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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 28th May, 2019
Pronounced on: 01st July, 2019

+ **CM (M) 1201/2018 & CM APPL.40951/2018**

H K ANAND Petitioner

Through: Mr. Siddharth Yadav, Advocate with
Mr. Wasim Ahsraf, Mr. Mohit
Daulatani, Advocates.

versus

S GURCHARAN SINGH BHASIN & ORS Respondents

Through: Mr. H. S. Arora, Advocate for R-1.

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CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. This petition under Article 227 of the Constitution of India is directed against an order dated 16.08.2018, whereby the Trial Court has allowed an application filed by the plaintiff in a pending suit (respondent no.1 herein) for amendment of the plaint and impleadment of the petitioner herein as a defendant in the suit.

Facts

2. The suit (Civil Suit No. 11634/2016 in the Court of the learned Additional District Judge, Central Delhi) was filed in October, 2004. The plaintiff had impleaded ten defendants including M/s S.S. Mota

Singh (Nila) Charitable Trust (through S. Jaswant Singh Jas, General Secretary) as defendant no. 1 (hereinafter referred to as “the Trust”) and S. Jaswant Singh Jas, Honorary General Secretary, M/s S.S. Mota Singh (Nila) Charitable Trust as defendant no. 2 (hereinafter referred to as “SJSJ”). The Trust is impleaded in this petition as respondent no. 2, and defendant nos. 3 to 10 in the suit are impleaded as respondent nos. 3 to 10. The reliefs claimed in the original suit were in the nature of declarations against the appointment of various defendants as trustees or office bearers of the Trust (including SJSJ), an injunction directing the holding of elections of office bearers of the Trust and appointment of an administrator/receiver for management and control over the movable and immovable properties of the Trust.

3. Respondent nos. 3 to 8 herein made an application for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"), which was allowed by the Trial Court vide order dated 19.03.2005. The Trial Court held that the suit was barred by law for want of compliance with the provisions of Section 92 of the CPC. Against this, the plaintiff filed an appeal (RFA No. 494/2005) before this Court. During the pendency of the appeal, SJSJ (the then General Secretary of the Trust) died, and the petitioner herein was appointed in his place on 24.07.2009. The death of SJSJ has been recorded in the order of this Court dated 21.04.2010. By a further order dated 06.09.2010, the Court directed the plaintiff to take steps to implead the succeeding office bearer of the Trust in the appeal. Ultimately, by an order dated 18.12.2012, the plaintiff's appeal

was allowed and the suit was restored to the file of the Trial Court for disposal. The order of this Court was challenged by the Trust, the petitioner and two of the other defendants, before the Supreme Court in SLP (Civil) No. 23955/2012. While issuing notice, by an order dated 24.08.2012, the Supreme Court granted stay of further proceedings. The Special Leave Petition was however ultimately dismissed on 18.03.2016.

4. In July 2017, the plaintiff filed an application under Order I Rule 10 of the CPC raising certain grievances against the appointment of the petitioner herein, as General Secretary of the Trust and seeking to implead her as defendant no. 2 in place of SJSJ. The application was opposed by the petitioner, *inter alia*, on the ground of delay and on the ground that she was neither a necessary nor a proper party to the suit. By an order dated 13.12.2017, the Trial Court dismissed the said application, recording that the substitution of the petitioner in place of the deceased defendant was not permissible in the absence of specific allegations in the plaint against her.

5. The plaintiff, thereafter, filed an application under Order VI Rule 17 and Order I Rule 10 of the CPC seeking amendment of the plaint to incorporate certain allegations against the petitioner in the plaint, as well as her impleadment. This application was allowed by the impugned order of the Trial Court dated 16.08.2018, leading to the institution of this petition.

