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THE HIGH COURT OF MADHYA PRADESH
M.P. No.1396/2019

(M/s Vallabh Electronics vs. Branch Manager United Bank of India)

Gwalior, Dated : 21.06.2019

Shri Sanjeev Jain, Counsel for the petitioner.

Shri G.K. Agrawal, Counsel for the respondent No.1.

This petition under Article 227 of the Constitution of India has been filed challenging the order dated 7.2.2019 passed by 16th Civil Judge Class I, Gwalior in Civil Suit No.44-A/2016 by which the application filed by the petitioner under Order 6 Rule 17 of CPC for amendment in the plaint has been rejected on the ground that the application has been filed belatedly and the proposed amendment would change the nature of the suit.

2. The necessary facts for the disposal of the present petition in short are that a suit for declaration that the disputed debit entry made by the defendants in the account of the petitioner is bad and the said entry is liable to be deleted as well as the petitioner is entitled for adjustment of the amount which was illegally debited by the respondents.

3. It is submitted by the counsel for the petitioner that on 3.4.2014, the petitioner received a message on his mobile that an amount of Rs.2,52,000/- has been withdrawn from the account of the petitioner and on enquiry the petitioner found that a debit entry was made in the account and the amount was credited to the account of

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one Sameer. It was alleged that the said amount was withdrawn on the basis of forged cheque and thus the respondents and its employees were negligent in performing their duties and there is deficiency in service.

4. It appears that the petitioner filed his affidavit under Order 18 Rule 4 of CPC, however, the cross-examination of the plaintiff's witness has not been begun. The petitioner filed an application under Order 6 Rule 17 of CPC claiming the consequential relief for recovery of Rs. 2,65,000/- which were wrongly debited by the respondents from the account of the petitioner.

5. The said application was opposed by the respondents and the Trial Court by the impugned order has rejected the application on the ground that the it has been filed belatedly and it would change the nature of the suit.

6. Challenging the order passed by the Trial Court, it is submitted by the counsel for the petitioner that in view of Section 34 of the Specific Relief Act, the suit in absence of the consequential relief would not be maintainable and under these circumstances the plaintiff was right in seeking the consequential relief of recovery of Rs.2,65,000/- which was wrongly debited from the account of the petitioner.

7. Per contra, it is submitted by the counsel for the respondent

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that the relief claimed by the petitioner is barred by limitation. The petitioner could have incorporated the relief at the time of presentation of the suit but that was not done and the relief for recovery of Rs.2,65,000/- has been made after expiry of limitation of three years and thus a valuable right has already been created in favour of the respondents which cannot be taken away by allowing the amendment in the plaint.

8. Heard the learned counsel for the parties.

9. The first question for consideration is that whether the relief claimed by the petitioner is time barred or not? Admittedly, the application for amendment has been filed after the period of three years from the date of filing of the suit. The plaintiff in his plaint had sought a declaration that the amount so debited by the respondents from the account of the petitioner is liable to be adjusted. Thus it cannot be said that the petitioner had already abandoned his claim of recovery of money. In fact the claim of money was already in substance in plaint though was not formally made. The petitioner in spite of recovery of an amount of Rs.2,65,000/- has sought relief for adjustment of the amount, therefore, this Court is of the considered opinion that by seeking amendment the petitioner has not tried to set up a new case but the relief claimed by the proposed amendment was already in substance in another form.

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10. The Supreme Court in the case of **A.K. Gupta and Sons vs. Damodar Valley Corporation** reported in **AIR 1967 SC 96** has held as under:-

"8. The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith, (1984) 26 Ch D 700 (710-711)*) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended (*Kisandas Rupchand v. Rachappa Vithoba, (1909) ILR 33 Bom 644 at p. 651, approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda, 1957 SCR 595 (603): (AIR 1957 SC 363 at p. 366).*"

11. In the present case, the question for determination is that whether an amount of Rs.2,65,000/- was rightly debited from the account of the petitioner/plaintiff on the basis of a cheque or not? By the proposed amendment the petitioner is seeking further relief which does not require to prove any further which was not pleaded in the plaint.

12. So far as the delay in making the application for amendment of plaint is concerned, it is well established principle of law that mere delay cannot be a ground for rejection of the application unless and until a serious prejudice is caused to the defendants.

13. The Supreme Court in the case of **Estralla Rubber vs. Dass**

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Estate (P) Ltd. reported in (2001) 8 SCC 97 has held as under:-

"8. It is fairly settled in law that the amendment of pleadings under Order 6 Rule 17 is to be allowed if such an amendment is required for proper and effective adjudication of controversy between the parties and to avoid multiplicity of judicial proceedings, subject to certain conditions such as allowing the amendment should not result in injustice to the other side; normally a clear admission made conferring certain right on a plaintiff is not allowed to be withdrawn by way of amendment by a defendant resulting in prejudice to such a right of the plaintiff, depending on the facts and circumstances of a given case. In certain situations, a time-barred claim cannot be allowed to be raised by proposing an amendment to take away the valuable accrued right of a party. However, mere delay in making an amendment application itself is not enough to refuse amendment, as the delay can be compensated in terms of money. Amendment is to be allowed when it does not cause serious prejudice to the opposite side. This Court in a recent judgment in *B.K. Narayana Pillai v. Parameswaran Pillai* after referring to a number of decisions, in para 3 has stated, thus: (SCC p. 715)

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the

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costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation.”

In para 4 of the same judgment this Court has quoted the following passage from the judgment in *A.K. Gupta and Sons Ltd. v. Damodar Valley Corpn.*: (AIR pp. 97-98, para 7)

“The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal*. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See *Charan Das v. Amir Khan* and *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.*”

This Court in the same judgment further observed that the principles applicable to the amendment of the plaint are equally applicable to the amendment of the written statement and that the courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event. It is further stated that the defendant has a right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice and that any admission made in favour of the plaintiff conferring right on him is not withdrawn.”

14. As already observed, cross-examination of the plaintiff witness has not begun, therefore, no prejudice would be caused to the

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respondents, if the amendment sought by the petitioner is allowed, otherwise the suit filed by the petitioner may be dismissed as not maintainable in absence of consequential relief.

15. Accordingly, this Court is of the considered opinion that the Trial Court has committed a material mistake by rejecting the application filed by the petitioner under Order 6 Rule 17 of CPC.

16. Accordingly, the order dated 7.2.2019 passed by 16th Civil Judge Class I, Gwalior in Civil Suit No.44-A/2016 is hereby set aside. The application filed by the petitioner under Order 6 Rule 17 of CPC for amendment in the plaint is hereby allowed. Let necessary amendment be carried out within the stipulated period so fixed by the Trial Court. The defendants if so advised may also file an application for consequential amendment in the written statement.

17. The petition succeeds and is hereby **allowed**.

(alok)

(G.S. Ahluwalia)
Judge