

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6678 OF 2014

Naserkhan Nazirkhan Pathan

..PETITIONER

VERSUS

Atmaram Ramkisan Sonawane and Others

..RESPONDENTS

....

Mr. K.J. Suryawanshi, Advocate for petitioner.

....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 15th APRIL, 2016

ORDER :

1. All the respondents are served. Despite service of Court notice, none of the respondents have caused an appearance either in person or through an advocate.

2. The petitioner is an applicant in Application W.C. No. 16/2012 filed before the Labour Court, Jalna. The Opponent No.1 in the said application is the Sub-contractor through whom the petitioner claims to be deployed in service of the Maharashtra State Electricity Distribution Company Ltd., Sub-divison Dhawada, Tq.

Bhokardan, Dist. Jalna. Opponent No.2 is the lineman and Opponent No.3 is an operator working with the same distribution company.

3. Mr. Suryawanshi, learned Counsel for the petitioner submits that inadvertently, the contractor namely PAC Company, Hyderabad was not added as an opponent. Similarly, the M.S.E.D.C.L. was also not added as an opponent. He further submits that entire recording of oral evidence in the matter has concluded and the claim application before the Labour Court is pending for advancing oral submissions.

4. He submits that the claimant is not well educated. He is guided by the learned Counsel before the Labour Court. Inadvertently, the principal employer M.S.E.D.C.L. and the main contractor PAC Company, Hyderabad were left out. Hence, an application for amendment was filed. He therefore submits that the Labour Court should have allowed the application for amendment considering the fact that the sub-contractor as well as the contractor and the principal employer can ultimately be held liable to pay

compensation to the petitioner in the event the claim of the petitioner is allowed by the Labour Court.

5. Mr. Suryawanshi fairly submits that the trial in the matter is complete. However the petitioner is likely to suffer rejection of his claim only on account of having not been properly guided and necessary parties having not been added in the cause title. He therefore submits that justice has to be done and in the event the amendment is not allowed, his claim is likely to be rejected.

6. He further submits that the Labour Court by its order dated 19.06.2014 has rejected the amendment application Exhibit U-22 only on the ground that the entire recording of oral evidence has been concluded and application for amendment cannot be allowed after recording of evidence is completed.

7. I have considered the submissions of the learned Counsel for the petitioner and have gone through the petition paper book with his assistance. None of the respondents have appeared in the matter as noted above.

8. The Employees Compensation Act, 1923 provides for payment of compensation even by a contractor if the claimant has been engaged through a contractor. It also provides for payment of compensation jointly by the principal employer as well as by the contractor.

9. Section 12 of the Employees Compensation Act, 1923 reads as under:-

“12. Contracting

(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purpose of his trade or business contracts with any other person (hereinafter in this section referred to as the contractor for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any [employee] employed in the execution of the work any compensation which he would have been liable to pay if that [employee] had been immediately employed by him; and where compensation is claimed from the principal, this Act shall apply as if references to the

principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the [employee] under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor, [or any other person from whom the [employee] could have recovered compensation and where a contractor who is himself a principal liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the [employee] could have recovered compensation,] and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing [an employee] from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken or

usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.”

10. It is thus provided that in cases where employees are deployed by contractors and for some reasons the contractor does not pay the compensation, the principal employer is held liable to pay the said compensation and he is entitled to be indemnified by the contractor or any other person from whom the principal employer can recover the compensation amount. Where a contractor himself is the principal employer, he is entitled to be indemnified by any person standing for him in relation of a contractor.

11. As such, presently in the proceedings before the Labour Court, Opponent No.1 is the sub-contractor. The main contractor PAC Company is sought to be added as an Opponent No.4. Though the lineman and the operator of the M.S.E.D.C.L. has been added as Opponent Nos.2 and 3, they would not be considered as authorized representatives of the said company in litigation. The proposed

Opponent No.4 would therefore be the competent authority to represent the principal employer M.S.E.D.C.L.

12. Needless to state, the observations in this order are only based on a superficial assessment of the proceedings and would not be construed to mean that the applicant has established his relationship with Opponent No.1 or in turn with the proposed Opponent Nos.4 and 5. The said issue is left open for the Labour Court to decide since the proceedings are still pending.

13. This Court in the matter of *Sanjay Sughanchand Kasliwal Vs. Jugal Kishor Tapadia, 2015 (3) MLJ 121* has considered the issue of amendment even in the matter in which the trial has commenced. No doubt, the rigours under the proviso to Rule 17 under Order VI of the Code of Civil Procedure have to be strictly construed. An amendment could be allowed if it appears that without the said amendment, real issues would not be adjudicated upon and the proceedings would suffer on account of deficiencies in the pleadings.

14. The Hon'ble Supreme Court in the matter of ***Rajeshkumar Agrawal Vs. K.K. Modi, (2006) 4 SCC 385*** has observed in paragraph nos. 17 and 18 as under:-

“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 subserve 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.”