Submissions

6. Mr. Siddharth Yadav, learned counsel for the petitioner assailed the impugned order on the ground that the application of the plaintiff suffered from inordinate delay and laches. He submitted that the appointment of the petitioner as General Secretary of the Trust was made on 24.07.2009, whereas the application under consideration was only filed several years thereafter, on 17.03.2018. According to him, the plaintiff had knowledge of the appointment of the petitioner at least from 06.09.2010. He also submitted that the relief sought to be added in the plaint against the petitioner was barred by limitation. Mr. Yadav referred to the judgment of the Supreme Court in *Alkapuri Cooperative Housing Society Limited vs. Jayantibhai Naginbhai (Deceased) Through LRs* (2009) 3 SCC 467 and of this Court in *Church of India, Pakistan, Burma & Ceylon vs. Church of North India Trust Association* (FAO (OS) 505/2009, decided on 23.12.2009). Mr. Yadav submitted that the plaintiff has sought to set up a new case which was not incorporated in the original suit and that the impugned order has not been decided within the framework of Order I Rule 10 of the CPC, inasmuch as the Trial Court has not arrived at a conclusion as to whether the petitioner is a necessary or a proper party to the suit.

7. Mr. H.S. Arora, learned counsel for the respondent no.1/plaintiff, on the other hand, submitted that the plaintiff's application was not belated and disputed the petitioner's contention regarding limitation in respect of the proposed relief. He pointed out that in the Special Leave Petition filed before the Supreme Court, the petitioner

was arrayed as petitioner no. 2 and had specifically averred that she had been substituted in place of the deceased defendant during the pendency of the appeal before this Court. He further submitted that the question of limitation can be reserved for a final decision upon trial and stated that the petitioner has in fact filed a written statement dated 08.10.2018 in the suit, wherein she has taken the defence of limitation. Issues are yet to be framed in the suit. Mr.Arora cited the judgments of the Supreme Court in *Ragu Thilak D. John vs. S. Rayappan and Others* (2001) 2 SCC 472, *S.N.Kapoor (Dead) by LRs vs. Basant lal Khatri and Others* (2002) 1 SCC 329 and *Pankaja and Another vs. Yellappa (Dead) by LRs and Others* (2004) 6 SCC 415 in support of his submissions.

8. In rejoinder, Mr. Yadav contended that the filing of the Special Leave Petition by the petitioner cannot *per se* lead to the conclusion that she had been impleaded in the suit, absent any order of the Court to that effect. He submitted that the petitioner's understanding, as reflected in the SLP, that she had been impleaded by the order of this Court dated 06.09.2010, was mistaken and cannot be determinative of the question before this Court.

Analysis

9. As noted hereinabove, the challenge in the suit concerns the appointment of various defendants as officer bearers and trustees of the Trust. Allegations were also made against the deceased defendant SJSJ in respect of his functioning as General Secretary of the Trust. The amendments proposed, to some extent, are formal amendments

consequent upon the demise of SJSJ. As far as the petitioner is concerned, the cause title is sought to be amended by substituting her name in place of SJSJ in two places - as the General Secretary through whom the Trust is being sued, and also independently as defendant no. 2.

10. The relevant averments for this purpose, and for the purpose of limitation, are contained in paragraphs 10 and 11 of the amended plaint which are reproduced below:-

“10. That in the previous cause title of the suit, Late S.Jaswant Singh Jas has been described as Hony. General Secretary of the Society. This has been done with a view to fulfill the requirements of the Societies Registration Act, 1860 for the purposes of instituting the present suit, while it is emphatically asserted that he was a usurper of the office of Hony. General Secretary and is liable to be removed from that position by a decree of mandatory injunction. Since as S.Jaswant Singh Jas had expired on 31.03.2010 and the defendants No.3 to 7 during the pendency of the suit appointed Mrs.H.K. Anand as the General Secretary of the defendant No.1. Hence, in the present cause title of the plaint, Mrs.H.K.Anand has been described as the Hony. General Secretary of the society. This has been done with a view to fulfill the requirements of the Societies Registration Act, 1860 for the purposes of the present suit while it is emphatically asserted that her appointment is at the Hony.General Secretary is totally illegal and she is liable to be removed from that position by a decree of mandatory injunction. The defendants No.9 and 10 have been added being trustees though no relief has been claimed against them as they are formal parties.

