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SUPREME COURT

(M. H. BEG,C.J.I. and D. A. DESAI,J.)

M/s. Ganesh Trading Co v. Moji Ram

Civil Appeal No. 1338 of 1977

25.01.1978

CPC, 1908, O. 6 R. 2 – Procedural law – Provisions relating to pleadings – Object of – Procedural law – Is intended to facilitate and not to obstruct the course of substantive justice – Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.[Para 2]

CPC, 1908, O. 6 R. 17, O. 30 R. 1 – Amendment of plaint – Suit for recovery of money based on a promissory note was filed by a firm through a partner – Partnership firm / plaintiff stood dissolved on the date of filing the suit – Suit was instituted by one of the erstwhile partners – Amendment could not be refused as it does not alter the cause of action – It only brings out correctly the capacity of the plaintiff suing – It does not change the identity of the plaintiff who remains the same.

CPC, 1908, O. 6 R. 17 – Principles – Provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them – Even if party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions – The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued. [Para 4]

CPC, 1908, O. 6 R. 17 – Cause of action – Mere failure to set out even an essential fact does not, by itself constitute a new cause of action. – It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there – Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time – But, mere failure to set out even an essential fact does not, by itself constitute a new cause of action – A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit – If any essential fact is lacking from averments in the plaint the cause of action will be defective – In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional

court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings. [Para 5]

Constitution of India, Art. 136 – Appeal by special leave – Against interlocutory orders – As a general rule as per settled practice of this Court does not to interferewith orders of an interlocutory nature, such as one on an application for the amendment of a plaint – Court feels compelled, in order to promote uniform standards and views on questions basic for a sound administration of justice, and, in order to prevent very obvious failures of justice, to interfere even in such a matter in a very exceptional case such as the one now before us seems to us to be. [Para 1]

Mr. V. M. Tarkunde, Sr. Advocate (Mr. O. P. Verma, Advocate with him), for Appellant; Mr. M. B. Lal, Advocate, for Respondent.

(Civil Revn. No. 508 of 1975, D/- 20-4-1977 (Punj. and Har.).)

Judgement

BEG, C. J.:- This appeal by special leave indicates how, despite the settled practice of this Court not to interfere, as a general rule, with orders of an interlocutory nature, such as one on an application for the amendment of a plaint, this Court feels compelled, in order to promote uniform standards and views on questions basic for a sound administration of justice, and, in order to prevent very obvious failures of justice, to interfere even in such a matter in a very exceptional case such as the one now before us seems to us to be.

2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.

3. Order 6, Rule 2 Civil Procedure Code says:

“Every pleading shall contain, and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively, Dates, sums and numbers shall be expressed in figures.”

Order 6, Rule 4 indicates cases in which particulars of its pleading must be set out by a party. And, order 6, rule 6 requires only such conditions precedent to be distinctly specified in a pleading as a party wants to put in issue. Order 6, Roule 5 provides for such “further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading .....”as the Court may order, and “upon such terms, as to costs and otherwise, as may be just.” Order 6, Rule 7, contains a prohibition against departure of proof from the pleadings except by way of amendment of pleadings. After some provisions relating to special cases and circumstances, and for signing, verification and striking out of pleadings, comes Order 6, Rule 17 which reads as follows:

“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.”

4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its ommissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights

accrued.

5. It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly, through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there. the Court will refuse to permit it if it amounts to depriving the party against which a suit is pending of any right which may have accrued in its favour due to lapse of time. But, mere failure to set out even an essential fact does not, by itself. constitute a new cause of action. A cause of action is constituted by the whole bundle of essential facts which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit. If any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could sometime be viewed as equivalent to an introduction of a new cause of action which, cured of its shortcomings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional court fees, which may be payable, or, of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the Courts should, ordinarily, refuse prayers for amendment of pleadings.

