

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

CIVIL APPLICATION NO.492 OF 2019
IN PUBLIC INTEREST LITIGATION NO. 129 OF 2018

(Anil Wadpalliwar vs. Maharashtra Electricity Regulatory Commission and others)

Office Notes, Office Memoranda of
 Coram, appearances, Court's orders Court's or Judge's orders
 or directions and Registrar's orders.

Shri S.P. Bhandarkar, Advocate for petitioner.
 Shri Rungta, Senior Advocate with Shri R.D. Khade,
 Advocate for respondent no.1.
 Shri S. Dewani, Shri R.H. Chandurkar, Shri Ashish Singh
 and Shri R.R. Pimpalkhute, Advocates for interveners.

CORAM : P.N. DESHMUKH AND
 ROHIT B. DEO, JJ.

RESERVED ON _____:MARCH 6, 2019
PRONOUNCED ON _____:MARCH 25,2019

This application is taken out by respondent no.1 M.E.R.C. for recalling of order dated 14/2/2019 to the extent it grants leave to petitioner to amend the petition, particularly with regards to prayer for penal action to be taken against concerned persons, who are found involved in destruction of public records and for recalling of subsequent order dated 20/2/2019 passed by this Court by which petitioner had sought leave to effect amendment.

2 Shri Rungta, learned Senior Counsel for respondent no.1 M.E.R.C, has submitted that both

the aforesaid orders are passed without hearing respondent Maharashtra Electricity Regulatory Commission. It is also contended that no such oral leave could be allowed for effecting amendment and as such, on this ground, aforesaid orders dated 14/2/2019 and 20/2/2019 be recalled and Civil Application No.376/2019 filed by petitioner for effecting amendment be decided after hearing Counsel for respondent M.E.R.C.

3 In view of submissions advanced, on perusal of record it is revealed that after hearing petitioner substantially, this Court directed respondent M.E.R.C. to place on record a short affidavit stating if hard copies of audio-video footage of past recordings was maintained as indexed database as provided under Regulation 78 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004. This Court also directed that respondent M.E.R.C. should further state if copies of any such recordings are supplied to any of the parties to the proceedings in past on accepting any fee and whether commission will allow videography of its proceedings or public hearing by an individual on payment of charges.

4 On issuing directions as aforesaid, Shri Bhandarkar, learned Counsel for petitioner, orally

sought leave to amend the petition to incorporate prayer for taking penal action against concerned Officers of respondent M.E.R.C., who are found involved in destruction of public records. Considering the fact that such directions were issued to respondent M.E.R.C., leave as sought by petitioner since was found to be reasonable and necessary for passing any such order while deciding the petition finally, leave was granted and matter was posted to 20/2/2019.

5 On 20/2/2019, in spite of petitioner having been granted leave to amend the petition as mentioned in the order dated 14/2/2019, petitioner took out Civil Application No. 376/2019 praying for permission to effect amendment, which application was heard observing therein that this Court vide order dated 14/2/2019 had already granted leave to petitioner to effect amendment to the petition. The application was, therefore, allowed. This Court while allowing that application further observed that since amendment for which permission was sought for was already allowed on 14/2/2019 itself, there was no reason for taking out such application and, therefore, imposed costs of Rs.5000/- while allowing the application.

6 After aforesaid orders are passed,

respondent M.E.R.C. has taken out this application for recalling the same by making submissions as stated above. Shri Rungta, learned Senior Counsel for respondent M.E.R.C., has also submitted that order dated 20/2/2019 was passed in his absence.

7 We do not find any reason to allow this application nor any order was passed without knowledge of respondent M.E.R.C. as record reveals that on 14/2/2019 order was passed in the presence of Shri Runga, learned Senior Counsel, who was assisted by Adv. R.D. Khade. In fact, we note that after issuing necessary directions to respondent M.E.R.C. with regards to supplying certain details of past records, if any maintained and the proceedings or copies thereof, if any are supplied to anyone on accepting fees, leave which was sought by learned Counsel for petitioner for incorporating prayer for penal action to be initiated against concerned Officers of respondent M.E.R.C. and leave sought since was found to be reasonable, same was granted. On 20/2/2019 nothing new has been done by this Court and finding that since leave was already granted on the earlier date, there was no need to file application, the application was allowed by imposing costs of Rs.5000/-. On that date, learned Senior Counsel for respondent though was not present, respondent was represented by Adv. R.D. Khade.

8 In the background of above facts, we do not find that any prejudice at all is caused to respondents, even if such amendment is carried out.

9 At this stage, Shri Rungta, learned Senior Counsel for respondent no.1, has submitted that for the purpose of issue, which is decided as aforesaid, he wants to rely upon law laid down in the case of Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Ltd. (2008)14 SCC 171, Indian Bank vs. M/s. Satyam Fibers (India) Pvt. Ltd. (1996)5 SCC 550, J. Samuel and others vs. Gattu Mahesh and others (2012) 2 SCC 300, Gurudayal Singh and others vs. Rajkumar Aneja and others (2002)2 SCC 445 and Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others (2009)10 SCC 84.

