

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3295 OF 2012

(Arising out of S.L.P. (Civil) No. 27961 of 2010)

Rameshkumar Agarwal

.... Appellant(s)

Versus

Rajmala Exports Pvt. Ltd. & Ors.

.... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

- 1) Leave granted.
- 2) This appeal is directed against the final judgment and order dated 08.06.2010 passed by the High Court of Judicature at Bombay in Appeal No. 40 of 2010 in Chamber Summons No. 1233 of 2008 in Suit No. 2374 of 2007 whereby the High Court disposed of the appeal filed by the appellant herein by partly allowing Chamber Summons No.

1233 of 2008 filed by respondent No.1 herein for amendment in the plaint.

3) Brief facts:

(a) The property (Bungalow) in question was constructed by the late Ganpatrai Agarwal, father of the appellant herein. Vipin Kumar Agarwal, respondent No.4 is the brother of the appellant. The land on which the said bungalow is constructed is a leasehold property and belongs to Hatkesh Co-operative Housing Society Limited (hereinafter referred to as "the Society"). The Society granted leasehold rights in respect of the said plot by indenture of lease dated 22.02.1976. The mother of the appellant passed away in 1991 and his father also passed away in 2002. After the death of the parents, the appellant holds 50% share in the suit property and his brother, respondent No.4 herein, also holds remaining 50% share in the suit property.

(b) According to the appellant, in the year 2002, for setting up a new business, he was in need of substantial finance and for that purpose, he approached respondent No.1-Company through its Director Mr. Rajendra Kumar Aggarwal, who is his

co-brother. Respondent No.2 agreed to finance the proposed projects on the condition that some documents are required to be executed as security. In 2006, the appellant signed an agreement with the Company promising to give his share in the bungalow as a security for the loan. The said agreement was to be acted only when the Company will give an advance loan of Rs.1,85,00,000/- and further upon failure of the appellant to repay the same within a period of two years from the date of disbursement of the full amount of loan with interest @ 12% p.a. Even before getting the loan amount, the appellant herein signed the agreement. Due to adverse market conditions, the appellant did not go ahead with the proposed project and did not take any kind of financial assistance from respondent No.1 - Company and respondent No.2 - co-brother of the appellant.

(c) According to respondent No.2, the appellant signed an agreement for sale on 02.02.2006 for selling 50% of his undivided right, title and interest in the suit property. On 16.08.2007, respondent No.1-Company filed a suit for specific performance being Suit No.2374 of 2007 before the

High Court of Bombay alleging that the appellant herein had agreed to sell his 50% share in the suit property to the Company for a consideration of Rs.1,85,00,000/- and also alleged that the appellant ensured that respondent No.4 – the brother of the appellant would sell his 50% undivided share in the property to the Company for Rs.3,00,00,000/- and represented him as an agent of respondent No.4. On 06.09.2007, respondent No.1 – Company took out Notice of Motion No.3241 of 2007 in which an ex-parte *ad interim* order was passed in their favour.

(d) The appellant herein sent a letter dated 10.09.2007 through his advocate to respondent Nos. 1 & 2 for seeking details of the consideration of Rs.1,85,00,000/- and also for inspection of various documents referred to and relied on by them in the plaint as well as in the Notice of Motion. After inspecting the documents, the appellant filed a reply and prayed for vacating of the ex-parte *ad interim* order dated 06.09.2007. After hearing the parties, the High Court, by order dated 26.11.2007, vacated the ex-parte *ad interim* order. On 20.08.2008, respondent No.1-Company took out

Chamber Summons No. 1233 of 2008 in Suit No. 2374 of 2007 with a prayer to amend the plaint by impleading other parties. The appellant herein opposed the same. However, by order dated 21.11.2009, learned Single Judge of the High Court partly allowed the Chamber Summons.

(e) Against the order dated 21.11.2009, the appellant herein preferred an appeal before the Division Bench being Appeal No. 40 of 2009 in Chamber Summons No. 1233 of 2008 in Suit No. 2374 of 2007. By the impugned order dated 08.06.2010, the Division Bench of the High Court dismissed the appeal.

(f) Aggrieved by the said order of the High Court, the appellant has filed this appeal by way of special leave before this Court.

4) Heard Mr. Shekhar Naphade, learned senior counsel for the appellant, Mr. Gaurav Agrawal, learned counsel for respondent Nos. 1-3 and Mr. Vinay Navare, learned counsel for respondent No.4.

