

(2001) 02 KL CK 0057

High Court Of Kerala

Case No: C.R.P. No's. 128 and 132 of 1991

Varghese

APPELLANT

Vs

K.S.E.B.

RESPONDENT

Date of Decision: Feb. 1, 2001

Acts Referred:

- Arbitration Act, 1940 - Section 20
- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 115

Citation: (2002) 1 CivCC 683 : (2001) 2 ILR (Ker) 559

Hon'ble Judges: T.M. Hassan Pillai, J; P.K. Balasubramanyan, J

Bench: Division Bench

Advocate: M.P. Abraham, for the Appellant; S. Ramesh Babu, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.K. Balasubramanyan, J.

On 10.11.2000 we disposed of these revisions. Thereafter it was brought to our notice that the revision petitioner was dead when we heard the revisions. We have reopened the matter and allowed the applications for impleading the legal representatives after condoning the delay and after setting aside the abatement. We have thereafter heard the revisions afresh and we are disposing of these revisions by this order.

2. Two suits were filed by a contractor against the Kerala State Electricity Board seeking the relief of accounting on the averment that there was a breach of contract committed by the Kerala State Electricity Board which has resulted in damages to the plaintiff and he is entitled to have an accounting, the determination of the amount due to him and a decree for the same. His plea in support of the claim for accounting was that reciprocal rights and obligations were cast on the parties by the

terms of the agreement and therefore he was entitled to have an accounting and a decree for the amount found due on such accounting. Subsequently, he sought an amendment of the plaint by substituting a prayer for recovery of damages in the place of the prayer for accounting. This was in view of the view expressed by this Court in a decision that in such circumstances, a contractor placed in the same situation as the plaintiff in this case, could not maintain a suit for accounting. The application was opposed by the Kerala State Electricity Board. The trial court took the view that the basis for a suit for accounting was entirely different from the basis for a suit for damages on breach of contract and hence such an amendment cannot be allowed. The trial court relied on the decision in *Retnakaran v. Vengoor Panchayat* (1988 (2) KLT 864). The plaintiff challenged the orders refusing amendment in the two suits before this Court in these Revisions. The plaintiff relied on the view expressed by the learned Judge in the order in C.R.P. 2482 of 1988, who had earlier decided *Retnakaran v Vengoor Panchayat* (1988 (2) KLT 864) in support of his plea that an amendment as sought for can be allowed. The learned Single Judge before whom the Revisions came up, felt that there was a conflict in the views expressed by the same learned Judge in Ratnakaran's case and in C.R.P. 2482 of 1988 and referred these Revisions to a Division Bench for decision. That is how these Revisions have come up before us.

3. Pending the revisions, the petitioner died and the legal representatives have been impleaded.

4. The view taken in Retnakaran's case is on the basis that a suit for accounting is founded on a plea of a set of facts that are different from a plea that can support a claim for recovery of damages on the ground of breach of contract. But, in the subsequent decision in C.R.P. 2482 of 1988, the learned Judge refused to interfere with an order passed by the trial court in a similar case allowing an amendment of the prayer in the plaint to convert the suit for accounting into one for recovery of damages on the ground of breach of contract. In our view, the cause of action for accounting and the cause of action for damages alleged to have been incurred by the plaintiff in these cases, arises out of the same transaction and is based on a plea that is a breach of contract by the defendant. As a matter of fact, all that it will amount to is that while filing the suit originally, the plaintiff had sought the wrong relief based on the cause of action that he had put in suit and what he had sought to do is to correct that error by incorporating the proper relief which he can claim based on the same cause of action, namely breach of contract.

5. A suit for accounting is a suit as recognised by the Code of Civil Procedure. As clarified by the Supreme Court in *P.A. Ahammed Ibrahim Vs. The Food Corporation of India*, what is taboo is the amending of a claim or a proceeding which is not a suit stricto sensu, or as understood by the Code of Civil Procedure, into a suit for a specified relief. In that case, a suit originally filed under S. 20 of the Arbitration Act, was sought to be amended into one for recovery of damages on the breach of

contract on the basis that the cause of action that would support the plea for compelling arbitration, was the breach of contract on which the claim for relief of damages could be rested. The trial court disallowed the amendment on the ground that the suit under S. 20 of the Arbitration Act was not a suit within the meaning of the Code of Civil Procedure. The learned Single Judge in this Court took the view that since the jurisdiction of the court to decide the dispute arising out of a contract which contains an arbitration clause is not ousted merely because the parties have contracted to refer the dispute to arbitration, the court could always allow an amendment seeking to invoke its jurisdiction to decide the dispute between the parties, by itself. But the Supreme Court on appeal, took the view that a suit under S. 20 of the Arbitration Act is something that arises before the institution of a suit and since the proceeding under S. 20 of the Arbitration Act is not a suit as understood by the Code of Civil Procedure, the amendment sought for cannot be allowed. That is not the position in a case where a plaintiff files a suit for accounting on the basis that there has been a breach of contract by the other party and an accounting has to be resorted to, in view of the fact that there are reciprocal obligations imposed on the parties by the contract and the amount due has to be determined by a process of accounting and he subsequently seeks an amendment of that plaint based on the same cause of action of breach of the contract, to claim a specified sum by way of damages. The suit originally filed is also a suit *stricto sensu* arising out of the same cause of action, namely, the alleged breach of contract and the subsequent amendment is only a correction of the relevant prayer in the plaint based on the same cause of action, namely the alleged breach of contract. We see no objection in the court allowing such an amendment.

We are therefore of the view that the trial court has failed to exercise the jurisdiction vested in it by law in refusing the prayer for amendment of the plaint. We therefore set aside the orders of the trial court and allow the application for amendment. It is needless to say that the defendant would be entitled to file an additional written statement putting forward whatever contentions it may have, to the amended claim.

The Civil Revision Petitions are thus allowed.