Shanti Kumar R. Canji

Vs

The Home Insurance Co. of New York

Civil Appeal No. 1991 of 1971

(CJI A. N. Ray, K. K. Mathew JJ)

24.07.1974

JUDGMENT

RAY, C.J. -

1. This is an appeal by certificate from the judgment dated March 29, 1971 of the High Court of Bombay.

2. The appellant filed this suit on September 2, 1964 in the High Court of Bombay and claimed six months salary in lieu of notice and gratuity for 16 years of service.

3. In the year 1965 the appellant asked for discovery by the respondent of documents relating to pension scheme for foreign employees. The application for discovery was dismissed in the month of November, 1965.

4. On December 16, 1969 the appellant took out a Chamber Summons for amendment of the plaint. The proposed amendments were two-fold. The first set of amendment related to averments in support of the claim for gratuity which had already been alleged in the plaint. The second set of amendment related to averments in support of a claim for Rs. 850 per month by way of pension as and from February 1, 1964 during the life time of the appellant.

5. By an order dated January 19, 1970 the appellant was allowed to amend the plaint in respect of the claim for gratuity. The appellant's proposed amendment in support of the claim for pension was refused.

6. By summons dated April 27, 1970 the appellant sought an amendment of the plaint claiming Rs. 68,000 as damages in relation to his right to pension. By an order dated July 6, 1970 the appellant was allowed to amend the plaint as prayed for.

7. The respondent preferred an appeal against the order dated July 6, 1970. The High Court by judgment dated March 29, 1971 allowed the appeal and set aside the order dated July 6, 1970 allowing the amendment.

8. The appellant repeated the contentions which had been advanced before the High Court. First, it was said that no appeal could lie against an order of amendment because it was not a judgment within the meaning of Clause 15 of the Letters Patent. Secondly, it was said that an order allowing the amendment was discretionary order. Therefore, the appellate Court should not have interfered with the discretion.

9. Counsel for the appellant submitted that 'judgment' means a decision finally adjudicating the rights between the parties. It was emphasised that a judgment would be a decision on substantive rights of parties. 'Amendment' was submitted to be a procedural right. Counsel for the appellant relied on the decisions in Dayabhai v. Murugappa Chettiar ((1935) ILR 13 Rang 457 : AIR 1935 Rang 267) and Manohar v. Baliram (ILR 1952 Nag 471 : AIR 1952 Nag 357) in support of the proposition that 'judgment' means and is a decree in a suit by which the right of the parties in the suit are determined.

10. The locus classicus is the decision of the High Court of Calcutta in Justice of the Peace for Calcutta v. Oriental Gas Company ((1872) 8 Bengal LR 433) where Sir Richard Couch, C.J. said :

We think that 'judgment' means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined.

11. This Court in Asrumati Debi v. Kumar Rupendra Deb Raikot (1953 SCR 1159) dealt with the question as to whether an order of transfer of a suit filed in the Jalpaiguri Court to the High Court to be tried in its Extra ordinary Original Civil Jurisdiction was a judgment within the meaning of Clause 15 of the Letters Patent. It was held that an order for transfer of a suit is not a judgment within the meaning of Clause 15 of the Letters Patent as it neither affects the merits of the controversy between the parties in the suit itself nor terminates or disposes of the suit on any ground.

12. This Court in Asrumati Debi's case (supra) said that a judgment within the meaning of Clause 15 of the Letters Patent would have to satisfy two tests. First, the judgment must be the final pronouncement which puts an end to the proceeding so far as the court dealing with it is concerned. Second, the judgment must involve the determination of some right or liability though it may not be necessary that there must be a decision on the merits. In this context this Court referred to observation of the Full Bench of the High Court of Madras in Tuljaram v. Alagappa (ILR 35 Mad 1). The text formulated by the Madras decision is not the form of the adjudication] but its effect on the suit or proceeding in which it is made. The Madras High Court said :

If the effect is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment.

It may be stated here that the Madras High Court spoke of 'judgment' on an application in a suit. The decision of the Madras High Court in Tuljaram's case (supra) was on an order for transfer of a suit under Clause 13 of the Letters Patent.

13. This Court also noticed the view expressed by the Madras High Court in Tuljaram's case (supra) that adjudication on an application, which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of the Letters Patent. In Asrumati Debi's case (supra) this Court noticed the argument advanced that if an order refusing to rescind leave to sue granted under Clause 12 of the Letters Patent was a 'judgment' under Clause 15 of the Letters Patent there was no difference in principle between an order of that description and an order transferring the suit under Clause 13 of the Letters Patent. This court did not express an opinion

excepting observing that if leave under Clause 12 of the Letters Patent was rescinded, the suit would come to an end and if an order was made refusing to rescind the leave the result would be on a vital point adverse to the defendant and it would go to the root of the suit and become final and decisive against the defendant so far as the Court making the order was concerned.

14. In finding out whether any decision is a judgment within the meaning of Clause 15 of the Letters Patent each case must be looked into in order to find out as to whether there is a decision determining the right or liability of the parties affecting the merits of the controversy between the parties. It is in that light that this Court in Asrumati Debi's case (supra) described the order refusing to rescind leave to be within the category of a judgment as laid down in the Calcutta cases though no final opinion was expressed as to the propriety of that view.

