurred.
- c. The deceased was working on a crane belonging to respondent No.3 and he met with an accident while digging a well.
- d. After the petitioner filed its written statement, the legal heirs of the deceased, who are original plaintiffs, did not understand the defence taken.
- e. After cross-examination was over, the plaintiffs were advised to take out an application under Order 6 Rule 17 of the CPC for suitably amending the plaint.
- f. If the plaintiffs have committed a mistake in stating the exact land Survey No., ends of justice would be met by allowing the amendment.
- g. Since the deceased was operating the crane for digging a well in the land of the petitioner, he has been correctly identified and arrayed as a respondent.
- h. No loss or harm of whatsoever nature would be caused to the petitioner if the amendment is carried out since the truth will prevail before the Workmen's Compensation Court.

5. I have considered the submissions of the learned Advocates

and have gone through the record available in the petition paper book. It is undisputed that the plaintiffs have alleged an accident in which the deceased passed away. They claim to have identified the actual owner, in whose land the accident is alleged to have occurred. After identifying the owner in whose land the digging work was going on, the legal heirs of the deceased furnished the said information for filing the claim petition.

6. The plaintiffs, who are parents of the deceased and residents of a different village, have lodged the claim after identifying the owner. It cannot be ruled out that being villagers and residing in a different village, may have caused an error while identifying the land by its survey number which is recorded in the revenue records. I quite see that after the cross examination of the plaintiffs was over, the application for amendment has been filed.

7. With regard to filing an application seeking amendment at a belated stage, I have dealt with a similar controversy in the matter of Sanjay Suganchand Kasliwal Vs. Jugalkishor Chhaganlal Tapadia and others, reported at 2015(3) Mh.L.J. 121 and held in paragraph Nos. 33 to 38 as under :-

“33. In the 2010 Apex Court Judgment in case of Hindustan

Construction Company (*supra*), paragraph Nos. 16 to 21 are of assistance and as such, I find it necessary to reproduce the said paragraphs herein below:- “

“16. Pleadings and particulars are required to enable the court to decide true rights of the parties in trial. Amendment in the pleadings is a matter of procedure. Grant or refusal thereof is in the discretion of the court. But like any other discretion, such discretion has to be exercised consistent with settled legal principles. In Ganesh Trading Co. v. Moji Ram¹⁰, this Court stated : (SCC p.93, para 2)

“2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleading in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

17. Insofar as Code of Civil Procedure, 1908 (for short ‘CPC’) is concerned, Order VI Rule 17 provides for amendment of pleadings. It says that the Court may at any stage of the proceedings allow either party 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 questions in controversy between the parties.

18. *The matters relating to amendment of pleadings have come up for consideration before courts from time to time. As far back as in 1884 in Clarapede & Company v. Commercial Union Association*¹¹ - an appeal that came up before Court of Appeal, Brett M.R. stated :

".....The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made....."

19. In *Charan Das and Others v. Amir Khan and Others*, Privy Council expounded the legal position that 11 Vol XXXII The Weekly Reporter 262 12 (1920) LR 47 IA 255 1 although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

20. A four-Judge Bench of this Court in [*L.J. Leach and Company Ltd., v. Jardine Skinner and Co.*](#)¹ while dealing with the prayer for amendment of the plaint made before this Court whereby plaintiff sought to raise, in the alternative, a claim for damages

for breach of contract for non-delivery of the goods relied upon the decision of Privy Council in Charan Das & Others¹²; granted leave at that stage and held :

"16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice."

21. Again, a three-Judge Bench of this Court in Pirgonda Hongonda Patil in the matter of amendment of the plaint at appellate stage reiterated the legal principles expounded in L.J. Leach and Company Ltd.¹ and Charan Das and others¹². This Court observed :

"8. Recently, we have had occasion to consider a similar prayer for amendment in L.J. Leach & Co. v. Jardine Skinner & Co., 1957 SCR 438, where, in allowing an amendment of the plaint in an appeal before us, we said:

"16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the

interests of justice.” These observations were made in a case where damages were originally claimed on the footing of conversion of goods. We held, in agreement with the learned Judges of the High Court, that on the evidence the claim for damages on the footing of conversion must fail. The plaintiffs then applied to this Court for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for non-delivery of the goods. The application was resisted by the respondents and one of the grounds of resistance was that the period of limitation had expired. We accepted as correct the decision in Charan Das v. Amir Khan, (1920) LR 47 IA 255 which laid down that “though there was full power to make the amendment, such a power should not as a rule be exercised where the effect was to take away from a defendant a legal right which had accrued to him by lapse of time; yet there were cases where such considerations were outweighed by the special circumstances of the case”.

