

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10423 OF 2014

ECGC Limited (formerly known
as Export Credit Guarantee
Corporation of India Limited)

.. Petitioner

vs.

Suresh Thomas and ors.

.. Respondents

Mr. Shyam Mehta, Senior Advocate a/w. Mr. Faisal Sayed & Shristi Verma i/b M/s. Manilal Kher Ambalal & Co. for the Petitioner.
Mr. P.S. Dani, Senior Advocate and Simil Purohit i/b Anand Gandhi for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 30 JUNE 2015.

P.C. :-

- 1] Not on board. Upon production, taken on board.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] This petition challenges the orders dated 15 April 2014 and 26 September 2014, by which the Trial Court and the Revisional Court has rejected the petitioner's application for amendment of written statement.
- 4] The petitioner seeks to add para 61A in the written statement, which reads thus:

“61A Further, ECGS submits that the lease deed dated 8th July, 1992 in respect of the office premises bearing No.21, 22 & 31 pending for registration with the office of

the Sub-Registrar of Assurance was duly registered on 10th July, 2009. In view thereof, ECGC denies the allegation that there is no valid deed of lease executed or that there is no registered document in this regard. Hereto annexed and marked as Exhibit 'L' is a copy of the registered lease deed dated 8th July, 1992 alongwith Index II in respect thereof.

5] The two Courts have rejected the application seeking leave to amend, mainly on the ground that the trial in the suit has already commenced and the petitioner has not established that despite due diligence on its part, the aforesaid amendment could not have been incorporated earlier. Mr. Dani, learned senior counsel appearing for the respondents-plaintiffs, has defended the reasoning in the impugned orders and further pointed out that the registration of the Lease Deed dated 8 July 1992, according to the petitioner was effected on 10 July 2009. Thereafter in the year 2010, the petitioner chose to amend the written statement, but did not advert to this aspect of registration. The affidavit in lieu of examination-in-chief was filed on 31 August 2012 and thereafter the matter was adjourned on six occasions to enable the petitioner to proceed with the cross-examination and it is only on the seventh occasion that the petitioner applied for leave to amend the written statement. In these circumstances, Mr. Dani submitted that leave to amend was rightly rejected.

6] On the other hand, Mr. Mehta, learned senior counsel appearing for the petitioner, submitted that there is no dispute as to factum of registration effected on 10 July 2009. Mr. Mehta submitted that in connected proceedings, this factum was admitted by the respondents. However, in the affidavit in lieu of examination-in-chief, since it was suggested by the respondents that the Lease Deed dated 8 July 1992 is unregistered, it was deemed necessary to apply for amendment. Such amendment, is necessary for full and effective adjudication of the issues which arise and the amendment if allowed, will not occasion any serious prejudice to the respondents. On the aspect of delay, Mr. Mehta submitted the petitioner never expected the respondents to dispute registration and therefore no necessity of amendment was perceived and in any case that the prejudice, if any, to the respondents can always be compensated by costs.

7] Having heard the learned counsel for the parties and perused the record, in my judgment, the impugned orders are required to be set aside and leave to amend granted, subject to payment of substantial costs by the petitioner. As noted earlier, the amendment seeks to bring on record the circumstance that Lease Deed dated 8

July 1992 was indeed registered on 10 July 2009. No doubt, this circumstance could have been incorporated by way of amendment carried out by the petitioner to its written statement in the year 2010. However, that by itself, is no reason to deny the same at this stage.

8] The trial in the present suit has technically commenced with filing of affidavit in lieu of examination-in-chief on 31 August 2012. However, the cross-examination is yet to commence. The petitioner could have exhibited greater diligence in the matter, however, looking to the nature of the amendment as also the stage, at which the proceedings are pending, interest of justice would be met if leave to amend is granted, at this stage, subject ofcourse, to payment of substantial costs by the petitioner. The explanation for the delay is reasonable in the circumstances. Besides, the apprehension expressed by the learned counsel for the respondent that the purpose of amendment was to protract proceedings, can be redressed by endorsing the orders of expedition already made by the Revisional Court on 18 March 2015 in Civil Revision Application No. 15 of 2015.

9] The amendment, if permitted would assist the Court in fully and effectively adjudicating at least one of the issues which arises in the matter. Such issue arises because the respondents had urged that there is no valid Deed of Lease or registered documents. The amendment, will assist in the adjudication of such an issue.

10] In so far as the costs are concerned, the same have to be substantial in the facts and circumstances of the present case. This is because, after the affidavit in lieu of examination-in-chief was filed by the respondents on 31 August 2012, the application seeking leave to amend was made only on 18 July 2013. In the interregnum on atleast six occasions, the petitioner applied for time to proceed with the cross-examination. The registration of the Lease Deed, as noted earlier was stated to be effected on 10 July 2009. The petitioner, have thus, contributed to the delay by not promptly applying for the amendment of the written statement.

11] For all the aforesaid reasons, the impugned orders orders dated 15 April 2014 and 26 September 2014 are set aside. Leave to amend the written statement as applied for, is granted. Necessary amendment to be carried out within two weeks from today. All this

is subject to the petitioner paying costs of Rs.50,000/- (Rs. Fifty Thousand) to the respondents. Such costs to be directly paid or deposited in the Trial Court within a period of two weeks from today. If deposited, the respondents shall be at liberty to withdraw the same unconditionally.

12] Further, in view of leave to amend written statement, the respondents-plaintiffs shall be entitled to file an additional affidavit in lieu of evidence. There is already an order for expedition of the proceedings before the Trial Court and the direction for disposal of the same within six months. Such direction as issued by the Revisional Authority, is hereby endorsed.

13] Rule is made absolute to the aforesaid extent.

(M. S. SONAK, J.)

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