

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5540 of 2016

ORDER:

The plaintiffs/revision petitioners who went unsuccessful in their application to amend the plaint in I.A.No.755 of 2016 vide order dated 13.10.2016 in the pending suit not riled to commence trial in O.S.No.146 of 2006 maintained against 7 defendants based on development agreement dated 16.04.1989 for construction of Multi-Storied Commercial Complex, the terms and conditions and time stipulations and for any delay for damages, for the reliefs of specific performance of the contract, to deliver 'A' schedule property out of 45% share of them pursuant to the development agreement, to complete the pending works in 'B' schedule pursuant to the development agreement and for recovery of Rs.15,00,000/- towards damages together with interest thereon @ 18% per annum from date of suit till realization and with costs and the amendment of plaint supra sought is instead of Rs.15,00,000/- damages claimed seeking to amend for what they are entitled to Rs.87,00,000/-, saying initially they could not raise the funds for payment of court fee at the time of filing suit in claiming Rs.15,00,000/- as damages and now they are ready to pay the deficit Court fee in seeking to amend the damages claim from Rs.15,00,000/- to Rs.87,00,000/-.

2. The same was opposed in the counter of the 1st defendant saying the relief of specific performance of the contract itself is barred by law as contending in the written statement filed, pursuant to the development agreement dated 16.04.1989 to complete the project within 24 months from the suit filed since in

September 2006 after long lapse of time and plaintiffs are also not entitled to the amendment to increase the claim of damages.

3. The lower Court from respective pleadings by the impugned order dated 13.10.2016 dismissed the application for amendment saying the pleadings can be permitted at any stage as long as same is necessary for determining the real question in controversy between the parties and the only limitation after commencement of trial on showing due diligence and amendment of plaint claiming damages in lieu of injunction bar of limitation will not apply and petitioners/plaintiffs though trial not commenced the suit filed in 2006 not entitled to the amendment sought for since Court would decline to permit amendment if a fresh suit for the amended claim barred by limitation by the date of application.

4. The contentions in the grounds of revision impugning the order of the lower Court vis-à-vis the oral submissions of the learned counsel for the petitioners/plaintiffs are that the order of the lower Court is erroneous, bar of limitation is a mixed question of fact and law and when the suit claim is in time there is no bar and trial is not even commenced, the Court ought to have been allowed the amendment which relate back to date of suit.

5. Whereas it is the submission of the learned counsel for the 1st defendant/revision respondent No.1 that the order of the lower court is supported by reasons and for this Court while sitting in revision there is nothing to interfere and there is also bar under Order II Rule 2 CPC, apart from bar of limitation to the claim as

contended in the written statement and Section 12 of the Court Fees Act has no application herein.

6. Heard both sides at length and perused the material on record.

7. The order of the lower Court no way whispers how the present amendment is barred by limitation. However, the fact remains that so far as the damages claim concerned, the entitlement is pursuant to the enforcement of the terms of the agreement and the claim of damages in fact made for Rs.15,00,000/- in the suit does not calculate of what all the damages entitled of Rs.87,00,000/- by showing the claim in the plaint and there is no leave of the Court taken by reserving any right for further claim. No doubt whether therefrom bar under Order II Rule 2 CPC applies or not apart from same not taken as a plea in the counter opposing the petition, is also a mixed question of fact and law and application or not of Section 12 of the Court Fees Act also depends thereon.