6. In the case before us, the appellant-plaintiff M/s. Ganesh Trading Co., Karnal, had filed a suit ‘through Shri Jai Parkash”, a partner of that firm, based on a promissory note, dated 25 August, 1970, for recovery of Rs. 68,000/-. the non-payment of money due under the promissory note was the real basis. The suit was filed on 24th August 1973, just before the expiry of the period of limitation for the claim for payment. The written statement was filed on 5th June, 1974, denying the assertions made in the plaint. It was also asserted that the suit was incompetent for want of registration of the firm and was struck by the provisions of section 69 of the Indian Partnership Act.

7. On 31st August, 1974. the plaintiff filed an amendment application wherein it was state that the plaintiff had “inadvertently omitted certain material facts which are not (now?) necessary to incorporate in the plaint so as to enable the Hon’ble Court to consider and decide the subject-matter of the suit in its true perspective and which it is necessary to do in order to meet ends of justice.” It was explained there that the omission consisted of a failure to mention that the plaintiff firm, Ganesh Trading Co. Karnal, had been actually dissolved on 15th July, 1973, on which date a deed of dissolution of the firm was executed. The Trial Court had refused to allow the amendment by its order dated 8th April, 1975, on the ground that it amounted to the introduction of a new cause of action.

8. On a revision application before the High Court the High Court observed:

“The suit originally instituted was filed on behalf of a firm through one of the partners in the amendment prayed for, a new claim is being sought to be laid on the basis of new facts.”

It examined the new averments relating to the shares of the partners and the execution of the deed of dissolution of the firm on 15th July 1973. It then said:

“It is on the basis of these averments that the title of the suit is sought to be changed from M/s. Ganesh Trading Company, Karnal, through Shri Jai Parkash son of Shri Hari Ram, resident of Railway Road, Karnal, to dissolved firm, through Shri Jai Parkash son of Shri Hari Ram, resident of Railway Road, Karnal, ex-partner of the said firm. It would be seen that the change in the heading of the suit is not being sought merely on the ground of mis-description or there being no proper description, the cause of action remaining the same, but on the other hand, the change in the heading of the plaint has been sought on the basis of the new facts prayed, to be allowed to be averred in the amended plaint, for which new basis has been given alleging the dissolution of the partnership on a date before the suit was filed in the Court.”

9. We are unable to share the view taken by the High Court. The High Court had relied on A. K. Gupta and Sons Ltd. v. Damodar Valley Corporation, AIR 1967SC 96. In that case the

plaintiff had sought a declaration of his rights under the terms of a contract. The suit was decreed. But, as the first appellate Court had reversed the decree on the ground that Sec. 42 of the Specific Relief Act barred the grant of a mere declaratory decree in such a case, the appellant had sought leave, by filing an amendment application in its second appeal before the High Court seeking to add a relief to recover such monies as may be found due to him on proper accounting. By a majority, the view expressed by this Court was that the amendment should be allowed although the Court affirmed the principle that, as a rule, a party should not be allowed, by means of an amendment, to set up a new cause of action particularly when a suit on the new case or cause of action is barred by time.

10. On that occasion, this Court had also referred to Charan Das v. Amir Khan, 47 Ind App 255: (AIR 1921 PC 50) and L. J. Leach and Co. Ltd. v. Jardine Skinner and Co., 1957 SCR 438 :(AIR 1957 Sc 357) to hold that "a different or additional approach to the same facts" could be allowed by amendment even after the expiry of the statutory period of limitation. It had pointed out that the object of rules of procedure is to decide the rights of the parties and not to punish them for their mistakes or short coming. It also said that no question of limitation, strictly speaking, arose in such cases because what was sought to be brought in was merely a clarification of what was already there. It said (at p. 98):

"The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill (1873) 8 CP 107 (116), in a different context, for if it were so, no materiel fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd., 1962-2 All ER 24 and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas.' Dornan v. J. W. Ellis and Co. Ltd., 1962-1 All ER 303. This also means to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time."