10 We have given our anxious consideration to the enunciation of law in the judgments from which Shri Rungta, the learned senior counsel draws support. We have also considered the written submissions filed on behalf of the M.E.R.C. in support of the application for recall.

11 In *Assistant Commissioner, Income Tax, Rajkot ..vs.. Saurashtra Kutch Stock Exchange Ltd,*

the Hon'ble Supreme Court was considering whether the Income Tax Appellate Tribunal, Gujrat was right in exercising power under sub-section 2 of section 254 of the Act on the ground that there was a mistake apparent from the record. Section 254 which fell for consideration reads thus:

“254. Orders of appellate Tribunal

(1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Appellate Tribunal may, at any time, within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section(1), and shall make such amendment if the mistake is brought to its notice by the assessee or the Assessing Officer;

....

(4) Save as provided in Section 256, orders passed by the Appellate Tribunal on appeal shall be final.

The Hon'ble Supreme Court articulates that core issue is whether non-consideration of a decision of jurisdiction Court (in the factual matrix the Gujrat High Court) or of the Hon'ble Supreme Court can be said to be a mistake apparent from record. The Hon'ble Supreme Court holds that both the Tribunals and the High Court were right in

holding that such a mistake can be said to be a mistake apparent from the record which could be rectified under section 254(2).

12 We are respectfully bound by the enunciation of the Hon'ble Apex Court on the scope and ambit of the term “an error apparent from record”. However, in our opinion, no error was committed in allowing the oral request for amending the prayer clause of the petition. The prayer was made and was allowed in the presence of the learned counsel for M.E.R.C. The backdrop of the prayer is already noted supra. The learned counsel for M.E.R.C. was well aware of the nature of the amendment which the petitioner was permitted to carry out to the prayer clause. The decision cited does not take the case of M.E.R.C. any further. Shri Rungta, the learned senior counsel then relies on the decision of the Hon'ble Apex Court in ***Indian Bank ..vs.. M/s. Satyam Fibres (India) Ltd*** to buttress the submission that where the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. The position of law is well settled. It is always open to the constitutional Court to correct its mistake and recall an order which suffers from a mistake apparent from record. The order of which recall is sought does not suffer from such mistake.

13 Shri Rungta, the learned senior counsel then presses into service the decision of the Hon'ble Apex Court in ***J. Samuel and Others ..vs.. Gattu Mahesh and Others*** and in particular the observations in paragraph 18 thereof which read thus:

“18. The primary aim of the court is to try the case on its merits and ensure that the rule of justice prevails. For this the need is for the true facts of the case to be placed before the court so that the court has access to all the relevant information in coming to its decision. Therefore, at times it is required to permit parties to amend their complaints. The Court's discretion to grant permission for a party to amend his pleading lies on two conditions, firstly, no injustice must be done to the other side and secondly, the amendment must be necessary for the purpose of determining the real question in controversy between the parties. However to balance the interests of the parties in pursuit of doing justice, the proviso has been added which clearly states that:

“....no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

We have no hesitation in recording that the M.E.R.C. is not prejudiced by the order which permits the petitioner to amend the prayer clause of the Public Interest Litigation.

14 The next decision cited is ***Gurdial Singh & Ors..vs.. Raj Kumar Aneja & Ors.*** The Hon'ble Apex Court notes the loose practice prevalent in the subordinate Courts in entertaining and dealing with applications for amendment of pleadings. The observations made are in the context of proceedings under the Punjab Urban Rent Restriction Act, 1949 in which the occupant preferred an application for amendment without specifically setting out which portions of the original pleadings were sought to be deleted and what were the avements which were sought to be added or substituted in the original pleadings. In this factual matrix, the Hon'ble Apex Court notes that what was done was to give a vague idea of the nature of intended amendment and then annex a new written statement to the application to be substituted in place of the original written statement. This practice was deprecated by the Hon'ble Supreme Court by observing that such a course is strange and unknown to the procedure of amendment of pleadings. For reasons articulated supra, we do not think that by permitting the petitioner in the Public Interest Litigation to amend the prayer clause to incorporate a relief that cognizance be taken of the destruction of public record, the M.E.R.C. would suffer any prejudice or would be taken by a surprise. The provisions of the Maharashtra Public Record Act, were referred to in

extenso during the course of hearing. The submission of the petitioner was that the destruction of public record was in unusual and ugly haste. The decision to do away with the audio and video record of the proceedings was taken on 4.9.2018 and the record was immediately destroyed on 5.9.2018. It is in this backdrop that the petitioner argued that destruction of the record without the permission of the competent authority would be a penal offence within the meaning of section 9 of the Maharashtra Public Record Act. M.E.R.C. was therefore well aware of the contentions of the petitioner and the exact nature and extent of the amendment. Shri Rungta then relies on the decision of the Apex Court in ***Revajeetu Builders & Developers ..vs.. Narayanaswamy & Sons & Others*** and in particular on paragraphs 67 to 69 which reads thus:

“67. On critically analyzing 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”.

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

“69. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner”.

For the reasons already articulated, we do not think that any error is committed in permitting the amendment in the Public Interest litigation.

The application for recall of the order dated 14.2.2019 and 20.2.2019 is without substance and is rejected.

JUDGE

JUDGE