8. So far as the correctness of the observation of the lower Court on bar of limitation concerned, the learned counsel for revision respondents placed reliance on **T.N. Alloy Foundry Co. Ltd. Vs. T.N. Electricity Board and Others**¹ where it is observed that in a suit for damages amended sought of plaint is enhancement of damages that was allowed by the learned single Judge of the High Court which the trial Court and in Letters Patent Bench where it is impugned, set aside the order and when the matter went to the Apex Court it was observed that it decline to

¹ (2004) 3 SCC 392

interfere with the discretion exercised by the appellate Bench supra by referring to the expression in **L.J. Leach and Company Ltd. Vs. Jardine Skinner and Company**² that if fresh suit on amended claim would be barred by limitation on date of application for amendment that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered and it does not affect the power of the Court to order it and appellate Court also has the co-extensive power of the trial Court. The other decision placed reliance is **South Konkan Distilleries and Another Vs. Prabhakar Gajanan Naik and Others**³ where the Apex Court observed that amendment though properly made cannot always relate back to date of filing of suit. If a prayer for amendment merely adds to facts already on record the amendment would be allowed even after the statutory period of limitation to the date of amendment, where that amendment does not constitute addition of a new cause of action but amounts merely to a different or additional approach to the same facts and bar of limitation has no application in such matter for that conclusion the expression in **LJ Leach supra** of the Apex Court also referred among other expressions including **TN Alloy supra** and it also referred the expressions of the Apex Court saying the principle laid down in **LJ leach** referred in **TN Alloy supra** is only a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered or not and it does not affect the power of the Court to order it, if that is required in the interest of justice. Same is the observation in Para 10 of the **South Konkan supra** by referring to the earlier expressions of the Apex Court in **Ragu**

² (1957) 1 SCR 438

³ AIR 2009 SC 1177

Thilak D. John Vs. S. Rayappan and Others⁴ that the amendment whether barred by time or not was a disputed question of fact therefore prayer for amendment could not be rejected, but for issue of limitation can be made an issue in the suit itself and also referred another expression in **Vishwambhar and Others Vs. Laxminarayan (Dead) through Lrs. And Another**⁵ and the earlier expression of the Apex Court in **Vineet Kumar Vs. Mangal Sain Wadhera**⁶ that the prayer for amendment merely adds to facts already on record amendment would be allowed even after statutory period of limitation and also referred the expression in **Pankaja and Another Vs. Yellappa (dead) by Lrs and Others**⁷ that Court should be extremely liberal as per the settled law in granting amendments if same within the limitation or there would be arguable issue with regard to limitation the Courts below ought to have allowed the amendment and question of limitation is an arguable issue thereby amendment to be allowed in directing trial Court to frame necessary issue on the question of any limitation and decide the same and also referred the other expressions of the Apex Court in **A.K. Gupta & Sons Limited Vs. Damodar Valley Corporation**⁸ where it held that where a prayer for amendment for a sum already specified in the plaint saying or such other amount as was to be determined on account the amendment ought to have been allowed though suit for recovery was barred by the time amendment was sought. In **Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria and Others**⁹ the three Judge

⁴ 2001 (2) SCC 472

⁵ AIR 2001 SC 2607

⁶ (1984) 2 SCR 333

⁷ (2004) 6 SCC 415

⁸ (1966) 1 SCR 796

⁹ 2016 (1) ALT 1 (SC)

Bench of the Apex Court referring to several expressions held on the scope of amendment that though withdrawal of an admission cannot be permitted by way of amendment however an admission can be clarified or explained by way of an amendment and procedural law is intended to facilitate but not to obstruct the Court of substantive justice that cannot be ignored in permitting amendments. In **Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon**¹⁰ the Apex Court held that amendment of plaint cannot be refused on technical grounds and suit originally when instituted mis-describing the plaintiff a subsequent amendment of substituting real plaintiff though by that time suit claim barred against the substituted plaintiff. Here the question of limitation does not arise as plaint must be deemed on such amendment to have been instituted in the name of real plaintiff as on the date of filing of the suit by relying on the earlier expressions of the Apex Court in **Purushottam Umedbhai and Company Vs. Manilal and Sons**¹¹ saying it is well settled rule that amendment should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties only by permitting the amendment injustice gravely result the other side. Any mis-description or bonafide mistake does not make the suit fail as the power of Court to grant amendment of pleadings is intended to serve the ends of justice and not governed by any such narrow or technical limitation.

