IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Supratim Bhattacharya

CO 4125 of 2019

M/S Sova Ispat Alloys (Mega Projects) Ltd.

-vs-

W.B.S.E.D.C.L.

For the Petitioner : Mr. Debdatta Sen
Mr. Prasun Ghosh.

For the Opposite party : Mr. S.S. Koley

W.B.S.E.D.C.L Mr. Tathagata Deb

Delivered On : 20.11.2026

Supratim Bhattacharya, J.:

1. The present civil revisional application under Article 227 of the Constitution of India has been preferred by the petitioner who is the defendant in the Money Suit No. 09 of 2019 (arising out of Money Suit No. 34 of 2014) pending before the Judge, Commercial Court, Asansol, Paschim Barddhaman, being dissatisfied with the Order No. 43 dated 14.11.2019, whereby the learned Trial Judge has allowed an application under Order VI Rule 17 of the Code of Civil Procedure 1908 (hereinafter to be referred to as the said Code) preferred by the plaintiff seeking amendment of the plaint.

2. The learned senior counsel representing the petitioner defendant has submitted that the money suit has been filed seeking recovery of bills

by the West Bengal State Electricity Distribution Company Ltd (hereinafter to be referred to as WBSEDCL).

He has further submitted that the Money Suit has been filed on 22.09.2014 and issues have been framed on 05.03. 2018 and after the framing of the issues, on 24.04.2019 the application under Order VI Rule 17 read with Section 151 of the said Code has been filed.

He has further submitted that there has been no explanation given as to why the plaintiff was prevented from filing the said application earlier.

The learned senior counsel has further submitted that the amount which has been shown to be incorporated through amendment was prevalent at the time of filing of the money suit and that being so the claim is barred by the law of limitation.

He has further submitted that no details have been provided as regards to the additional claim and there is no whisper as regards to delay in payment surcharge.

The Ld. Counsel in addition to the above has submitted that there has been no diligence on behalf of the plaintiff and has reiterated that the claim of original surcharge being time-barred cannot be allowed.

In support of his contention the learned Counsel has relied upon the following authorities which are as follows:

(2008) 14 SCC 632, AIR 2009 SC 1433, (2020) 11 SCC 549, and (***2022) 16 SCC 1***.

The learned senior counsel has time and again reiterated that the amount which has been sought to be incorporated through the

amendment application and which has been allowed is time-barred as such the said amendment ought to have been rejected. The learned senior counsel has also submitted that bank interest is separate from late payment surcharge.

Banking upon the aforementioned submission the learned senior counsel has prayed for setting aside the impugned order and allowing the present civil revision application.

3. *Per contra* the learned counsel representing the opposite party that is WBSEDCL has submitted that in the amount which has been sought to be incorporated through the application seeking amendment there is 'late payment surcharge' which comes into play from the next month of payment and the question of limitation does not arise at all.

The learned counsel further submitted that late payment surcharge is only interest for delayed payment which cannot be assessed earlier, until and unless original payment is made.

The learned counsel has further submitted that in Paragraph 7 of the original plaint the words ' along with accrued bank interest ' is mentioned .

He has further submitted that only the amount has been placed in the amendment application which has been sought to be incorporated and apart from that no new point has been raised.

In support of his contention the learned Counsel has further submitted that the amendment has not changed either the nature or character of the suit and amendment can be allowed at any time even at the stage of trial.

The learned counsel has relied upon Section 56(2) Of the Electricity Act 2003 and has further submitted that the amount which has been sought to be incorporated through the amendment application, are statutory dues as such the question of limitation does not arise at all. The learned counsel has also relied upon the judgment of the Hon'ble Apex Court published at ***(2022) 16 SCC 1***.

4. From the contentions of the Ld. counsels representing the petitioner and the opposite party it transpires that the moot point is as regards to the amount which has been allowed to be incorporated through the amendment application can be allowed or not.

