

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION NO.486 OF 2017
IN
COMPANY APPLICATION NO.2201 OF 1957
AND
COMPANY PETITION NO.2369 OF 1957
IN
COMPANY PETITION NO.263 OF 2017**

Maharashtra State Textile Corporation Ltd.)....Applicant

IN THE MATTER BETWEEN :

M/s.Onkarmal and Co.)....Petitioner
V/s.

Rajkumari Renuka Devi & Anr.)....Respondents

Mr.Y.V.Divekar a/w Mr.Salil Dubke i/by M/s.Divekar and Co. for the petitioner.

Mr.Sarosh Bharucha a/w Ms.Naira J.Shrey Fatterpekar and Ms.Akshita Bhargava i/by M.Mulla Associates for respondents.

CORAM : K.R.SHRIRAM,J

DATE : 4.6.2018

P.C.:-

1 This application is taken out by the applicant to declare that the leave granted by this Court on 11.8.2010 under Section 446 of the Companies Act 1956 will not apply to the amendment to the plaint in Special Civil Suit No.243 of 2009 pending in the court of Civil Judge, Senior Division, Solapur.

2 Respondent no.1 has filed the Special Civil Suit No.243 of

2009 in the court of Civil Judge, Senior Division, Solapur against the applicant and State of Maharashtra for a declaration that respondent no.1 as plaintiff in the said suit and defendant nos.3 to 7 in the said suit are lawful owners of immovable properties of the company Narsingirji Manufacturing Co. Ltd. (in Liquidation).

3 The company was ordered to be wound up by this Court on 10.2.1957. Therefore, respondent no.1 had filed an application for leave under Section 446 of the Companies Act 1956 to implead the Official Liquidator to the said suit and to proceed with the said suit. The application came to be allowed on 11.8.2010. The court while granting the application was pleased to observe “In the event of Official Liquidator being impleaded, leave is granted to the Applicant to proceed with the suit accordingly”.

4 After leave was obtained, respondent no.1 filed an application for impleadment of the Official Liquidator which was allowed. Thereafter, a fresh application was filed by respondent no.1 seeking amendment of the plaint by which certain reliefs were introduced. That amendment application was also allowed. Shri Bharucha submits that these two orders have not been challenged. Subsequently, respondent no.1 took out a further application for

further amending the plaint which was allowed vide order dated 25.8.2016.

5 Against this order in the 3rd amendment application, the applicant herein has filed a Writ Petition which is pending. At the stage of admission of the Writ petition, respondent no.1 has made a statement to the court that they shall not proceed with the said suit.

6 The applicant has now filed this Company Application for a declaration that the leave granted by this court on 11.8.2010 under Section 446 of the Companies Act 1956 to respondent no.1 will not apply to the amendment to the plaint in the said suit granted pursuant to order dated 25.8.2016. According to the applicant, the amendment application which was allowed by the Civil Judge changed the entire nature and character of the suit and therefore, before such an application was filed by respondent no.1, respondent no.1 should have applied to this court for fresh leave under Section 446 of the Companies Act 1956.

7 Shri Bharucha appearing for respondent no.1 relied upon a judgment of single Judge of this Court in ¹***Zainab Bai Vs. Navayug***

1 AIR 1969 BOMBAY 194

Chitrapat Co., to submit that once leave of winding up court is obtained to commence or proceed with suit or legal proceedings, it does not require fresh leave of the winding up court when an application of whatever nature is made before the trial Court. Shri Bharucha also submitted that if the applicant is aggrieved with the order passed by the trial court allowing the amendment, that cannot be gone into by this court because this court cannot sit on appeal over the order passed by the Civil Judge, Senior Division.

8 Heard the counsel.

I am inclined to accept the submissions made by Shri Bharucha. In *Zainab Bai* (supra) the facts were also almost similar. There, the plaintiff had obtained leave under Section 446 of the Companies Act before proceeding with the suit. Plaintiff thereafter took out an application to amend the plaint which the learned trial Judge refused to allow on the ground that leave of the winding up court was not taken for filing amendment application under Section 446(1) of the Companies Act 1956. That order of the trial Judge was set aside. The High Court held that once the winding up court has granted leave to commence or proceed with the suit or other legal proceedings against the company, it cannot be that leave of the winding up court must be obtained to commence or proceed with

every application in the progress of the suit, such as an application for striking out or adding other parties, amending pleadings, setting aside *ex-parte* orders or decree etc. The court held that once winding up court has granted leave to commence or proceed with the suit, it does not require fresh leave of the winding up court. Paragraph-7 of the said judgment reads as under :-

*"7. It is true that the words "other legal proceedings" in [Section 446](#) of the Companies Act, 1956 are not to be confined to original proceedings in the Court of first instance analogous to a suit initiated by means of a petition similar to a plaint. But once the winding up Court has granted leave to commence or proceed with the suit or other legal proceeding against the Company, it cannot be that leave of the winding up Court must be obtained to commence or proceed with every application in the progress of the suit, such as an application for striking out or adding other parties, serving summons by registered post, obtaining further and better particulars of pleadings, amending pleadings, setting aside *ex parte* orders or decree, getting discovery or inspection, summoning witnesses, issuing commissions, applying for adjournments or extension of time for complying with the orders of the Court. In my opinion, once leave of the winding up Court is obtained to commence or proceed with the suit or other legal proceedings, no application in the progress of that suit or legal proceeding will require fresh leave of the winding up Court, and were it otherwise, it would lead to absurd results. An application for leave to amend the plaint is one such application and I hold that it does not require fresh leave of the winding up Court. The learned trial Judge has on this ground wrongly failed to exercise jurisdiction to allow amendment of the plaint which, but for this ground, he was willing to allow.*

9 I am in respectful agreement with the learned Judge.

10 So far as the merits of the amendment application is concerned, this court cannot go into that and the same will be decided by the appropriate forum.

Application accordingly, dismissed.

(K.R.SHRIRAM,J)