9. In **Prithi Pal Singh and Anr. v. Amrik Singh**¹² the Apex Court in the recent past in a suit claiming pre-emption,

¹⁰ AIR 1969 SC 1267(1)

¹¹ AIR 1961 SC 325

¹² (2013) 9 SCC 576

amendment of plaint sought claiming that plaintiff is entitled to relief as a co-sharer of the suit property, held that it is reasonable to presume that the amendment in the plaint would relate back to the date of filing the suit.

10. In fact in **Sampath Kumar Vs. Ayyakannu**¹³ application for amendment made 11 years after the date of the institution of the suit to convert through amendment a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession was allowed holding, the basic structure of the suit is not altered by the proposed amendment and if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit by allowing the amendment that would curtail multiplicity of legal proceedings.

11. The Apex Court held relying upon **M/s. Revajeetu Builders & Developers v. Narayanaswamy & Sons & others**¹⁴ held in **State of M.P. Vs. Union of India**¹⁵, **Ashutosh Chaturvedi V. Prano Devi**¹⁶ and **South Konkan Distilleries & Anr. V. Prabhakar Gajanan Naik**¹⁷ that though courts have ample power to allow amendment of plaint, said power should be exercised in the interest of justice and to determine the real questions in controversy between the parties and on such terms as may be just, amendment cannot be claimed as a matter of right and court should not also adopt a hyper technical approach but a liberal approach and by compensating other side by costs. It was

¹³ (2002) 7 SCC 559

¹⁴ 2009 (10) SCC 84=AIR 2009 SC (Supp) 2897

¹⁵ 2011 (12) SCC 268

¹⁶ 2008 (15) SCC 610

¹⁷ AIR 2009 SC 1177

also held by the Apex Court in **Ramachandra Sakharam Mahajan V. Damodar Trimbak Tanksale**¹⁸ that when the amendment sought for would enable the Court to pin-pointedly consider the real dispute between the parties and thereby help to render a decision more satisfactorily, it ought to be allowed.

12. The Apex Court in **Vidyabai & Ors. v. Padmalatha**¹⁹, held further that it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. The three important factors to be taken into consideration while considering the application for amendment are:

1. Whether the amendment sought for is necessary in determining the real controversy of dispute between the parties?
2. Whether the application for amendment is bona fide?
3. Whether the amendment sought for, if allowed, causes prejudice to the other side which cannot be compensated adequately in terms of money?

13. This Court by scanning and updating the entire case law in the latest expression, vide common order dated 17.10.2016, in the Civil Revision Petition Nos.1751, 1752 and 1753 of 2016, held by reiterating the settled law- that amendment of pleadings is basically for the purpose of bringing about final adjudication in a suit and to avoid multiplicity of proceedings. It is in the interest of justice that a suit shall be decided on all points of controversy and accordingly, it is needed that the party shall be allowed to alter or amend their pleadings during the pendency of the suit. There can be a situation where there is change of circumstances in the

¹⁸ (2007)6 SCC 737

¹⁹ AIR 2009 SC 1433

course of pendency of a proceeding and if a matter in issue arises upon such change of circumstances, then amendment becomes necessary. According to Order VI Rule 17 of the Code of Civil Procedure, 1908, the Court may allow the amendment at any stage of the proceedings and for such purpose it may impose conditions i.e. in the form of cost or any other condition. The Court has been given discretion in this regard and the mandatory guidelines upon the Court as well as upon the party seeking amendment is that they shall make only such amendments which are necessary for determination of real controversy between the parties to the suit. The main object of the legislation is to enable the Court to allow amendment at any stage. The purpose of the *Proviso* added order VI Rule 17 CPC cannot do away with the intent of the legislation. In a proper case if the point to be amended is very essential to the suit, the Court may, in the interest of justice and equity, allow the amendment on such conditions as the Court deems fit and proper in the facts and circumstances of the particular case.

