

Monmohan Rakshit Vs Dominion of India

Original Suit, No. 2170 of 1949

Court: Calcutta High Court

Date of Decision: April 15, 1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 6 Rule 17, 152, 153, 48, 80#Limitation Act, 1963
" Article 181#Railways Act, 1989 " Section 77

Citation: (1958) 2 ILR (Cal) 156

Hon'ble Judges: G. K. Mitter, J

Bench: Single Bench

Advocate: S. Sinha, for the Appellant; Sankar Ghosh, for the Respondent

Final Decision: Allowed

Judgement

G. K. Mitter, J.

This is an application for amendment of a plaint. The suit was filed in 1949 claiming damages alleged to have been suffered

by reason of delay in delivery of a consignment of potatoes. Delivery of the goods was to be had at Shalimar, outside the jurisdiction of this Court,

but the plaint contains an averment that notices u/s 77 of the Railways Act and Section 80 of the CPC were served within such jurisdiction and

leave was obtained under Clause 12 of the Letters Patent enabling the Plaintiff to file the suit in this Court. The Plaintiff who claimed to be the

endorsee for value of the Railway receipt covering the goods, now seeks to amend his plaint by pleading that the said railway receipt was

endorsed by the Imperial Bank of India at Nos. 1-3 Strand Road, Calcutta, within the jurisdiction of this Court.

2. The amendment is opposed on the ground that the application is barred under the provisions of Article 181 of the Limitation Act which governs

all applications for which no period of limitation is provided elsewhere in the Schedule to the Act or by Section 48 of the Code of Civil Procedure.

Under the said Article the said period commences when the right to apply accrues. It is contended that all applications for amendment of pleadings

are made under the CPC and as such are governed by the said Article unless they are covered by any other specific Article. Order 6, Rule 17, of

the CPC which governs the rights of the parties to have their pleadings amended is couched in the following words:

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

(2) such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties.

It is significant to note that the provision is not like that contained in Sections 152 and 153 of the Code which empowers the Court to order certain

amendments ""at any time"" and this expression has been interpreted to mean that no period of limitation is applicable to the doing of such acts.

It was also argued on behalf of the Respondent, though not in a very clear form, that the right to apply for amendment of a party's own pleading

accrues as soon as the pleading is put on record. In other words, a party could, if he chose, apply for amendment of his pleading as soon as it was

filed and, therefore, he ought to be held debarred from making such applications after the lapse of three years from the date of filing his first

pleading.

3. Reliance was placed on the case of Subbarayan v. Natarajan ILR (1922) Mad. 785. and specially to the judgment of Ramesam, J", at p. 795

where the learned Judge observed that the phrase ""period of limitation"" can be used in two senses, (1) a strict sense and (2) a loose sense. On

behalf of the applicant, Mr. Sinha the learned advocate for the applicant, drew my attention to the judgment in Koer Durag Pal Singh Vs. Th.

Pancham Singh and Others, and Kundaswami Pillai v. Kamrappa Chetty AIR (1952) Mad. 186 (F.B.). where the above Madras judgment has

been rather severely criticised.

4. In my view the above judgments are not much in point. The CPC by Order 6, Rule 17, gives the party right of amendment at any stage of the

proceedings, that is to say, before the trial, at the trial or even before a court of appeal so long as the matter is not finally disposed of In this

connection referees may be made to the recent judgment of the Supreme Court in L.J. Leach and Company Ltd. v. Jardine Skinner and Company

Ltd. (1957) S.C.A. 318. Amendment by correction of the name of a party even after the period of limitation was allowed in the English case of

Challinor v. Rkoder Ors. (1885) I.T.L.R. 527. It should be noted that the provisions of Order 28, Rule 11, of the rules of the Supreme Court in

England are exactly the same as those in Order 6, Rule 17, of the Code of Civil Procedure.

5. This, however, does not mean that a party is at liberty to amend his pleading at any time irrespective of the law of limitation. Under the

corresponding rules of the supreme Court in England, it has been held that:

6. However negligent the first omission and however late the proposed amendment, the amendment should be allowed if it can be allowed without

in justice to the other side, per Lopes, L. J. in *Weldon v. Neal* (1887) 19 Q.B.D. 394, 396., but His Lordship refused to allow the amendment on

the ground and that ""The effect of ""allowing the amendments sought for would be to take away from ""the Defendant the defence under the Statute

of Limitation and, ""therefore, unjustly prejudice the Defendant."" Similar observations are to be found in numerous Indian decisions and it has been

held time and again that where by an alteration of the pleading a party seeks to introduce a new cause of action which would be barred if a fresh

plaint were allowed to be filed, such amendment ought not to be allowed. But short of the above or unless the amendment was such that the

opponent resisting it could not be compensated for by costs, it is the practice of all Courts to allow amendments whenever asked for in the

interests of justice.

7. It is well-known that for several decades the legislature has dealt with the CPC at the same time as the Limitation Act. Das, J. pointed out in

Talmukund Marwari v. Basanta Kvmari Dassi ILR (1924) Pat. 371. that the two statutes are in *pari materia* and are to be taken together as

forming one system. When, therefore, the CPC lays down in Sections 152 and 153 that certain things can be done at any time, it is not right to

hold that these things must be done within three years when the right to apply in that behalf arises. Similarly, when in Order 6 Rule. 17, the Court is

given a power to allow amendment at any stage of the proceedings, it must be held that such right accrues from day to day until the final disposal of

the matter subject to the conditions already specified and does not come to end after three years of the filing of the original pleading. In this view of

the matter, as there is no change in the nature of the cause of action sought to be introduced by the amended plaint, I think there is no substance in

the contention put forward on behalf of the Defendant and the application must be allowed. There will be an order in terms of prayers (a) and (b)

of the summons, but the applicant must pay the costs of this application to the Respondent. Certified for Counsel.