

25 January, 2023.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7805 OF 2021

M/s. Mafatlal Industries Ltd.

.....Petitioner

V/s.

Sowkar Textiles & Tailors

....Respondent

Mr. Vishal Kanade a/w. Mr. Monil Punjabi, Mr. Satyadev D. Joshi, Ms. Bhoomi Aprodia (Legal Manager, Mafatlal), Ms. Shejal Nag,

CORAM : SANDEEP V. MARNE, J.**DATED : JANUARY 25, 2023.****P.C. :**

1. By this petition, petitioner assails order dated 1 October, 2021 passed by the City Civil Court at Bombay in Chamber Summons No. 295/2021 filed in Commercial Suit No. 26/2020. By that order, the City Civil Court has dismissed the Chamber Summons No. 295/2021 filed by the petitioner-plaintiff for amendment of the plaint.

2. Plaintiff has instituted Commercial Suit No.26/2020 against the respondent-defendant for recovery of amount of Rs.10,26,306/-. Alongwith the plaint, plaintiff filed list of seven documents. Defendant caused appearance and filed Written Statement. Before the trial could commence, the petitioner-plaintiff filed Chamber Summons No. 295/2021 for amendment of the suit by

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which he sought to delete the list of documents filed alongwith the plaint and to replace the same with a fresh list of documents. In the new list proposed to be added, the petitioner-plaintiff sought to add six additional documents from serial nos. 8 to 13 issued by the Government Authorities. Plaintiff also sought to add averments about additional documents in the body of the plaint. By order dated 1 October, 2021 the City Civil Court, proceeded to reject the amendment application.

3. Notice in the Writ Petition was issued to the respondent on 23 November, 2021, when the petitioner was also granted liberty to serve the respondent by private service. Accordingly, petitioner has served the respondent with private service and has filed Affidavit of service. Since court notice was not served, on 10 December 2021 this Court extended the time for service of notice on respondent till 12 January, 2022. The court notice came to be served on the respondent and bailiff has filed report, an endorsement about which is made by the Registry on 4 April, 2022 and 24 November, 2022. Despite service of notices, both issued by Court as well as private notice, the respondent has failed to appear in the petition. Since the respondent is already served and the issue involved in the present petition is in a narrow compass, I have proceeded to hear the learned Counsel for the petitioner on merits and to decide the present petition.

4. The amendment was undoubtedly introduced before commencement of trial in the suit. The principles relating to amendment of pleadings have been enunciated by the Apex

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Court in its recent judgment in **Life Insurance Corporation Ltd. Vs. Sanjeev Builders Private Limited**, AIR 2022 SC 4256 and in paragraph-70 it is held as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the

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claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would

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have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. ([See Vijay Gupta v. Gagninder Kr. Gandhi & Ors.](#), 2022 SCC OnLine Del 1897) : (AIR Online 2022 Del 1797)”

5. Since the trial in the present case was yet to commence, the plaintiff was within its right to amend the plaint to the extent the same does not alter the nature of the suit.

6. The City Civil Court has proceeded to reject the Chamber Summons, essentially on the ground of delay in filing the same and also because the pleadings and documents sought to be brought on record were already in the knowledge of the plaintiff. In my view, the approach of the City Civil Court in rejecting the Chamber Summons on both grounds, does not appear to be in consonance with the principles enunciated by the Apex Court in its judgment in ***Life Corporation of India*** (supra). Even if the documents were in custody of the plaintiff before filing of the suit and he had inadvertently left them to be incorporated in the plaint, the plaintiff has every right to correct the error and incorporate the missing documents and pleadings in the plaint, before commencement of the trial. Under the provisions of Order XI Rule 17 of the Civil Procedure Code, the plaintiff is not even

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required to show due diligence for amendment of the plaint before commencement of trial.

7. The City Civil Court has relied on Order XI of the Code of Civil Procedure, as applicable to commercial disputes for rejecting the Chamber Summons. However, under Order XI Rule 1(2), the plaintiff is required to satisfy whether the documents in his power, possession, control or custody are originals, office copies or photocopies etc. It appears that, in the original list of documents, the plaintiff had not satisfied this requirement in respect of seven documents originally filed. In the amended list of documents, in addition to production of six new documents, the plaintiff also proposed to set out whether the documents are originals or photocopies with a view to satisfy the requirements of Order XI Rule 1(2) of the Code. Even otherwise, under Order XI Rule 1(5) of the Code, the Court is empowered to grant leave to produce additional documents. Considering the nature of documents sought to be produced by way of amendment, where all new documents form parts of government records, their non-disclosure along with the plaint would not prejudice the defendant.

8. True it is that the plaintiff could have filed an application seeking leave of the court under Order XI Rule 1(5) of the Code for production of additional documents. However it also wanted to cure the technical defect of non-disclosure of form/ nature of 7 documents (whether original or photocopies) in the original list filed along with the plaint. This appears to be the possible reason it filed application for amendment of plaint to substitute the list of

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documents and also to add averments relating to additional documents in the plaint. Therefore it cannot be said that the request of the plaintiff would fall squarely within the ambit of provisions of Order XI Rule 1(5) of the Code.

9. I am therefore of the view that, the City Civil Court has erred in dismissing the Chamber Summons filed by the petitioner-plaintiff. The Writ Petition accordingly succeeds. The order dated 1 October, 2021 passed by the City Civil Court and Sessions Court in Chamber Summons No.295/2021 filed in Commercial Suit No.26/2020 is set aside and the Chamber Summons No. 295/2021 is allowed in terms of prayers made therein. Writ Petition is accordingly allowed without any orders as to costs.

**NEETA
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(SANDEEP V. MARNE, J.)