ANDHRA PRADESH HIGH COURT

I Satyanarayana

Vs.

A.C.A. & I. Society (A.P)

Civil Revn. Petn. No. 556 of 1973

(Venkatarama Sastry, J.)

23.10.1973

ORDER

Venkatarama Sastry, J.

1. This is an application to revise the order passed by the lower court in I. A. 54/71 in O.S. 61/70 on its file which was a petition filed under Order 6, Rule 17 and Section 151, Civil Procedure Code for permission to amend the plaint.

2. In the affidavit in support of the petition for amendment it was stated that the plaintiff filed the suit for recovery of Rs. 19723.95 from the defendant towards balance with interest due for the sale price of 1927 bags of sugar purchased by the defendant purporting to be the representative of the Taluk Co-operative Marketing Society Ltd. Srikakulam from the plaintiff society from 24-7-1962 to 12-4-1963 after payments were made from 12-9-1962 to 16-6-1963. The defendant executed a letter of undertaking to pay the amount. In the letter he has admitted that he had lifted the sugar from the factory and made payments in his personal capacity though he used the name of the Taluk Co-operative Marketing Society. The suit was filed on the strength of the undertaking and also on the promissory note though the relief was asked on the basis of the promissory note. The original consideration was the balance of the price of the sugar bags purchased by the defendant from the plaintiff society. Since the defendant has taken up the plea that the suit promissory note is insufficiently stamped and is therefore inadmissible in evidence, the plaintiff prayed for amending the plaint by deleting lines 1, 2 and 3 of paragraph 4 and substituting therefore by the words "the cause of action for this suit arose between the period from 24-7-1962 to 12-4-1963 when the defendant lifted the sugar bags from the plaintiff society and between the period from 12-9-1962 to 16-6-1963 when the defendant made payments for the said sugar bags and subsequently thereafterwards on 7-8-1967 when the defendant executed a letter of undertaking and promissory note in favor of the plaintiff society."

3. Similar consequential amendments in paras 5 and 6 (A) were prayed for.

4. The defendant-petitioner herein filed a counter contending that the amendment if allowed would introduce a new relief and a new cause of action. The plaintiff cannot be permitted to base

his claim on the letter of undertaking dated 7-8-1967 as the claim based upon the said letter became barred by the date of the petition for amendment. The effect of allowing amendment would result in taking away the right which has accrued to the defendant and he would therefore be put to irreparable loss.

5. The lower court considered the respective contentions and allowed the petition by its order which is now impugned in this revision.

6. Sri K. Raghavarao the learned Counsel appearing for the petitioner has submitted that since a new claim based upon the undertaking letter dated 7-8- 1967 is barred by 5-2-1971 when the amendment petition was filed, the amendment ought to be rejected. It may be noted that the suit in this case was filed on 26-4-1969. He has placed reliance upon a decision of this court in *Indlamudi Veeraiah v. Kamala Mining Corpn*[1]*.,* and *Sambasiva Rao v. Balakistaiah*[2]*,*

7. As regards the decision in (1973) 1 Andh WR 5 that was a case wherein the amendment that was sought was based upon an earlier note when the suit note became inadmissible in evidence. It was held by Sriramulu, J., that the suit based upon the earlier note having become barred on the date of the present suit itself, the amendment could not be allowed. The Full Bench decision in (1972) 2 APLJ (Short Notes) 73 (FB) dealt with only the circumstances under which the amendment based upon the original cause of action can be asked for when the promissory note is inadmissible on any ground like want of stamp or insufficient stamp etc., I do not therefore think that the two decisions relied upon by the learned Counsel would be of any assistance to him.

8. On the other hand there is a Full Bench decision of the Madras High Court in *Official Assignee v. Kuppuswami Naidu*[3]*,* which has approved two or three earlier decisions which are directly in point and which are more appropriate in this case. In the Full Bench case the original debt was on dealings and the promissory note was executed for the balance. The suit was filed on the basis of the promissory note but the amendment that was sought was to base it on the original debt which was still alive even though the claim based upon the promissory note was barred. Their Lordships allowed the amendment The Full Bench followed the decision of the Calcutta High Court in *E. B. Commercial Bank Ltd. v. Surendra Narayan Saha*[4]*.* where the claim in the plaint was based on an insufficiently stamped promissory note which claim was barred and the amendment was made to introduce a claim on the loan. Since the plea of the defendant in that case was a case of total denial of the loan, their Lordships allowed the amendment on the ground that in the special circumstances of that case, the defendant was not prejudiced.

9. Dealing with Order 6, Rule 17 it was observed as follows :

> "The difficulty lies in applying this rule where, as here, the defendant claims a time-bar under the statute of limitations. In *Weldon v. Neal*[5]*,* Lord Esher said : we must act on the settled rule of practice, which is that amendments are not admissible when they prejudice the rights of the opposite party as existing at the date of such amendments. Under very peculiar circumstances the Court might perhaps have power to allow such amendment, but

[1](1973) 1 Andh WR 5
[2](1972) 2 APLJ (Short Notes) 73 (FB)
[3] AIR 1936 Mad 785 (FB)
[4](1935) 39 Cal WN 1235
[5](1887) 19 QBD 394

> certainly as a general rule it will not do so."

