

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2611 OF 2017

Suzlon Energy Ltd. ... Petitioner

Versus

Rajagopalan Sridhar ... Respondent

Mr. Archit Jayakar a/w Mr. Rahil Jhaveri I/by Jayakar & Partners for
Petitioner.

Mr. Rahul S. Kadam for Respondent No.1.

**CORAM : NITIN W. SAMBRE, J.
DATE : JUNE 26, 2018.**

P.C. :

. The order passed by the 3rd Additional Judge, Small Causes and Joint Civil Judge Senior Division, Pune on November 9, 2016 in a suit for declaration bearing Special Civil Suit No. 594 of 2012, refusing to grant amendment to the written statement pursuant to the provisions of Order 6 Rule 17 of the Code of Civil Procedure is subject matter of challenge in the present Writ Petition.

2. The Respondent to the present Petition who claimed to have been in employment of the Petitioner – Defendant, initiated Special Civil Suit No. 594 of 2012. In the suit prayer is in regard to the declaration that the termination letter dated 13th May 2009 as illegal, null and void and the same be set aside and further declaration that he is continues to be in employment of the Petitioner – Defendant. The declaration is also sought as regards back wages with continuity of service and recovery of amount of Rs. 5,36,54,969/- with interest. The claim was resisted by the Defendant – Petitioner vide written statement [Exhibit – 18] dated 1st February 2013, in which it is claimed that the criminal proceedings in India and civil proceedings in Australia are pending against the present Respondent – Plaintiff which speaks of volumes against the conduct of the Respondent.

3. By way of application for amendment to the written statement [Exhibit – 60], the Petitioner – Defendant sought to incorporate pleadings about the investigation carried out by CBI and other incidental pleadings, which prayer came to be rejected vide impugned order dated 9th November 2016.

4. The learned Counsel for Petitioner would urge that the order impugned is not sustainable for the reason the developments which are sought to be brought on record by virtue of Application for amendment to the written statement [Exhibit – 60] are in addition to the plea already raised in defence. According to him, mere filing of examination-in-chief of the Plaintiff would not amount to commencement of the trial. He would then urge that the amendment is based on the chargesheet filed by the CBI on 12th October 2015. According to him, whether there is substance in the pleadings which are sought to be incorporated by way of amendment will not be an issue which can be gone into at this stage, for deciding application for amendment. He would then urge that plaintiff will get appropriate opportunity, if so required, to deal with the amended pleadings.

5. The learned Counsel would rely upon the judgments of Apex Court in the matter of *Baldev Singh and others V/s Manohar Singh and another*¹, *Rajesh Kumar Aggarwal and others V/s K. K. Modi and others*² and *B. K. Narayana Pillai V/s Parameswaran Pillai and another*³, so as to substantiate his claim in regard to the object of the

1 (2006) 6 SCC 498

2 (2006) 4 SCC 385

3 (2000) 1 SCC 712

amendment. According to him, the prayer for amendment to the written statement should be construed liberally. In addition, he would urge that in the matter of **Rajesh Kumar Aggarwal** (*cited supra*) the Apex Court has held that the Court should take notice of the fact that the amendment is based on subsequent events and the Court should avoid recording the findings on the merits of the pleadings sought to be incorporated by way of the amendment. Based on the judgment in the matter of **Baldev Singh** (*cited supra*) the learned Counsel for Petitioner would urge that the inconsistent defence can be raised by the Respondent.

6. Per contra, the learned Counsel for Respondent – Plaintiff would oppose the claim and sought to support the order impugned on the ground that trial in the matter has already commenced. According to him, there is no necessity to plead evidence as is sought by way of amendment. The attempt on the part of the Petitioner is to delay the trial. He would then urge that it is the duty of the Petitioner to demonstrate that in spite of due diligence the Petitioner was unable to raise the matter before the commencement of the trial. He would draw support from para nos. 10 and

11 in the matter of **Vidyabai and others V/s Padmalatha and another**¹ which read thus :

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 rule 17 of the Code, which reads as under :

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

11. *From the order passed by the learned trial Judge, it is evident that the respondents had not been able to fulfil the said precondition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination-in-chief of the witness, in our opinion, would amount to “commencement of proceeding”.*

¹ (2009) 2 SCC 409

7. Considered rival submissions.

8. The suit in question is for enforcement of the contract of personal employment, wherein the relief *qua* setting aside the order of termination and payment of the salary and other emolument is sought. The defence was raised by the present Petitioner in 2013 with a specific plea that there are criminal proceedings in India pending against the Respondent – Plaintiff. By way of Application for amendment to the written statement [Exhibit – 60], it is sought to be incorporated in the written statement that a supplementary chargesheet was filed on 12th October 2015 against the Respondent in the CBI Court – Chief Judicial Magistrate, Pune. Respondent has also raised certain incidental pleadings based on the earlier pleadings of pendency of criminal proceedings against the Respondent. The application [Exhibit – 60] is admittedly based on a subsequent development of filing of supplementary chargesheet dated 12th October 2015 for which already basic pleadings could be noticed in para no. 3 of the written statement.

9. As such, from the pleadings in the amendment it could be inferred that the same are based on the subsequent development of filing

of supplementary chargesheet and there was already basic pleadings in para no.3 of the written statement to that effect. That being so, it cannot be inferred that the present Respondent was taken by surprise or the nature of claim made in the defence is sought to be changed.

10. Apart from above, though the learned Counsel for Respondent has drawn support from the judgment in the matter of **Vidyabai** (*cited supra*) it is required to be noted that the fact of filing of supplementary chargesheet is subsequent to the filing of written statement and as such there was no occasion for the present Petitioner to incorporate the said pleadings in specific terms in the written statement which was already filed. That being so, the law in the matter of **Vidyabai** (*cited supra*) will be of hardly any assistance to the Respondent – Plaintiff. Apart from above, though the issues in the suit are already framed and the Plaintiff has filed his examination-in-chief, it is required to be noted that the nature of defence raised by the Petitioner has not undergone any cause. It is needless to say that the law laid down by the Apex Court in the matter of **Rajesh Kumar Aggarwal, B. K. Narayana Pillai and Baldev Singh** will be of appropriate assistance to the Petitioner.

11. While working out the equities between the parties, it is also required to be noted that the present Respondent cannot be left to the mercy of the Petitioner, who has sought amendment after the issues are framed. Though in response to the Court's query the learned Counsel for Petitioner was generous enough to offer costs of Rs. 50,000/-, however, in the circumstances this Court has enhanced the same and proposed to allow the Writ Petition with following order.

ORDER

- (A) The impugned order dated November 9, 2016 passed by 3rd Additional Judge, Small Causes and Joint Civil Judge Senior Division, Pune below Exhibit – 60 in Special Civil Suit No. 594 of 2012 is hereby quashed and set aside.
- (B) For the reasons disclosed herein, Application [Exhibit – 60] stands allowed, subject to deposit of costs of Rs. 75,000/- before the learned Small Causes Court within a period of four weeks from today.
- (C) The deposit of costs shall be a condition precedent for carrying out amendment to the written statement.

(D) If the costs is deposited, the Respondent – Plaintiff will be entitled to withdraw the same.

12. With above observations, Writ Petition stands disposed of.

(NITIN W. SAMBRE, J.)