

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.203 of 2018**

Mr. Atul Pai Dhungat,
Major of age,
Trading in the name and style
Pop's Snack Services,
D-3, Industrial Estate,
Bicholim-Goa. .. Petitioner

Vs.

1. Chief Electrical Engineer,
Government of Goa,
Vidyut Bhawan,
Panaji-Goa.
2. Executive Engineer,
O & M Division V,
Bicholim- Goa
3. Assistant Engineer, Elect.,
O & M S/D1(U),
Bicholim- Goa
4. The State of Goa,
Through its Chief Secretary,
Government of Goa,
Secretariat,
Porvorim- Goa. .. Respondents.

Shri A. D. Bhobe, Advocate for the petitioner.

Shri V. Sardessai, Additional Government Advocate for the respondents.

CORAM :- C. V. BHADANG, J.

DATE:- 20th February, 2018

ORAL JUDGMENT :

Rule, made returnable forthwith. The learned Additional

Government Advocate waives service for the respondents. Heard finally by consent of parties.

2. The challenge in this petition is to the order dated 23/01/2018, by which an application for amendment of plaint filed by the petitioner, has been dismissed.

3. The petitioner has filed a suit *inter alia*, for a declaration that the petitioner is entitled to 25 % rebate in tariff in terms of notification dated 30/09/1991 and for a further declaration that the electricity bill dated 17/02/2010 and all subsequent bills are illegal, null and void. The petitioner is also seeking recovery of a sum of Rs.1,55,190/- along with interest and for consequential relief of perpetual injunction, etc.

4. The respondents contested the suit on various grounds. However, a contention about the suit being barred by limitation was not specifically raised in the Written Statement. Be that as it may, the learned Trial Court, on the basis of rival pleadings, framed in all six issues on 10/12/2015. The parties led evidence and when the suit was at the stage of arguments, the learned Trial Court suo motu framed an additional issue on 14/11/2017 as to whether the suit was within time. This led the petitioner to file an application for amendment of plaint, seeking incorporation of the following portion in para 34 :

“The plaintiff made several representations to the defendants requesting for adjustment of the dues alleged to be payable by him to the defendants, against the balance amount of the unpaid rebate that he was entitled to and/ or release of his balance amount of unpaid rebate. However, as all his pleas fell on deaf ears, the plaintiff was constrained to address an application dated 23/10/2007 under the Right to Information Act, 2005 seeking information about the action initiated by the defendants in the matter of his requests for settlement of his unpaid rebate amount. In response to the same, the plaintiff received a letter dated 05/11/2007 clarifying that the matter pertaining to the grant of subsidy was being studied by the Government.”

5. The application was opposed on behalf of the respondents, *inter alia*, on the ground that the facts as sought to be incorporated, were within the knowledge of the petitioner even before the filing of the suit. The learned Trial Court, by the impugned order, has dismissed the application on the ground of non-compliance with the proviso to Order VI, Rule 17 of C.P.C. The learned Trial Court has come to the conclusion that the petitioner has failed to show that he could not bring the amendment, prior to commencement of trial, in spite of due diligence.

6. I have heard Shri Bhobe, the learned Counsel for the

petitioner and Shri Sardessai, the learned Additional Government Advocate for the respondents.

7. Although it was not disputed on behalf of the petitioner that the Court can suo motu raise an issue of limitation, what is contended is that in view of the specific issue being framed on 14/11/2017, it was necessary to bring on record and/or to amplify certain facts, which were already pleaded in the plaint. A perusal of the draft amendment would show that all that the petitioner wants to incorporate is that he had sought information under Right to Information Act by filing an application dated 23/10/2007 and in response thereto, the respondent had written a letter dated 05/11/2007, clarifying that the matter pertaining to the grant of rebate was being considered by the Government. Considering the nature of the amendment sought, I find that it is essentially of a formal/ amplificatory in nature to the pleadings already incorporated and was consequent upon the Court framing specific issue on the point of limitation.

8. The learned Additional Government Advocate, in all fairness, states that the respondents did not dispute that in pursuance of the application dated 23/10/2007 under Right to Information Act, the respondents had written a letter dated 05/11/2007.

9. Shri Bhobe, the learned Counsel for the petitioner states that after the amendment is allowed, the petitioner does not intend to lead any further evidence, in the event the application dated 23/10/2007 and the reply dated 05/11/2007 are allowed to be placed on record and admitted on behalf of the respondents. Considering the stand taken on behalf of the respondents, it would not be necessary to reopen the evidence in the matter and this would not cause any further delay in disposal of the suit or prejudice to any of the parties. Needless to mention that it would be open to the Trial Court to consider the effect of the amendment and two documents on the aspect of limitation on its own merits. In that view of the matter, the petition is allowed. The impugned order is hereby set aside. The application for amendment is allowed as prayed. The respondents would be at liberty to carry out consequential amendment in the Written Statement, if necessary and if so advised.

10. Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

SMA