5) After filing a suit for specific performance in the year 2007, the plaintiff filed Chamber Summons No. 1233 of 2008

for amendment of plaint for impleadment of two parties as plaintiff Nos. 2 & 3 and three parties as defendant Nos. 3,4 & 5 apart from the fact that he wants to explain how money was paid. A perusal of the amendment application shows that plaintiff by this amendment seeks to incorporate certain facts, which according to him, establish that an aggregate amount of Rs. 2,05,00,000/- was paid by him and the proposed plaintiffs prior to the suit agreement; that defendant No.1 confirmed having received the payment from the plaintiffs in the name of his nominees, namely, proposed defendant Nos. 3-5 and the receipt of the amount was reflected in the accounts of proposed defendant Nos. 3-5. It is also projected that the proposed amendment is limited to the extent of contending that defendant Nos. 1 and 2 and the proposed defendants treated the payment made by the plaintiffs to defendant Nos.3 to 5 as payment having been made to defendant No.1. Though the appellant herein - defendant No.1 therein, contended that the proposed amendment altered the cause of action, after perusal of the entire averments, we are of the view that it

merely introduce facts/evidence in support of the contention already pleaded, viz., that the entire consideration under the agreement has been paid. In the original plaint, the details of payment of consideration have not been stated and by the present amendment, the plaintiff wants to explain how money was paid. Accordingly, there is no inconsistency in the case of the plaintiff. The claim that the present amendment being barred by limitation is also rightly rejected by the Courts below. In fact, the learned single Judge allowed the Chamber summons only to the extent of prayers (a) and (b) subject to clarification made in paragraph 14 of his order.

6) Order VI Rule 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the Code") makes it clear that every pleading shall contain only a statement in a concise form of the material facts on which the party pleading relies for his claim or defence but not the evidence by which they are to be proved. Sub-rule (2) of Rule 2 makes it clear that every pleading shall be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient,

contained in a separate paragraph. Sub-rule (3) of Rule 2 mandates that dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

7) Order VI Rule 17 of the Code enables the parties to make amendment of the plaint which reads as under;

“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.”

8) Order I Rule 1 of the Code speaks about who may be joined in a suit as plaintiffs. Mr. Shekhar Naphade, learned senior counsel for the appellant, after taking us through the agreement for sale dated 02.02.2006, pointed out that the parties to the said agreement being only Rameshkumar Agarwal, the present appellant and Rajmala Exports Pvt. Ltd., respondent No.1 herein and the other proposed parties, particularly, Plaintiff Nos. 2 & 3 have nothing to do with the contract, and according to him, the Courts below have

committed an error in entertaining the amendment application. In the light of the said contention, we have carefully perused the agreement for sale dated 02.02.2006, parties to the same and the relevant provisions from the Code. We have already pointed out that the learned single Judge himself has agreed with the objection as to proposed defendant Nos. 3-5 and found that they are not necessary parties to the suit, however, inasmuch as the main object of the amendment sought for by the plaintiff is to explain how the money was paid, permitted the other reliefs including impleadment of plaintiff Nos. 2 & 3 as parties to the suit.

9) In ***Rajkumar Gurawara (Dead) Through L.Rs vs. S.K. Sarwagi & Company Private Limited & Anr.*** (2008) 14 SCC 364, this Court considered the scope of amendment of pleadings before or after the commencement of the trial.

In paragraph 18, this Court held as under:-

“.....It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.....”

10) In **Revajeetu Builders & Developers** vs. **Narayanaswamy & Sons & Ors.** (2009) 10 SCC 84, this Court once again considered the scope of amendment of pleadings. In paragraph 63, it concluded as follows:

“Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

11) It is clear that while deciding the application for amendment ordinarily the Court must not refuse *bona fide*, legitimate, honest and necessary amendments and should

never permit *mala fide* and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

12) In view of the fact that the amendment application came to be filed immediately after filing of the suit (suit came to be filed in 2007 and the amendment application was in 2008) i.e. before commencement of the trial and taking note of the fact that the learned single Judge confined the relief only to a certain extent and also that in the proposed amendment the plaintiff wants to explain how the money was paid, though necessary averments in the form of foundation have already been laid in the original plaint, we

hold that by this process the plaintiff is not altering the cause of action and in any way prejudice defendants.

13) By the present amendment, the plaintiff furnished more details about the mode of payment of consideration. Accordingly, we hold that there is no inconsistency and the amendment sought for is not barred by limitation. We fully agree with the conclusion arrived at by the learned single Judge and the Division Bench of the High Court.

14) In the light of what we have stated above, we do not find any merit in the appeal, consequently, the same is dismissed. No order as to costs.

JUDGMENT.....J.
(P. SATHASIVAM)

.....J.
(J. CHELAMESWAR)

NEW DELHI;
MARCH 30, 2012.