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

APPEAL (L) No. 264 OF 2015
IN
CHAMBER SUMMONS No. 41 OF 2013
IN
CHAMBER SUMMONS No. 114 OF 2013
IN
CHAMBER SUMMONS No. 564 OF 2013
IN
SUIT No. 187 OF 2012
WITH
NOTICE OF MOTION (L) No. 788 OF 2015
WITH
NOTICE OF MOTION No. 791 OF 2015

BG Exploration and Production India Ltd. & Ors. ... Appellants
(NMAL 788/2015 &
NMAL 791/2015)

Vs.

Mr. Santosh Rangnekar ... Respondents

Mr. Iqbal Chagla, Sr. Counsel a/w Rahul Narichaniya a/w Udit
Mendiria a/w Priyank Ladoia i/b Trilegal, for the Appellants.

Mr. Arshad Shaikh a/w Netaji Gawade a/w Mahesh Londhe i/b Sanjay
Udeshi & Co., for the Respondent.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

ORDER RESERVED ON : JULY 7, 2015

ORDER PRONOUNCED ON : JULY 14, 2015

PC.

1. Appellants being aggrieved by the common judgment and order dated 19th January, 2015 passed by the learned Single Judge in three Chamber Summons, viz. Chamber Summons Nos. 41/2013, 114/2013 taken out by the Defendant Nos. 2 and 3 respectively / Appellants herein and Chamber Summons 564/2013, taken out by the Plaintiff / Respondent herein, seeking leave to amend the plaint, filed this appeal under Clause 15 of the Letters Patent.

2. The brief facts are as under:

For the sake of convenience, Appellants shall be referred to as the original Defendant Nos. 1 to 3 and the Respondent shall be referred to as the original Plaintiff. Plaintiff is an employee of Defendant No. 1 Company and his services were terminated on 28.6.2010. The Plaintiff was appointed as Manager-Taxation of Defendant No. 1 Company on 1.11.1995. On 17.6.2010 the Plaintiff was called for a meeting, which was attended by Mr. Richard (Defendant No. 3) and the Plaintiff was shown approximately 25 invoices and vouchers consisting of hotel bills, restaurant bills, local taxi bills, etc. and was asked to explain the expenditure incurred by him and whether he had any approval before spending the said amount. According to Plaintiff, he gave a satisfactory explanation. However, his explanation was not accepted, and on 17.6.2010 he was suspended and a letter of suspension was issued. Plaintiff's services were terminated by a letter dated 28th June, 2010. Plaintiff sent legal notice through

advocate on 30.11.2010 stating therein that the disciplinary procedure has not been followed while terminating his services and he claimed an amount of Rs. 1.23 crores towards the amounts due by way of superannuation, leave encashment, gratuity alongwith interest @ 12% per annum till the date of payment. The allegations were denied by the Defendant Company, therefore, the Plaintiff filed a suit. After the suit was filed, Defendant Nos. 2 and Defendant No. 3 filed separate chamber summons for deleting their names from the array of Defendants in the suit, on the ground that there was no averment regarding cause of action against them. After the said chamber summons was filed, Plaintiff filed a chamber summons seeking leave to amend the plaint in terms of draft amendment on 19th January, 2015. All three chamber summonses were heard by the learned Single Judge and he was pleased to dismiss the chamber summonses filed by Defendant Nos. 2 and 3 and allowed the chamber summons filed by the Plaintiff, permitting him to amend the suit in terms of the schedule, annexed to the chamber summons.

3. Mr. Chagla, learned senior counsel appearing on behalf of the original Defendant Nos. 2 and 3 submitted that the chamber summons seeking leave to amend the plaint was filed by the Plaintiff only after Defendant Nos. 2 and 3 had filed their chamber summons under Order VI, Rule 11 of C.P.C. for deleting their names from the array of Defendants. He submitted that the suit which was originally

filed discloses that the cause of action pleaded by the Plaintiff in the original plaint was solely against Defendant No. 1 Company, and no allegations were made against Defendant Nos. 2 and 3. It was then contended that no reliefs were claimed in the plaint against Defendant Nos. 2 and 3, nor in the amended in the plaint. It was submitted that therefore, in the absence of any cause of action, allegations levied and in the absence of reliefs sought against Defendant Nos. 2 and 3, their names were liable to be removed from the plaint. He invited our attention to the plaint and submitted that even the learned Single Judge has in his order observed upto paragraph 13 that Plaintiff had averred only on the basis of acts and omissions of Defendant No. 1. Mr. Chagla, learned senior counsel invited our attention to the averments made in paragraph 11 and 24 of the impugned order. He submitted that perusal of the said paragraphs indicate that the Plaintiff had averred that the present case was a case of victimisation and discriminatory treatment towards him. He submitted that the learned Single Judge has observed that in view of averments made in paragraph 11 of the original plaint, the Plaintiff had pleaded cause of action qua Defendant Nos. 2 and 3. He further submitted that the learned Single Judge has further erred in holding in paragraph 24 that Plaintiff had pleaded cause of action against Defendant Nos. 2 and 3. Mr. Chagla, learned senior counsel appearing on behalf of the Defendants submitted that by introducing averments of allegations in support of bald and vague words i.e. victimisation and discriminatory treatment used in the original plaint, Plaintiff had tried to introduce the

