

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION (REVIEW) NO. 15 OF 2017
IN
WRIT PETITION NO. 120 OF 2017**

SHRI. KEDAR RAMAKANT KAKODKAR.,
son of Shrii Ramakant Kakodkar,
aged 73 years, occupation Businessman,
Indian National, residing at Flat No.812,
Building no.6, Kamat Royale Co-op.
Housing Society, Caranzalem,
Panaj-Goa.
(Registered Address)

... Applicant

Versus

SHRI. AUDUTH TIMBLO.
Son of late Shri Modu Timblo,
aged 65 years, Indian National,
businessman, residing at House
No.G-9, La Marvel Colony,
Dona Paula, Panaji-Goa.
(Registered Address)

... Respondent

Advocate Rajendra V. Pai with Advocate Nikhil A. Vaze for the Applicant.
Advocate S. Usgaonkar with Adv. Ms. R. Pereira, for the Respondent.

Coram:- C. V. BHADANG, J.
Date:- 31st July, 2017.

Oral Order:

This is an application for review of the judgment and order dated 26/4/2017 passed by this Court in Writ Petition No.120/2017. By the said judgment, this Court while allowing the petition has set aside the order of the

trial court by which, an application for amendment of the plaint was rejected. The net result is that, the application for amendment filed by the respondent (original plaintiff) stands allowed.

2. I have heard Shri Pai, the learned counsel for the applicant and Shri Usgaonkar, the learned counsel for the respondent. With the assistance of the learned counsel for the parties, I have gone through the judgment of this Court and perused the record.

3. In the application, the applicant has raised the following grounds:

(i) That this Court was in error in juxtapositioning the contents of the written statement (filed by the respondent to the counter claim) as against the proposed amendment. In other words, it is submitted that the proposed amendment can only be considered in the context of the pleadings in the plaint and not in relation to the contents of the written statement to the counter claim.

(ii) That this Court has not considered the question whether the amendment, would be impermissible, as a fresh suit on the amendment claim would be barred by limitation. It is submitted that the Supreme Court in the case of **Revajeetu Builders & Developers Vs. Narayanawamy & Sons and others,**

reported in **(2009) 10 SCC 84**, in para 63 (6) has held that as a general rule, the court should decline amendment if fresh suit, would be barred by limitation, on the date of the application.

(iii) That there was a categorical finding recorded by this Court in CRA no.17/2009 decided on 17/9/2009 that the respondent/plaintiff was a money lender and the subject transactions were of money lending transactions. It is pointed out that the observations of this Court in para 26 are incorrect.

(iv) Lastly it is submitted that the reliance placed on the case of **Gangamal Ramchand Vs. The Hongkong & Shanghai Banking Corporation** reported in **AIR (37) 1950 Bom. 345**, as also in the case of **Joshna Gouda Vs. Brundaban Gouda & Anr. (2012) 5 SCC 634** is misplaced. It is submitted that in that case the application for rejection of plaint was filed under Order 7 Rule 11 (a) of C.P.C on the ground that the plaint was not disclosing any cause of action, unlike in the present case, where the rejection of the plaint is sought on the ground that the plaint is barred by law, namely, the Goa Money Lenders Act 2001. Except these, no other grounds are raised in the application.

4 However during the course of the arguments, it is submitted by the learned counsel for the applicant that there are innate answers in the impugned judgment in so far as grounds nos.3 and 4 are concerned and hence

he has restricted the challenge to the grounds no.1 and 2, as set out above.

5. On behalf of the applicant reliance is placed on the decision of the Supreme Court in case of **Usha Bharti Vs. State of Uttar Pradesh and others (2014) 7 SCC 663** and in the case of **Green View Tea and Industries Vs. Collector, Golaghat, Assam and anr. (2004) 4 SCC 122**, in order to submit that the act of the Court should prejudice none and in an appropriate case, the Court should be magnanimous enough to correct the error.

6. On the contrary it is submitted by Shri Usgaonkar, the learned counsel for the respondent that this Court in para 23 of the judgment has not only compared the proposed amendment to the contents of the written statement to the counter claim, but also to the plaint itself. It is thus submitted that the first ground does not hold water. Secondly, it is submitted that the ground based on para 63 (6) was neither raised before the trial court nor before this Court. In other words, it is submitted that the question of the amendment being not permissible on the ground that a fresh suit on the amended plaint would be barred by limitation was not raised earlier. It is however, submitted that the proposed amendment had no bearing on the cause of action, as the cause of action is not sought to be

amended/alterd/replaced nor there is any effect on the claim made in the suit. The learned counsel has placed reliance on the decision of this Court in the case of **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhury (Smt.) (1995) 1 SCC 170**, in order to submit that review has to be confined to a case, where there is error apparent on the face of the record. It is submitted that the error must be such as would be apparent on mere looking at the order without requiring any long-drawn process of reasoning.

7. I have carefully considered the rival circumstances and the submissions made and do not find that any case for review is made out. In so far as the first ground is concerned, this Court after considering the averments in the plaint as well as the written statement filed by the respondent to the counter claim has found that the proposed amendment is by and large on the similar lines as to the contentions raised in the written statement to the counter claim. Under Order 6 Rule 1 of C.P.C., pleadings shall mean plaint or written statement. In a given case where the plaintiff files a written statement to the counter claim of the defendant, the pleadings would include the plaint as well as the written statement to the counter claim. In that view of the matter this Court has found that on juxtapositioning the contents of the written statement filed by the respondent to the counter claim, it cannot be said that the proposed amendment is diametrically opposite to the

pleadings already on record. In that view of the matter the first ground in my humble view cannot be accepted.

8. Coming to the second ground the record clearly discloses that the ground that a fresh suit based on the proposed amendment, would be barred by limitation, was neither raised before the trial court nor before this court. The impugned order also does not show that any such ground was raised during the course of the arguments before the trial court. It may be significant to note that the application for rejection of the plaint which the applicant has filed is only on the ground that the plaint is barred by the provisions of the Goa Money Lenders Act. Thus in my considered view the ground which was neither raised before the trial court nor before this court cannot be considered for the first time in a review application.

9. The principles governing the scope and ambit of an application for review are too well settled to be restated. The question whether there is an error apparent on the face of the record, however, depends upon the facts and circumstances of each case. As noticed earlier, this Court on a finding that on conjoint reading of the plaint and the written statement to the counter claim, the proposed amendment does not seek to introduce any new case has allowed the application for amendment. In my considered view the impugned

order does not demonstrate any error apparent on the face of the record. In the result, the review application is hereby dismissed.

C. V. BHADANG, J.

ap/-