14. Amendment of pleadings from the above is basically for the purpose of bringing about final adjudication in a lis and to avoid multiplicity of proceedings and shorten litigation and where it is necessary to determine the real controversy. It is in the interest of justice that a suit shall be decided on all points of controversy and accordingly, it is needed that the party shall be allowed to alter or amend their pleadings during the pendency of the suit.

15. It is no doubt some liberal approach, without rigidity, is required to adopt from the wording, despite the proviso requires due

diligence of the party seeking amendment once trial is commenced.
However it no way takes away the power of the Court to satisfy
from the material to consider such amendment despite trial
commenced, with the earlier approach in all traits of resolving the
real controversy to the lis, reducing life to the litigation, avoid
multiplicity of proceedings and sub serving ends of justice, as
procedural law is the hand maid and not mistress of justice and
amendment of pleadings is part of the procedural law. This is for the
purpose of preventing frivolous application to delay the proceedings
 as reiterated in **Salem Advocate Bar Association, T.N V. Union of India**²⁰ known as Salem Bar Association case-2.

16. Coming to delay in seeking amendment whether a ground by itself or deciding of real questions in controversy concerned, it is referring to some of the expressions among other of the Apex Court, in **Andhra Bank V. ABN Amro Bank N.V**²¹ it was held by the Apex Court that, delay by itself is no ground for refusal of prayer for amendment, as the only question to be considered by Court is whether such amendment would be necessary for decision of the real controversy between the parties in suit and at that stage the Court cannot go into question of merit of amendment. Once trial commenced, amendment sought, to satisfy the requirement of due diligence. In **Surender Kumar Sharma V. Makhan Singh**²² the Apex Court observed that merely because the amendment sought is belated that does not liable to be rejected on the ground of delay, where Court feels allowing of the application resolves the

²⁰ 2005(5) SCJ 519

²¹ AIR 2007 SC 2511

²² 2009(10)SCC 626

real controversy between the parties. In **Pankaja V. Yellappa**²³, **P.Durga Reddy and another v. B.Yadi Reddy**²⁴ it was relying upon the expressions of the Apex Court in **State of AP v. Pioneer Builders**²⁵ and **Sameer Suresh Gupta v. Rahul Kumar Agarwal**²⁶ observed by this court that delay by itself is not a ground to reject the amendment when it can be allowed on other considerations, for the delay, other side can be compensated by costs.

17. In **Vishwambhar v. Laxminarayan**²⁷ it was held that if as a result of allowing the amendment, the basis of the suit is changed, such an amendment even though allowed, cannot relate back to the date of filing the suit to cure the defect of limitation. But in **L.C. Hanumanthappa (since died) rep by LRs Vs. H.B. Shivakumar**²⁸ relying upon several expressions including by quoting with approval **Siddalingamma and Anr v. Mamtha Shenoy**²⁹ it was held that the doctrine of relation back to date of suit would apply to all amendments made under Order VI Rule 17 of the Code of Civil Procedure, which generally governs amendment of pleadings, unless the court gives reasons to exclude the applicability of such doctrine in a given case and costs can usually compensate for an amendment that is made belatedly.

18. Having regard to the above and in the result, the impugned order of the lower Court is set aside and the amendment proposed is allowed by holding the amendment relates back to the

²³ AIR 2004 SC 4102

²⁴ 2016 (2) ALT 63 = 2015(1) LS201.

²⁵ 2007 (1) ALT 43 (SC)

²⁶ (2013) 9 SCC 374

²⁷ (2001) 6 SCC 163 at 168

²⁸ 2016(1) SCC 332

²⁹ (2001) 8 SCC 561

date of suit and there is no bar of limitation to the amendment sought for but for left open to decide by framing any specific issue during trial from any additional written statement to permit on to the aspect as to the amended claim is whether barred by Order II Rule 2 CPC.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 16.12.2016
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