fresh cause of action qua Defendant Nos. 2 and 3. He submitted that Plaintiff could not have brought a fresh suit on the basis of new cause of action, sought to be introduced against Defendant Nos. 2 and 3, since it was barred by limitation. It was submitted that cause of action for instituting the suit arose on 28th June, 2010 and the application for amendment was made on 19th July, 2013 i.e. more than three years after the cause of action has arisen.

4. It was then submitted that no reasons were assigned by the learned Single Judge while dismissing the chamber summonses filed by Defendant Nos. 2 and 3. He also relied on the judgment of the Apex Court in the case of – ***Shah Babulal Khimji, Appellant Vs. Jayaben D. Kania & Anr., Respondents [AIR 1981 Supreme Court 1786]*** and more particularly, paragraph 116 of the said judgment and submitted that if vested right of limitation accrued in favour of Defendants is taken away by the impugned interlocutory order, Letters Patent Appeal was maintainable.

5. On the other hand, learned counsel appearing on behalf of the Plaintiff – Mr. Shaikh submitted that by amending the plaint, Plaintiff wanted to bring on record the further particulars for the proving victimisation. He invited our attention to the averments in the plaint and submitted that the Plaintiff had specifically pleaded victimisation by the Defendants and for the purpose of giving better particulars, the Plaintiff had sought amendment in the plaint.

6. It is an admitted position that the Plaintiff had not

amended the prayer clause, but has merely given better particulars of the victimisation by the Defendants. The Apex Court in the case of - ***M/s. Bharat Iron Works, Appellants vs. Bhagubhai Balubhai Patel & Ors., Respondents [AIR 1976 Supreme Court 98]*** in paragraph 9 of the judgment has held that wherever victimisation is alleged, it has to be properly and adequately pleaded with all particulars, upon which the charge is based to enable the employer to fully meet them. Perusal of the amendment indicates that further particulars of victimisation have been given by the Plaintiff. In paragraphs 9 and 10 of the said judgment, it is observed as under:

“9. A word of caution is necessary. Victimisation is a serious charge by an employee against an employer, and therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The charge must not be vague or indefinite being as it is an amalgam of facts as well as inferences and attitudes. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof is, *per se*, no crucial instance Collective bargaining being the order of the day in a democratic social welfare State, legitimate trade union activity which must shun all kinds of physical threats, coercion or violence, must march with a spirit of tolerance, understanding and grace in dealings on the part of the

employer. Such activity can flow in healthy channel only on mutual co-operation between employer and employee and cannot be considered as irksome by the management in the best interest of the concern. Dialogues with representatives of a union help striking a delicate balance in adjustment and settlement of various contentious claims and issues.

10. The onus of establishing a plea of victimisation will be upon the person pleading it. Since a charge of victimisation is a serious matter reflecting, to a degree, upon the subjective attitude of the employer evidenced by acts and conduct, these have to be established by safe and sure evidence. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced.”

7. In our view, therefore, the learned Single Judge is right in coming to the conclusion that this is not a fit case where fresh cause of action has been averred or pleaded but only further particulars have been given by the Plaintiff, and the submission that Plaintiff's claim is barred by limitation is without any substance. In our view, therefore, no case is made out for interference with the impugned order passed by the learned Single Judge.

8. It is no doubt true that the learned Single Judge after

having held that the Plaintiff was entitled to amend the plaint, did not give any reasons for dismissal of the chamber summons filed by Defendant No. 2 and Defendant No. 3. In our view, since the chamber summons for amendment of the plaint has been allowed and further particulars have been allowed to be averred / pleaded in the plaint, the necessary averments leading to victimisation by Defendant Nos. 2 and 3 have come on record, and as such, therefore, case of Defendant Nos. 2 and 3 that no cause of action has arisen against them falls to the ground. Chamber summonses filed by Defendant No. 2 and Defendant No. 3, therefore, were rightly dismissed by the learned Single Judge. Appeal is accordingly dismissed.

9. In view of dismissal of the appeal, Notice of Motion (L) Nos. 788/2015 and 791/2015 filed therein do not survive, and are accordingly disposed of.

Sd/-

[B. P. COLABAWALLA, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath