

\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 5th July, 2019

+

CM(M) 52/2019

M/S UEM INDIA LTD

..... Petitioner

Through: Mr.Samir Malik & Mr.Paritosh
Goel, Advocates

versus

SUNIL KUMAR RAJAN

..... Respondent

Through: Mr.Amarjit Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

CM APPL. 28944/2019 (early hearing)

For the reasons stated in the application, the application is allowed.

With the consent of the parties, the petition is taken up for hearing.

CM(M) 52/2019

1. This petition under Article 227 of the Constitution is directed against an order dated 05.09.2018 by which the application of the plaintiff/respondent for amendment of the plaint was allowed.
2. The suit in question was filed by the plaintiff against the petitioner/defendant claiming recovery of a sum of ₹51,00,000/- [Rupees Fifty One Lakhs] with interest. It was contended that the

plaintiff was an employee of the defendant and had dues against the defendant on account of “leave encashment, salary, incentive and other part etc.” arising out of his employment. A chart was also filed alongwith the plaint giving the details of the plaint.

3. After issues were framed, but before any of the parties had led evidence, the plaintiff applied for amendment of the plaint. The relief claimed in the suit remained unamended; the amendment related to the basis of the claims. The amendment was allowed by the impugned order of the Trial Court.

4. Learned counsel for the petitioner/ defendant submits that the nature and character of the suit has been altered by the reason of the amendment. He has referred to the amendments whereby the plaintiff has now sought to contend that he was also rendering services to an American company which is a sister concern of the defendant and was entitled to certain emoluments as a result thereof. According to the plaintiff, these were to be paid by the defendant and adjusted between the defendants and its American sister company. Learned counsel submits that this is an entirely new claim and no mention of this arrangement between the plaintiff, the defendant and the American company is to be found in the plaint. He further submits that the claim which has been incorporated in the present suit is barred by limitation, disentitling the plaintiff to amend the plaint. He further submits that there was no justification for these facts to be belatedly pleaded, as they were all within the plaintiff's knowledge prior to filing of the suit.

5. Learned counsel for the respondent, on the other hand, submits that the amendments are merely explanatory of the claims made in the suit and do not alter its nature or character. He further submits that the documents filed with the original plaint also included a document showing the particulars of all these claims and no new case has been urged.

6. The principles governing amendment of pleading under Order VI Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the CPC”), have been crystalized in the judgment of the Supreme Court in *Revajeetu Builders and Developers vs. Narayanaswamy and Sons & Ors.* (2009) 10 SCC 84 in the following terms: -

“Factors to be taken into consideration while dealing with applications for amendments

63. *On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

7. In subsequent judgments including *Pankaja vs. Yellappa* (2004) 6 SCC 415, it has been clarified that even where the question of limitation in respect of amended claims is raised, the amendment can be allowed while reserving the question of limitation for a final decision at trial.

8. Applying these principles to the facts of the present case, I do not find any scope for interference with the impugned order under Article 227 of the Constitution of India. Without getting into the controversy of whether the claims raised by way of an amendment are merely an elaboration of the claims made in the suit or are new claims, it is sufficient for the present purposes to note that the amendments do not amount to a change in the fundamental nature and character of the suit. The original suit was in respect of an employee's claims for outstanding dues from his former employer. This remains unchanged. Even if some of the heads under which he claims are incorporated by way of amendment, that by itself does not, in my view, change the nature and character of the suit. The amendment having been filed prior to affidavits in evidence, I do not find the impugned order to be in excess of jurisdiction of the Trial Court, or to be perverse or illegal, inviting the invocation of the supervisory jurisdiction of this Court.

9. It is made clear that the defendant is not foreclosed from taking any defences open to it in law. In particular, the defendant's contention that the plaintiff has incorporated new claims by an amendment, and that those claims were barred by limitation at the time the amendment was sought, are left expressly open. The defendant will be entitled to urge those defences in the amendment written statement to be filed by it and they will be decided in accordance with law.

10. The question remains of prejudice caused to the defendants and its adequate compensation by way of costs. The defendant is right in urging that the facts brought out in the amendment ought to have been incorporated in the original plaint. However, in view of the fact that the suit was at a pre-evidence stage, the prejudice caused to the defendant can be compensated with costs. In this connection, paragraphs 61 and 62 of *Revajeetu Builders and Developers* (supra) provide considerable guidance: -

“Costs

61. The courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive:

- (i) At what stage the amendment was sought.*
- (ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage.*

(iii) *The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.*

(iv) *The imposition of costs should not be symbolic but realistic.*

(v) *The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.*

(vi) *In case of appeal to higher courts, the victim of the amendment is compelled to bear considerable additional costs.*

All these aspects must be carefully taken into consideration while awarding the costs.

62. *The purpose of imposing costs is to:*

(a) *discourage mala fide amendments designed to delay the legal proceedings;*

(b) *compensate the other party for the delay and the inconvenience caused;*

(c) *compensate the other party for avoidable expenses on the litigation which had to be incurred by the opposite party for opposing the amendment; and*

(d) *to send a clear message that the parties have to be careful while drafting the original pleadings.”*

11. While allowing amendment, the Trial Court has granted costs of ₹2,000/-. I find that this amount is wholly inadequate in the light of the guidelines laid down by the Supreme Court. The amendment will necessitate further pleadings, and at least one or two extra hearings, with consequent costs to the defendant. The impugned order of the Trial Court is, therefore, modified to the extent that the plaintiff will be liable to pay costs of ₹30,000/- to the defendant as a condition for amendment of his plaint.

12. I am informed that the suit is listed before the Trial Court on 09.07.2019. The Trial Court will give appropriate directions for filing of amended written statement by the defendant and proceed thereafter in accordance with law.

13. The petition is disposed of with the aforesaid directions.

PRATEEK JALAN, J

JULY 05, 2019

'hkaur/pv's