15. The Hon'ble Supreme Court in the matter of ***Revajeetu Builders and Developers Vs. Narayanswamy and Sons and Others, (2009) 10 SCC 84*** has held in paragraph nos.33 to 36, 38 and 42 as under:-

“33. In a recently published unique, unusual and extremely informative book Justice, Courts and Delays, the author Arun Mohan, a Senior Advocate of the High Court of Delhi and of this Court, from his vast experience as a civil lawyer observed that 80% applications under Rule 17 Order 6 are filed with the sole objective of delaying the proceedings, whereas 15% applications are filed because of lackadaisical approach in the first instance, and 5% applications are those where there is actual need of amendment. His experience further revealed that out of these 100 applications, 95 applications are allowed and only 5 (may be even less) are rejected. According to him, a

need for amendment of pleading should arise in a few cases, and if proper rules with regard to pleadings are put into place, it would be only in rare cases. Therefore, for allowing amendment, it is not just costs, but the delays caused thereby, benefit of such delays and the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken into consideration while awarding the costs.

34. To curtail delay in disposal of cases, in 1999 the Legislation altogether deleted Rule 17 which meant that amendment of the pleadings would no longer have been permissible. But immediately after the deletion there was widespread uproar and in 2002 Rule 17 was restored, but added a proviso. That proviso applies only after the trial has commenced. Prior to that stage, the situation remains as it was. According to the view of the learned author Arun Mohan as observed in his book, although the proviso has improved the position, the fact remains that amendments should be permissible, but only if a sufficient ground therefor is made out, and further, only on stringent terms. To that end, the rule needs to be further tightened.

35. *The general principle is that courts at any stage of the proceedings may allow either party to alter or amend the pleadings in such manner and on such terms as may be just and all those amendments must be allowed which are imperative for determining the real question in controversy between the parties. The basic principles of grant or refusal of amendment articulated almost 125 years ago are still considered to be correct statement of law and our courts have been following the basic principles laid down in those cases.*

36. *In the leading English case of Cropper v. Smith, the object underlying amendment of pleadings has been laid down by Brown, L.J. in the following words:*

".....it is a well-established principle that the object of the courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct if it can be done without injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace ... It

seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right." (emphasis supplied)

38. In another leading English case *Weldon v. Neal*, A filed a suit against B for damages for slander. A thereafter applied for leave to amend the plaint by adding fresh claims in respect of assault and false imprisonment. On the date of the application, those claims were barred by limitation though they were within the period of limitation on the date of filing the suit. The amendment was refused since the effect of granting it would be to take away from B the legal right (the defence under the law of limitation) and thus would cause prejudice to him.

42. [*Kisandas v. Rachappa Vithoba Shilwant*](#) is probably the first leading case decided by the High Court of Bombay under the present Code of 1908. There A, the plaintiff, averred that in pursuance of a partnership agreement, he delivered Rs.4001 worth of cloth to B, the defendant, and sued for dissolution of partnership and accounts. The trial court found that A delivered the

cloth worth Rs.4001 but held that there was no partnership and the suit was not maintainable. In appeal, A sought amendment of the pleadings by adding a prayer for the recovery of Rs.4001. On that day, claim for recovery of money was barred by limitation. The amendment was allowed by the appellate court and the suit was decreed. B challenged the decree. The High Court upheld the order and dismissed the appeal.”

16. It is therefore the law, as is laid down in caetna of judgments by the Hon'ble Supreme Court that, the general principle is that the Courts can at any stage of the proceedings allow either party to alter or amend the pleadings if those amendments are found to be imperative and necessary for deciding the question/dispute before the Court. It is a well established principle that the object of the Court is to decide the rights of the parties and not punish them for any mistakes committed in the proceedings. If the said mistake can be corrected and if it leads to a proper adjudication of the real dispute, an amendment should normally not be turned down.

17. Considering the application for compensation filed by the petitioner which is pending before the Labour Court, a sub-contractor has been added as Opponent No.1. The main contractor is also a necessary party. Going by the scheme of law under Section 12 of the Employees Compensation Act, 1923, in the matters of this nature the sub-contractor, the contractor and the principal employer are necessary parties to the proceedings. On account of an error committed by the advocate for the petitioner in not adding the necessary opponents before the Labour Court, the petitioner is likely to suffer rejection of his claim for an injury arising out of and in the course of employment. He should not be deprived of his right to claim justice.

18. It is only in these peculiar facts of this case that I am inclined to allow this petition so as to ensure that the necessary parties are before the Court and the claim application of the petitioner is not rejected on account of having not added the necessary parties.

19. In the light of the above, this petition is allowed. The impugned order dated 19.06.2014 delivered by the Labour Court, Jalna is quashed and set aside. Application U-22 is allowed. Though I was inclined to impose costs upon the petitioner, I find that none of the respondents have chosen to appear in this proceeding and assist the Court. I am therefore not imposing costs.

20. Needless to state, after the petitioner amends the claim application before the Labour Court in Application W.C. No. 16/2012 within three weeks from today, the Labour Court shall issue notices to the added respondents. After the said respondents appear in the matter, and file their written statements, the petitioner as well as the respondents shall be given an opportunity to lead further oral and documentary evidence.

21. In the event the amendment is not carried out within the time frame as directed, this order shall stand recalled, this petition shall then stand dismissed and the impugned order dated

19.06.2014 shall stand restored. The Labour Court would then proceed with the Claim Application W.C. No. 16/2012.

(RAVINDRA V. GHUGE, J.)