11. That the cause of action for instituting the present suit has arisen in the months of July/August, 2004 when the nefarious activities of late S.Prithipal Singh Bhasin, Late S.Jaswant Singh Jas, Mrs. Kawaljeet Kaur Bhasin and the newly illegally appointed five trustees came to the knowledge of the plaintiff which were confirmed on inspection and receipt of copies of the records of the Registrar of Societies in September/October 2004. "The cause of action for impleadment of Mrs.H.K.Anand, in place of Late S. Jaswant Singh Jas when the defendants No.3 to 7 in connivance with each other without following the rules and regulations of the trust and without holding any election of the trust appointed Mrs.H.K. Anand as the General Secretary of the defendant No.1. The cause of action further arose when the Hon'ble Delhi High Court allowed the impleadment of Mrs.H.K.Anand in place of Late S.Jaswant Singh Jas as respondent No.2 in R.F.A. No.249/2005. The cause of action against Mrs. H.K.Anand-defendant No.2 regarding her illegal appointment as Hony. General Secretary of the defendant No.1 further arose when the Hon'ble Supreme Court dismissed the SLP No.23955 of 2012 on 18.03.2016 and the stay order in the suit was vacated and trial of the suit began. The cause of action is still subsisting and continuing."

11. The claims made in the suit have also been amended to the extent that a declaration has been sought against the petitioner's appointment as General Secretary and an injunction against her claiming to be the General Secretary of the Trust. The amended prayer in this regard is as follows:-

"ii) pass a declaratory decree declaring that late S. Jaswant Singh Jas was not duly appointed Hony. General Secretary of S.S. Mota Singh (Nila) Charitable Trust and its board of trustees and further declare the appointment of Mrs. H.K. Anand, as the General Secretary of the trust

illegal and further pass a decree of injunction against her, restraining her from claiming herself to be the General Secretary of the Society and also of its board of trustees and acting as such;”

12. In deciding whether or not to permit amendment of a plaint, the Court is required to take into account all the facts and circumstances of the case and also, to the extent possible, to avoid the prospect of multiplicity of litigation. The Supreme Court has emphasized the wide power conferred on the Court by Order VI Rule 17 of the CPC in order to ensure that the real controversy between the parties is resolved. Even an application made belatedly may be allowed, if necessary, by compensating the other side with the award of costs. Reference may be made to the judgments in *B. K. Narayana Pillai vs. Parameswaran Pillai and Another* (2000) 1 SCC 712 [paragraphs 3 & 4] and *Surender Kumar Sharma vs. Makhan Singh* (2009) 10 SCC 626, [paragraphs 5 & 6]. In *Revajeetu Builders and Developers vs. Narayanaswamy and Sons and Others* (2009) 10 SCC 84, after analysis of the legislative history of the provision and the authorities, the Court laid down the following factors to be taken into consideration while dealing with applications for amendment:

“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.

64. The decision on an application made under Order 6 Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

This judgment has been cited in *Rameshkumar Agarwal vs. Rajmala Exports Private Limited and Others* (2012) 5 SCC 337 wherein the Supreme Court has further elaborated upon the approach to be adopted in the following terms:

“21. It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order 6 Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule, particularly in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

13. Considering the factors laid down in the aforesaid judgments, I am of the view that the amendment sought in the present case was justified. The grievance now sought to be agitated by the plaintiff relates to the appointment of the petitioner as General Secretary of the Trust, which occurred during the pendency of the suit. The suit is at a relatively early stage and the petitioner has the opportunity to take all defences available to her. The original suit pertains to the appointment of office bearers and trustees and control over the management and properties of the Trust. These are the very issues which are also sought to be agitated qua the petitioner. If the amendment is disallowed and the petitioner is compelled to institute independent proceedings in respect of his alleged cause of action against the petitioner, it would lead to a multiplicity of proceedings in which common issues would arise and in fact there are likely to be several common parties as well.

14. Mr. Yadav has also raised a grievance regarding the incorporation of a new cause of action against the petitioner, which according to him was barred by limitation. In this connection, it is important to note that at the time SJSJ died, the application of the defendants under Order VII Rule 11 of the CPC had been allowed, and consequently, there was no suit pending in which the plaintiff could have applied for substitution of parties or amendment of the plaint. The pending proceeding at that stage was the appeal before this Court. Although the petitioner had not in fact been impleaded in the appeal by the order of this Court dated 06.09.2010, it is she (and the other petitioners in the Special Leave Petition) who asserted to the contrary before the Supreme Court. There was, therefore, no occasion for the plaintiff to take any steps in this regard at that stage either. Further, as pointed out by Mr.Arora, the Supreme Court by its order 24.08.2012 directed stay of further proceedings, which continued until 18.03.2016 when the Special Leave Petition was dismissed. Consequently, the plaintiff could not have proceeded during this period either. Further, therefore, not possible to conclude finally at this stage that the relief sought to be incorporated in the suit is, in fact, barred by limitation.