11. The High Court had also referred to Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, AIR 1969 SC 1267 but had failed to follow the principle which was clearly laid down in that case by this Court. There, the plaintiff had instituted a suit in the name of Jai Jai Ram Manohar Lal which was the name in which the business of a firm was carried on. Later on, the plaintiff had applied to amend the plaint so that the description may be altered into "Manohar Lal Proprietor Jai Jai Ram Manohar Lal." The plaintiff also sought to clarify paragraph 1 of the plaint so that it may be evident that "Jai Jai Ram Manohar Lal" was only the firm's name. The defendant pleaded that Manohar Lal was not the sole proprietor. One of the objections of the defendant in that case was that the suit by Manoharlal as sole owner would be time barred on 18th July, 1952, when the amendment was sought. In that case, the High Court had taken the hypertechnical view that Jai Jai ram Manohar Lal being "a non-existing person" the Trial Court could not allow an amendment which converted a non-existing person into a "person" in the eye of law so that the suit may not be barred by time. This Court while reversing this hypertechnical view observed (at p. 1269):

"Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake. negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

12. Purushottam Umedbhai and Co. v. Manilal and Sons, (1961) 1 SCR 982:(AIR 1961 SC 325) was a case of a partnership firm where this Court pointed out that Sec. 4 of the Partnership Act uses the term "firm" or the "firm name" as "a compendious description of all the partners collectively." Speaking of the provisions of Order 30, Civil Procedure Code this Court said there (at p. 991 of SCR): (at p. 328 of AIR):

"The introduction of this provision in the Code was an enabling one which permitted partners constituting a firm to sue or be sued in the name of the firm. This enabling provision, however, accorded no such facility or privilege to partners constituting a firm doing business outside India. The existence of the provisions of O. XXX in the Code does not mean that a plaint filed in the name of a firm doing business outside India is not a suit infact by the partners of that firm individually."

13. We think that the view expressed by Narula C. J. in Mohan Singh v. Kanshi Ram (Civil revision No. 533 of 1975 decided on 15-12-1975, reported in 1976 Cur LJ (Civil) p. 135) (Punj) which was dissented from by the Division Bench of the High Court is correct. In that case, the learned Judge had rightly followed the principles laid down by this Court in Jai Jai Ram Manohar Lal, (AIR 1969 SC 1267) (supra) and had also agreed with the view taken in Ippili Satyanarayana v. The Amadalavalasa Cooperative Agricultural and Industrial Society Ltd., AIR 1975 Andh Pra 22 where it held that the defendant was not prejudiced by the amendment of the description at all.

14. In the case before us also, the suit having been instituted by one of the partners of a dissolved firm the mere specification of the capacity in which the suit was filed could not change the character of the suit or the case. It made no difference to the rest of the pleadings or to the cause of action. Indeed, the amendment only sought to give notice to the defendant of facts which the plaintiff would and could have tried to prove in any case. This notice was being given, out of abundant caution, so that no technical objection may be taken that what was sought to be proved was outside the pleadings.

15. We also agree with the view taken by the Nagpur High Court in Agarwal Jorawarmal v. Kasam, (AIR 1937 Nag 314) where Vivian Bose, J., Said (at p. 315):

"It is argued on behalf of the defendants that O. 30, R. 1, Civil P. C. indicates that a suit can be filed in the name of the firm by some of the partners only if the partnership is existing at the date of the filing of the suit. The argument has no force in view of the finding that the firm was not dissolved by reason of the insolvency of one of its partners, But even if it has been dissolved, the effect of dissolution is not to render the firm non-existent. It continues to exist for all purposes necessary for its winding up. One of these is of course the recovery of moneys due to it by suit or otherwise."

16. We think that the amendment sought does not alter the cause of action. It only brings out correctly the capacity of the plaintiff suing. It does not change the identity of the plaintiff who remains the same.

17. The result is that we allow this appeal and set aside the orders of the High Court and the Trial Court. We allow the amendment application and send back the case to the Trial Court. We direct that the Trial Court will now permit the defendant to file such further objections, if any, as the defendant may wish to file within 14 days of the receipt of the record by the Trial Court. It will then proceed to decide the case in accordance with law. Costs to abide the results of the litigation.

Appeal Allowed.