15. The present appeal concerns an application for amendment of the plaint. The suit was filed in the year 1964. The application for amendment of the plaint in regard to damages for the right to pension was made in the year 1970. An amendment, if allowed, would relate to the date of the institution of the suit. The respondent contended before the trial Court entertaining the application for amendment of the plaint that the amendment should not be allowed inter alia on the ground that the alleged claim was barred by limitation in 1970.

16. The High Court in the present case relied on the decision of the High Court at Calcutta in M. B. Sirkar & Sons v. Powell & Co. (AIR 1956 Cal 630). In that case an amendment was allowed on Chambers Summons substituting in place of the original defendant which was described as a firm a defendant converted into a company in that name. The company so proposed to be substituted complained that the amendment took away from it a valuable right which had accrued to it by afflux of time, and, therefore, the amendment should not be allowed. The contention of the defendant was not accepted by the learned Chamber Judge. The High Court on appeal set aside the order. It was not held to be a case of mis-description of the defendant. A mis-description of a party impleaded can arise when the party really intended to be impleaded had always been the same and such intention appeared clearly from the body of the plaint in spite of the inaccurate mis-description in the cause title. In such a case, it would not be adding a new party or substituting a new party for the original one, but perfecting the identity of the party originally impleaded clearing or rectifying the inaccurate description. When the same person, whether an individual or a legal entity, remains the defendant but only the name is altered, it would be a case of mis-description. Where a new legal entity is substituted, it was held in the M. B. Sirkar's case (supra) that substitution of a company for a firm would be a change of a substantial character affecting the right of a party. The effect of the amendment in the M. B. Sirkar's case (supra) was to substitute a new party for the party originally impleaded and the consequence was to take away from the new party so substituted his defence of limitation that a suit brought on the date of the amendment would be barred by time. Chakravarti, C.J. in the M. B. Sirkar's case (supra) said that an order for amendment of the plaint there decided a vital question concerning the merits of the case and the rights of the newly impleaded party and therefore became a judgment within the meaning of Clause 15 of the Letters Patent.

17. The right to claim that an introduction of a cause of action by amendment is barred by limitation is founded on immunity from a liability. A right is an averment of entitlement arising out of legal rules. A legal right may be defined as an advantage or benefit conferred upon a person by a rule of law. Immunity in short is no liability. It is an immunity from the legal power of some other person. The correlative of immunity is disability. Disability means the absence of power. The appellant in the present case because of the limitation of the cause of action has no power to render the respondent liable for the alleged claim. The respondent has acquired by reason of limitation

immunity from any liability.

18. The views of the High Courts at Calcutta and Madras with regard to the meaning of 'judgment' are with respect preferred to the meaning of 'judgment' given by the Rangoon and Nagpur High Courts. We are in agreement with the view expressed by the High Court at Calcutta in the M. B. Sirkar's case (supra) as to when an order on an application for amendment can become a judgment within the meaning of Clause 15 of the Letters Patent. If an amendment merely allows the plaintiff to state a new cause of action or to ask a new relief or to include a new ground or relief all that happens is that it is possible for the plaintiff to raise further contentions in the suit, but it is not decided whether the contentions are right. Such an amendment does nothing more than regulate the procedure applicable to the suit. It does not decide any question which touches the merits of the controversy between the parties. Where, on the other hand, an amendment takes away from the defendant the defence of immunity from any liability by reason of limitation, it is a judgment within the meaning of Clause 15 of the Letters Patent. The reason why it becomes a judgment is that it is a decision affecting the merits of the question between the parties by determining the right or liability based on limitation. It is the final decision as far as the trial Court is concerned.

19. In finding out whether the order is a judgment within the meaning of Clause 15 of the Letters Patent it has to be found out that the order affects the merits of the action between the parties by determining some right or liability. The right or liability is to be found out by the Court. The nature of the order will have to be examined in order to ascertation whether there has been a determination of any right or liability.

20. The appellant made an application in December, 1969 for amendment of the plaint to claim pension. Those amendments were disallowed by the learned Chamber Judge. Four months thereafter the appellant sought to amend the plaint by adding certain paragraphs and those amendments were in relation to the appellant's alleged claim for pension. The appellant submitted that the second application for amendment in regard to the claim for amortised amount of damages in relation to pension was not the same as the first application. It was said on behalf of the appellant that if the learned Judge allowed the application the appellate Court should not have interfered with the discretionary order. The amendment order is not purely of discretion. Even with regard to discretionary orders the appellate Court can interfere where the order is insupportable in law or is unjust. The High Court considered the second application for amendment to be a new claim based on the new set of facts which became barred on the date of the application for amendment. In exceptional cases an amendment has been allowed where the effect is to take away from a defendant a legal right which has accrued to him by lapse of time, because the court found that consideration of lapse of time is out weighed by the special circumstances of the case. (See Charan Das v. Amir Khan (47 IA 255 : AIR 1921 PC 50)). The High Court rightly found that there were no special circumstances to entitle the appellant to introduce by amendments such claim.

21. For these reasons, the judgment of the High Court is upheld. The appeal is dismissed with costs.

</html