5. In this context the provision laid in the Code of Civil Procedure, 1908 under order VI Rule 17 is placed.

> *"17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties: Provided 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."*

6. From the said provision laid under Order Vi Rule 17 it transpires that the court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as

may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties, provided 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.

7. From the contentions of the learned counsels it transpires that the amount which has been sought to be incorporated is late payment surcharge and the same cannot be assessed earlier unless and until the original claim has been paid.

The Hon'ble Apex Court in catena of judgments has laid that amendment is to be allowed which is not working injustice to the other side and is necessary for the purpose of determining the real question in controversy between the parties. Amendment is not to be allowed in case of any fresh claim in respect of the cause of action which since the institution of the suit has become barred by limitation.

8. In this instant case, in the original plaint in addition to the outstanding dues accrued bank interest has been mentioned and the said amount could not have been assessed at the time of institution of the suit unless and until payment is made. So from the above discussion it is apparent that there will not be any change in the nature and character of the suit because of the seeking of amendment and the issue of lack of due diligence does not come into play.

In this context this Court relies upon a judgment passed by the Hon'ble Apex Court in the case between ***Life Insurance Corporation of India versus Sanjeev Builders Private Limited and another*** published at ***(2022) 16 SCC 1***. In Paragraph 71 of the said judgment the Hon'ble Apex Court has summed up the conclusion by stating that:

> *" ... **71**. Our final conclusions may be summed up thus:*
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> ***71.1.** Order 2 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 2 Rule 2 CPC is, thus, misconceived and hence negatived.*
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> ***71.2.** 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 6 Rule 17CPC.*
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> ***71.3.** The prayer for amendment is to be allowed:*
>
> ***71.3.1.** If the amendment is required for effective and proper adjudication of the controversy between the parties.*
>
> ***71.3.2.** 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 divesting of the other side of a valuable accrued right (in certain situations).

71.4. *A prayer for amendment is generally required to be allowed unless:*

71.4.1. *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.*

71.4.2. *The amendment changes the nature of the suit.*

71.4.3. *The prayer for amendment is mala fide, or*

71.4.4. *By the amendment, the other side loses a valid defence.*

71.5. *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.*

71.6. *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.*

71.7. *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.

71.8. *Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.*

71.9. *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.*

71.10. *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.*

71.11. *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."

9. From the aforementioned judgment it transpires 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 and if the amendment is required for effective and proper adjudication of the controversy between the parties and also to avoid multiplicity of proceedings. Through the said judgment the Hon'ble Apex Court has also opined that in dealing with the prayer for amendment court should avoid hypertechnical approach and is ordinarily required to be liberal specially where the opposite party can be compensated by costs and 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 can be framed separately for decision. The Hon'ble Apex Court has also opined that a court is required to bear in mind the fact that the opposite party could have a chance to meet the case set up in amendment.

Herein also in the present lis the petitioner/defendant shall have the opportunity to raise the issue as regards to delay which is arguable in the present facts and circumstances and the issue of limitation can also be argued at the time of final hearing.

As such the authorities relied on behalf of the petitioner raising the issue of lack of due diligence, bar of amendment of pleadings after the

trial has commenced and the issue of time-barred claim does not come in aid to the petitioner.

10. In addition to the above it is worth mentioning that the amount which has been sought to be incorporated through the amendment is whether time-barred or not can be decided at the time of trial and if the amendment is allowed then only there is scope of adjudication. On the contrary if the said amendment is disallowed at this stage and nipped at the bud then the scope of adjudication as regards to the claim sought to be incorporated being time-barred cannot at all be adjudicated.

11. From the above discussion this Court is of the view that the impugned order seeking amendment of the plaint has been rightly allowed and does not require interference.

12. Hence the present civil revision application being **C.O. No. 4125 of 2019** is **dismissed**

13. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

14. Urgent Xerox certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Supratim Bhattacharya, J.)