

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.342 OF 2015
IN
SUIT NO.3059 OF 2010**

ICICI Lombard General
Insurance Co. Ltd.

....Applicants/Defendant

IN THE MATTER BETWEEN :

M/s. SBI Global Factors Ltd.Plaintiff

V/s.

ICICI Lombard General
Insurance Co. Ltd.

....Defendant

Mr. Dhaval Patil i/b. K. Ashar & Co. for the plaintiff.

Mr. Naval Sharma a/w Mr. Saket Satapathy i/b. Tuli & Co. for the
defendant.

CORAM : K.R.SHRIRAM,J

DATE : 1st October, 2015

P.C.:-

1 This chamber summons is for leave to amend the written statement. By this amendment, the defendant wants to bring on record certain facts regarding the plaintiff having commenced proceedings under Section 138 read with Section 141 of the Negotiable Instruments Act against one RKR Gold Private Limited which came to be dismissed. According to the defendant this fact was very necessary to be brought on record for determining the real question in controversy between the parties. According to the

applicant, they discovered the existence of these proceedings while perusing their old records and this could not be brought on record earlier due to number of former employees leaving the employment with defendant.

2 The plaintiff strongly opposes the application and has also filed an affidavit in reply. Some of the grounds raised are that (a) orders passed in criminal proceedings have no bearing on the civil proceedings, (b) these facts were known prior to filing of the written statement and (c) no case is made out for condoning the delay. Order 6 Rule 17 of the CPC reads as under :-

“17. Amendment of Pleadings.- the Court may at any stage at 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:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

3 This rule confers a wide discretion to courts in the matter of amendment of pleadings. As a general rule, leave to amend will be granted so as to enable the real question in issue between the

parties to be raised in pleadings where the amendments will occasion no injury to the opposite party and sufficient compensation and other terms are imposed by the orders.

4 In **Surender Kumar Sharma vs. Makhan Singh**¹, paragraph 5 reads as under :-

“5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse amendment.

5 In **Rajesh Kumar Aggarwal & Ors. vs. K.K. Modi & Ors.**², paragraphs 15, 16 and 19 read as under :-

“15. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may

1. (2009) 10 SCC 626

2. (2006) 4 SCC 385

be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

16. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.”

6 As held by the Apex Court in Rajesh Kumar Aggarwal case (supra) at the amendment application stage, court does not really go into or give a finding on the merits of the amendment and/or adjudge at the stage of allowing the prayer for amendment. Therefore, the first ground raised by the plaintiff that orders passed in Criminal Proceedings have no bearing on the Civil Proceedings cannot be sustained. Moreover, the ground of no case is made out for condoning the delay is also not sustainable because the Apex Court in Surender Kumar Sharma case (supra) has held that even if an application for amendment is filed belatedly, such belated

amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. As regards the third ground to oppose that these facts were known to the defendant prior to filing of the written statement, the defendant has mentioned that due to number of employees leaving the employment with defendant they were not aware of the existence of the proceedings, details of which they wish to bring on record by way of this amendment application. This explanation is not something that can be brushed aside. Plus the suit is still at pre-trial stage.

7 It is also settled law that when a suit is at pre-trial stage, the court is very liberal in granting the amendment application provided they were necessary amendments and there is no malafide. On an application for amending the plaint, if the court can take such a liberal approach when the suit is at pre-trial stage, certainly the court can take a more liberal approach in allowing the application for amending the written statement, so long as the attempt is not to delay the matter.

8 Further adding a ground of defence is not the same as adding a cause of action and the same yardstick therefore should not be applied. In **Baldev Singh Vs. Manohar Singh**¹, in paragraph

¹ AIR 2006 SUPREME COURT 2832

nos.15, 16 & 17 it is stated as under :-

“15 That apart, it is now well settled that an amendment of a plaint and amendment of a written statement are not necessarily governed by exactly the same principle. It is true that some general principles are certainly common to both, but the rules that the plaintiff cannot be allowed to amend his pleadings so as to alter materially or substitute his cause of action or the nature of his claim has necessarily no counterpart in the law relating to amendment of the written statement. Adding a new ground of defence or substituting or altering a defence does not raise the same problem as adding, altering or substituting a new cause of action. Accordingly, in the case of amendment of written statement, the courts are inclined to be more liberal in allowing amendment of the written statement than of plaint and question of prejudice is less likely to operate with same rigour in the former than in the latter case.

16 This being the position, we are therefore of the view that inconsistent pleas can be raised by defendants in the written statement although the same may not be permissible in the case of plaint. In the case of M/s. Modi Spinning and Weaving Mills Co.Ltd. & Anr. Vs. M/s. Ladha Ram & Co. [(1976) 4 SCC 320], this principle has been enunciated by this Court in which it has been clearly laid down that inconsistent or alternative pleas can be made in the written statement. Accordingly, the High Court and the Trial Court had gone wrong in holding that defendants/appellants are not allowed to take inconsistent pleas in their defence.

17 Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in

the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings”.

9 In this case even issues have not been framed. Where trial in the suit is yet to commence, the courts are generally liberal even with amendment of plaint. Certainly when it comes to amendment of written statement, the question of prejudice is less likely to operate.

10 In my view no prejudice will be caused to the plaintiff, if the amendment application is allowed. It is also stated in the affidavit in support that the plaintiff was a party to the proceedings, which the defendant is bringing on record by this amendment and yet the plaintiff has suppressed the aforesaid facts. In the affidavit in reply, the plaintiffs have not denied that they have not disclosed these facts, as they cannot because it is not mentioned in the plaint. The plaintiffs simply say “I deny whatever is stated therein since different cause of

action arises out of same transaction and the plaintiff can avail of one or more remedies to recover their due and payable amount.”

11 In the circumstances, the chamber summons requires to be allowed. However, the defendant should be put to terms.

12 The Chamber Summons is hereby allowed in terms of prayer clause (a) and accordingly disposed. The defendant to pay cost in the sum of Rs.25,000/- to the plaintiff by way of cheque drawn in favour of the advocate on record of the plaintiff.

13 The defendant to carry out amendment to the written statement and serve a copy thereof upon the plaintiff within two weeks from the date of this order being uploaded.

(K.R.SHRIRAM,J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**