



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3369 OF 2019

(Karamtara Engineering (P) Ltd. vs. Prabhu Steel Industries Limited)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. J.B. Gandhi, Advocate for Petitioner.
None for the respondent.

CORAM : ABHAY J. MANTRI, JJ.

RESERVED ON : SEPTEMBER 13, 2024

PRONOUNCED ON : NOVEMBER 25, 2024

Heard learned Counsel for the petitioner. Despite the service of notice, the respondent/original plaintiff chose not to appear.

2) The challenge is raised to the order dated 28/03/2019, passed by 12th Jt. C.J.S.D. Nagpur, below Exh.61, in Special Civil Suit No.581/2012, whereby allowed the application for amendment of plaint.

3) At the outset, it appears that the respondent/original plaintiff has filed the suit for recovery of money. Accordingly, in para 9 of the plaint, the plaintiff has given the particulars of the claim and the matter was adjourned for evidence. The PW-1, namely Krishan Agrawal, while going through the documents and calculating the details of the claim, noticed that the total liability of the defendant towards the

plaintiff is correctly mentioned in the plaint; however, the amount of money explained under different heads was inaccurately stated. Therefore, he has moved an application for amendment of the plaint as under:-

"a. In para 9 of the plaint:

Substitute the sum "53,89,049/-" mentioned in entry no. (1) with the sum "46,78,085"

b. In para 9 of the plaint:

Substitute the sum "22,25,923/-" mentioned in entry no. (2) with the sum "29,36,887"

c. In para 9 of the plaint :

Substitute the sum "1,06,624/-" mentioned in entry no. (3) with the sum "1,11,609"

d. In para 9 of the plaint:

Substitute the sum "1,82,718/-" mentioned in entry no. (5) with the sum "1,77,533/-"

4) It is contended that carrying out the aforesaid amendment is necessary to rectify mistakes that occurred during the calculation. The said amendment does not change the nature of the suit or relief claimed by the plaintiff. Therefore, he has moved the application for amendment of the plaint.

5) Learned Counsel for the petitioner/original defendant vehemently argued that in the notice as well as in the plaint, similar averments appear; if the proposed amendment is

permitted, then it will change the nature of the suit. By way of the amendment, the plaintiff intends to increase the claim from Rs.22,25,923/- to Rs.29,36,887/-, which is not permissible. It is further contended that the suit was filed in 2012, and the application for amendment was filed in 2019; it was filed beyond limitation and is not permissible. Lastly, it is averred that the evidence has commenced, and the plaintiff has also filed an affidavit of additional evidence in the Court. Therefore, as per the proviso to Order VI Rule 17 of the Civil Procedure Code, the plaintiff is not entitled to amend the pleading after the commencement of the trial. Hence, he has prayed for allowing the petition by setting aside the impugned order.

6) To buttress his submissions, learned Counsel has relied upon para 16 of the judgment in the case of ***L.J.Leach and Co. Ltd. and another vs. M/s. Jaidine Skinner and Co. reported in AIR 1957 SCC 357*** and in the case of ***T.N.Alloy Foundry Co.Ltd. vs. T.N. Electricity Board, reported in 2004(3) SCC 392*** and submitted that in view of the dictum laid down in these judgments the petition be allowed.

7) Having heard the learned Counsel for the petitioner, it seems that the petitioner is challenging the order passed below Exh.61 regarding the amendment of the plaint.

The Apex Court, while dealing with a similar issue of amendment of the pleadings, in the case ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another reported in 2023(2) ALL MR 333 (S.C.)*** after considering the various decisions, summed up the law on this issue in para 70. In the aforesaid backdrop, I would like to reproduce para 70 of the said decision, which reads thus:-

“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 do 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 the 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 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) A delay in applying for an amendment alone is not grounds for disallowing 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 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)”*

8) A bare perusal of the above observations/conclusions reveals that the Apex Court has held that 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. Also, the Apex Court categorically held that delay in applying for amendment alone is not a ground for disallowing the prayer. The proposed amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

9) In the case at hand, the plaintiff has filed a suit for recovery of Rs.7,47,713/- towards the supply of material and by way of the proposed amendment, the plaintiff wants to rectify the figure of the bills raised by him. The proposed amendment does not change the nature of the suit due to the rectification of the figure. On the contrary, the amendment would help to determine the real controversy between the parties. Moreover, the plaintiff has to prove the said recovery based on the bills, and therefore, in my view, if the proposed amendment is allowed, it certainly would not change the nature of the suit or the relief claimed by the plaintiff.

10) It is evident that the plaintiff has filed the suit to recover the amount, which was claimed under different heads. However, it incorrectly mentions the amount; therefore, he wants to rectify the figure. If the plaintiff is permitted to rectify the figure, then it would not certainly change the nature of the suit, but it would help to determine the real controversy between the parties as the plaintiff has to prove the said recovery based on the documentary evidence. Furthermore, if the amendment is allowed, the defendant can get an opportunity to file an additional written statement. It will not cause prejudice to it.

11) In both the authorities relied upon by the petitioner, the Apex Court has held that if a fresh suit on the amended claim would be barred by limitation on the date of application, then the plaintiff is not entitled to amend the plaint. However, in the case at hand, the plaintiff has filed the suit to recover the amount under different heads and only wants to rectify the figures under the said heads; therefore, in my view, it does not mean that the plaintiff wants to amend the plaint, which is time-barred. Thus, the dictum laid down in the said judgments is not helpful for the petitioner in support of his contention. On the contrary, the dictum laid down in the case of ***Life Insurance Corporation*** (supra) is squarely applicable in the case at hand.

12) Perused the impugned order, wherein learned Judge has observed that the proposed amendment as to the correction of the figure as to bills raised by the plaintiff to the defendant does not change the nature of the suit, therefore, held that the said amendment is nothing but a technical and clerical in the nature, which is necessary to determine the real controversy between the parties. If the amendment is allowed, it would not cause prejudice to the defendant and, therefore, allow the application.

13) In the backdrop above, I have no hesitation in holding that the order passed by the learned Judge is well reasoned and no interference is required. As the petition is bereft of any merit, it stands dismissed. No order as to costs.

Inform the trial Court accordingly.

(ABHAY J. MANTRI, J.)

KOLHE