15. The judgments cited by Mr. Arora make it clear that the question of limitation in respect of a newly incorporated claim can be left open for decision in the suit, even while allowing the application for amendment. In *Ragu Thilak D. John* (supra), it was emphasized that a liberal approach should be employed in deciding applications for amendments particularly to avoid multiplicity of litigation. The

Court in that case allowed the amendment and also directed that the plea of limitation, being disputed, could be made a subject matter of the issue after amendment. In *Pankaja* (supra), the Court has followed its earlier judgments - including *Ragu Thilak D. John* (supra) - and held that the Court is vested with a discretion to allow an amendment application, even if, the application is made with some delay. With regard to the incorporation of reliefs which are alleged to be barred by limitation, the Court held in *Pankaja* (supra) as follows:-

“13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.

14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

15. This Court in the case of L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357] has held: (AIR p. 362, para 16)

“16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice.”

16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392] . Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.”

In this case too, the Supreme Court allowed the amendment leaving the question of limitation to be decided in the suit.

16. The decision of the Supreme Court in *Alkapuri Housing Corporative Society* (supra) cited by Mr. Yadav reiterates the ruling in *Pankaja* (supra) to the extent that a judicial evaluation of the facts and circumstances of the case is required whenever a belated application for amendment is made. However, the Court cautioned that in every case where an amendment application also requires impleadment of a third party, the Court's evaluation must also take into account the principles governing Order I Rule 10 of the CPC. In that case, an application for amendment filed 18 years after the filing of the suit

was rejected by the Trial Court but allowed by the Gujarat High Court. The Supreme Court held that the plaintiff therein had sought to alter the nature and the character of the suit by the amendment and the impleadment sought, and thereafter rejected the plea.

17. In *Alkapuri* (supra), the Supreme Court also referred to its earlier judgment in *Sampath Kumar vs. Ayyakannu & Another* (2002) 7 SCC 559 wherein this issue has been discussed in some detail. The relevant observations of the Court in this regard are as follows:-

“7. In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial court, it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

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9. Order 6 Rule 17 CPC confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for

amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. (See observations in Siddalingamma v. Mamtha Shenoy[(2001) 8 SCC 561].)

11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending

suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

12. On the averments made in the application, the same ought to have been allowed. If the facts alleged by the plaintiff are not correct it is open for the defendant to take such plea in the written statement and if the plaintiff fails in substantiating the factual averments and/or the defendant succeeds in substantiating the plea which he would obviously be permitted to raise in his pleading by way of consequential amendment then the suit shall be liable to be dismissed. The defendant is not prejudiced, more so when the amendment was sought for before the commencement of the trial.”

18. I am of the view that the approach outlined by the Court in *Sampat Kumar* (supra) can appropriately be followed in the present case. As stated above, there is no amendment to the basic structure of the suit which was still at a pre-trial stage when the amendments were

made. The question of limitation in respect of the cause of action against the petitioner can be left open for a final decision by the Trial Court.

19. Having held that the amendment is liable to be allowed in the circumstances aforesaid, it is consequently necessary also to permit the impleadment of the petitioner. As noted above, by virtue of the amendment, specific reliefs have been sought against the petitioner and she is, therefore, a necessary party to the suit.

20. In *Church of India* (supra), on which Mr. Yadav placed reliance, the Division Bench of this Court dismissed an application by a third party seeking impleadment as a defendant in a pending suit. The Division Bench affirmed the order of the learned Single Judge in this regard, on the ground that the third party was the plaintiff in a connected suit which had been consolidated with the suit in question and was, therefore, not required to be impleaded. It is in this context that the Division Bench also held that the delay of 10 years in the moving the impleadment application had not been explained. The circumstances in the present case are clearly dissimilar.

Conclusion

21. In the facts and circumstances above, the petitioner has failed to make out any ground for interference with the impugned order. The petition is dismissed but without any orders as to costs. It is made clear that the question of limitation in respect of the claims made by the plaintiff against the petitioner herein, may be agitated by the

petitioner in the suit, and will be decided by the Trial Court independently, in accordance with law. The pending applications also stand disposed of.

PRATEEK JALAN, J.

JULY 01, 2019

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