9. As pointed out in Charan Das case the power exercised was undoubtedly one within the discretion of the learned Judges. All that can be urged is that the discretion was exercised on a wrong principle. We do not think that it was so exercised in the present case. The facts of the present case are very similar to those of the case before Their Lordships of the Privy Council. In the latter, the respondents sued for a declaration of their right of preemption over certain land, a

form of suit which would not lie having regard to the proviso to s.42 of the Specific Relief Act (1 of 1877). The trial Judge and the first appellate court refused to allow the plaint to be amended by claiming possession on pre-emption, since the time had expired for bringing a suit to enforce the right. Upon a second appeal the court allowed the amendment to be made, there being no ground for suspecting that the plaintiffs had not acted in good faith, and the proposed amendment not altering the nature of the relief sought. In the case before us, there was a similar defect in the plaint, and the trial Judge refused to allow the plaint to be amended on the ground that the period of limitation for a suit under O. XXI, r.103 of the Code of Civil Procedure, had expired. The learned Judges of the High Court rightly pointed out that the mistake in the trial Court was more that of the learned pleader and the proposed amendment did not alter the nature of the reliefs sought."

34. *The observations made by the Apex Court in paragraph No.16 (by relying upon Moji Ram's Judgment) and the observations in paragraph Nos. 18, 19, 20 and 21 as reproduced herein above, indicate that the basic issue is to ensure that a litigating party is not deprived of an opportunity to bring on record, by amendment, such pleading as would be necessary for the purpose of determining the real question in controversy between the parties.*

35. *In paragraph No.22 of Hindustan Construction Judgment*

(supra), the Apex Court while relying on *Jai Jai Ram Manohar Lal's* case has observed as follows:

" 22. In Jai Jai Ram Manohar Lal, this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held :

"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."

This Court further stated :

"7....The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

36. The Apex Court in *Rajeshkumar Aggrawal case (supra)* has observed in paragraph Nos. 18 and 19 as follows:-

“17. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment. In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to sub serve the ends of justice. It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of

justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.”

37. *It is thus clear that the Court dealing with an application for amendment should ensure that the larger interest of the litigants needs to be taken care of and the discretionary power of amendment should be exercised in order to do full and complete justice. In dealing with an application for amendment, the Court ought not to go into the correctness or falsity of the case in the amendment. No finding needs to be recorded on the merits of the amendment as any attempt to adjudge the same at the stage of allowing the amendment is likely to lead to prejudging the case before it is subjected to the adjudicatory process, unless it introduces a totally new cause of action.*

38. *In the Venture Global Engineering’s case (supra), the Apex Court has noted that the Court concerned with the amendment application ought not to go into the aspect as to what would be the effect of the amendment on the merits of the case. The end result is not to be prejudged. The observations of the Apex Court in paragraph 45 read thus:-*

“ 45. Whether the award will be set aside or not is a different question and that has to be decided by the appropriate court. IN this appeal, this Court is concerned only with the question whether by allowing the amendment, as prayed for by the appellant, the Court will

allow material facts to be brought on record in the pending setting aside proceeding. Judging the case from this angle, this Court is of the opinion that in the interest of justice and considering the fairness of procedure, the Court should allow the appellant to bring those materials on record as those materials are not wholly irrelevant or they may have a bearing on the appellant's plea for setting aside the award. “

8. It is yet to be decided by the Labour Court as to which land Survey number is the accident site. It cannot be ruled out that after the amendment, the Compensation Court would be in a better position to arrive at a finding on facts as regards the actual accident site. Workmen's Compensation Act is a part of social legislation and in such situations, in order to do justice, the Court may very well permit an amendment even at a stage which may appear to be virtually in the midst of the trial.

9. By the amendment, the petitioner is not rendered defenceless. He can file an additional written statement. He is yet to step into the witness box. The FIR and the spot panchnama would also be considered by the Labour Court, which would assist the petitioner since it is his case that the spot panchnama has occurred on land

Survey No.483 and not in the land owned by the petitioner. The petitioner can lead adequate evidence to point out the mischief in the event the claimants have put forth a vexatious claim.

10. The Compensation Court is bound to look into the record available and arrive at a conclusion with due circumspection as to which land Survey No. is actually the accident site. I am, therefore of the view that no harm or prejudice is likely to be caused to the petitioner since he would be able to rely on the record to establish that no accident took place in land Survey No.485.

11. In the light of the above, this petition is disposed off with the above observations. Since the claim petition W.M.C.No.8/2004 has been pending for the past 11 years, the Trial Court shall endeavour to decide the said suit, as expeditiously as possible and preferably on or before 30/01/2016. Litigating sides shall be precluded from seeking adjournments on trivial grounds.

12. The Compensation Court shall note that this Court has not drawn any inference on the merits of the matter and as such the claim petition shall be decided on its own merits taking into account the oral and documentary evidence adduced before it. Needless to

state, in the event the Competent Court comes to a conclusion that a vexatious claim has been put forth against the petitioner, it shall consider imposition of costs.

13. Rule is, therefore, discharged.

(RAVINDRA V. GHUGE, J.)