Reference was then made to *Charan Das v. Amir Khan*[6], wherein the following observations were made by Lord Buckmaster :

> "Though the power of a Court to amend the plaint should not as a rule be exercised where its effect is to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases, see for example *Mohammed Zahoor Ali v. Mt. Ralla Koer*[7], where such considerations are outweighed by the special circumstances of the case."

The case (1935) 39 Cal WN 1235 is therefore an authority for the proposition that where the defence is one of total denial of the whole suit transaction, there is no question of the defendant being prejudiced by the amendment being introduced at that stage and it will be barred by limitation.

10. The same is the case with regard to the decision in *Maung Po Chein v. C. R. V. V. V. Chettiar*[8], In that case the suit was based upon a promissory note which was insufficiently 12.0pt;color :black'stamped. But all the facts of the original loan and all the terms thereof were set out in the plaint, and the only defect in the plaint was that in the prayer the plaintiff had omitted to pray for a decree based on the original contract of a loan alternatively with a prayer for a decree based on the promissory note. Subsequently the plaintiff put in an application to amend the plaint by including such prayer. It was held that even on his original plaint, the plaintiff was entitled to succeed as on the original contract of loan and it was strictly not necessary, although it would simplify matter if it were amended. The Full Bench in AIR 1936 Madras 785 (FB) therefore observed after citing the above.

> "It is of course well settled that where all the facts of the original loan and all its terms are set out in the plaint but the plaint is based on an insufficiently stamped promissory note, or, it may also be added, a promissory note barred by limitation, the plaintiff is entitled to succeed alternatively on the original loan although there is no such prayer; but this case is useful for its treatment of the party's right to amend assuming that such an amendment is necessary. In that case the only defense open to the defendant was a denial of the loan and in his written statement he did actually deny receipt of the consideration of the promissory note and under those circumstances the court held that the amendment ought to be allowed. Reference was also made to the decision of this High Court in *Sevugan Chetty v. Krishnana Ayyengar*[9], where it was held that a petition for an amendment of the plaint based on no new facts and asking for a further relief, viz., recovery of money, may be allowed even though it be barred by limitation between the date of the plaint and the date of the petition if the same is put in before any evidence is let in and there is no injustice to the defendant."

In view of the principle laid down by the Full Bench in the above decision, I have gone through the allegations in the plaint and the written statement in the case.

[6]47 Ind App 255
[7](1867) 11 Moo Ind App 468 (PC)
[8] AIR 1935 Ran 282
[9](1913) ILR 36 Mad 378

11. In para 3 (a) of the plaint, it is stated as follows :

> "The plaintiff admitted the same in his letter of undertaking dated 7-8-1967 executed in favor of the plaintiff factory, wherein he clearly stated that the facility was extended to him on account of his friendship with the Taluk Co-operative Marketing Society and the management of the plaintiff factory also admitted his liability to discharge the dues of Rs. 17073/- to the factory and undertook to clear off the dues within (60) days from the date of the letter of undertaking (7-8-67)."

In para 3 (b) it is stated :

> "The suit is therefore instituted for recovery of Rs. 19723-96 from the defendant with costs and subsequent interest."

In the cause of action para 4 it is averred as follows :

> "The cause of action for this suit arose on 7-8-1967 when the defendant executed the suit promissory note in favor of the plaintiff at Srikakulam where the defendant resides and where the suit promissory note was executed in Srikakulam taluk of Srikakulum District. The suit is within time."

In Para 6 the prayer was for a decree for a sum of Rs. 19723.95 being the principal and interest under the suit promissory note dated 7-8-1967.

12. It is therefore clear that sufficient allegations have already been made in the plaint regarding the undertaking letter given by the defendant on 7-8- 1967 wherein he admitted his liability to discharge the dues of Rs. 17073/- to the plaintiff factory and undertook to clear off the said sum within 60 days. The suit was laid for the recovery of the said amount together with interest. The only defect in the plaint was that in the cause of action as well as in the relief portion it was not clearly stated that it is also alternatively based upon the letter of undertaking given on 7-8-1967.

13. In the written statement of the defendant, the case is one of pure denial. He denied the execution of the letter dated 7-8-1967 and also the promissory note dated 7-8-1967 and the receipt of consideration under both.

14. As the case of the defendant in this case is one of complete and total denial of the entire suit transaction, the defendant is in no way prejudiced by the amendment being allowed. The defendant cannot be heard to say that it would take away the plea of limitation available to him. Applying the principle laid down in AIR 1935 Rangoon 282 and (1935) 39 Cal WN 1235, which was approved in the above Full Bench. I have to hold that the amendment in this case was properly allowed by the lower court.

15. I do not therefore, find any ground to interfere in revision with the order challenged in this case. The revision, therefore fails and is therefore dismissed. But in the circumstances without any costs.

Revision dismissed.