

(1993) 11 MP CK 0010

Madhya Pradesh High Court (Gwalior Bench)

Case No: C. Rev. No. 216 of 1993

Chandra Kumar  
Phulbadhiya

APPELLANT

Vs

Jaidev Nainani and  
Others

RESPONDENT

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Date of Decision: Nov. 9, 1993

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17
- Limitation Act, 1963 - Article 54
- Specific Relief Act, 1963 - Section 10

Citation: (1994) 39 MPLJ 300 : (1994) MPLJ 300

Hon'ble Judges: R.C. Lahoti, J

Bench: Single Bench

Advocate: S.S. Bansal, for the Appellant;

Final Decision: Dismissed

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### Judgement

@JUDGMENTTAG-ORDER

R.C. Lahoti, J.

The plaintiff/petitioner has come up in revision feeling aggrieved by an order of the trial Court directing his application under Order 6, Rule 17, CPC seeking amendment in the plaint to be rejected.

It appears that the plaintiff has in his favour an agreement dated 12-3-1985 to sell the suit property executed by the defendant/non-petitioner. The time limited for performance of the agreement was till 7- 6-1985. In the year 1991, the plaintiff apprehending a breach of the agreement by the defendants filed a suit seeking merely a declaration of agreement in his favour and an injunction restraining breach thereof. The relief of specific performance of contract was not prayed for. On

29-6- 1992, the plaintiff moved an application for amendment of the plaint so as to incorporate the necessary pleadings and relief of specific performance. The trial Court formed an opinion that the proposed amendment not only changed the nature of the suit, but the relief sought to be introduced was barred by time on the date of moving the application and hence the amendment did not deserve to be allowed.

The learned counsel for the petitioner submitted that even if the amendment changed the nature of the suit, it should have been allowed because the basic facts would remain the same as were alleged in the original plaint. It is also submitted that between 15-7-1987 and 16-3-1992 the plaintiff was prosecuting proceedings before the Registrar of Co- operative Societies seeking a relief of specific performance, which proceedings terminated against the plaintiff/petitioner for want of jurisdiction with the Registrar and the time spent in prosecuting those proceedings was liable to be excluded from limitation for filing the suit for specific performance before the civil Court.

Such a contention on the point of limitation as has been raised before this Court was not raised before the trial Court. Still accepting the correctness of dates stated at the Bar by the learned counsel for the petitioner, the relief of specific performance had stood barred by time on the date on which the plaintiff moved the application before the Court.

In the leading cases of [L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.,](#) and [Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others,](#) it has been held that Courts would not permit amendment setting up a fresh claim which since the institution of the suit had become barred by time because that would take away a valuable right accrued to the other party by lapse of time and allowing amendment would cause the defendant an injury incapable of being compensated by costs.

The view taken by the trial Court cannot be faulted. Though the learned counsel for the petitioner has placed reliance on an unreported Single Bench Decision of this Court in Niranjan Kumar v. New Bank of India, 1993-II MPWN 56, but that case is not applicable to the facts of the present case. Therein an amendment in a money suit was allowed. The claim sought to be introduced by amendment was barred by time. However, this Short Note does not show the Court having formed a positive opinion on the plea of limitation. The trial Court had allowed the amendment protecting the right of the defendant to raise the plea of limitation in defence. The Court below had also expressed an opinion that in spite of the amendment having been allowed, the claim would be liable to be dismissed at the stage of final decision, if found barred by time. The High Court did not interfere with the discretion exercised by the trial Court. Such is not the case here.

During the course of dictation of the order, the learned counsel for the petitioner brought to the notice of the Court a Supreme Court decision published as a Short

Note in *Gajanan Jaikishan Joshi v. Prabhakar Mohanlal* 1990 1 MP 117, wherein two Supreme Court decisions of 1957 have been considered and explained. In *Gujanan's* case (*supra*) the suit was for specific performance of an agreement, but the averment as to readiness and willingness of the plaintiff was missing from the pleadings. In the written statement an objection as to non-maintainability of the suit was raised for non-compliance with the provisions of Section 16(c) of the Specific Relief Act. A preliminary issue was framed. At that stage, the plaintiff sought for leave to amend the plaint by incorporating an averment as to readiness and willingness of the plaintiff to perform his part of the agreement. Their Lordships observed that no new cause of action was being introduced by amendment and the plaintiff was merely trying to complete the cause of action already pleaded.

In the case at hand, the plaintiff had sued merely for declaration and injunction without seeking relief of specific performance. He is for the first time converting his suit into a suit for specific performance and the date on which the amendment has been applied for, the limitation for filing the suit for specific performance had already expired. *Gajanan's* case (*supra*) does not, therefore, help the petitioner.

For the foregoing reasons, the revision is meritless. It is dismissed without notice to the/other side.