Muni Lal vs The Oriental Fire & Generalinsurance ... on 9 November, 1995

Equivalent citations: 1996 AIR 642, 1996 SCC (1) 90, AIR 1996 SUPREME COURT 642, 1995 AIR SCW 4656, 1996 (1) SCC 90, (1995) 8 JT 283 (SC), 1996 ( ) ALL CJ 39, (1996) 1 APLJ 89, 1996 (113) PUN LR 209, (1996) MADLW(CRI) 10, (1996) 2 PUN LR 209, (1996) ILR (KANT) 1067, (1996) 1 CURLJ(CCR) 509, (1996) 1 RRR 418, (1996) 1 MAD LW 349, (1996) 1 CIVILCOURTC 467, (1996) 1 LJR 81, (1996) 1 BANKLJ 441, (1996) 2 BANKCAS 166, (1995) 4 CURCC 375, (1995) 4 SCJ 701, (1996) 1 CIVLJ 760, (1996) 1 LANDLR 340, (1996) 27 ALL LR 91, (1996) 86 COMCAS 60

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
MUNI LAL

Vs.

RESPONDENT:
THE ORIENTAL FIRE & GENERALINSURANCE COMPANY LTD. & ANR.

DATE OF JUDGMENT09/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)

CITATION:
1996 AIR 642 1996 SCC (1) 90
JT 1995 (8) 283 1995 SCALE (6)501

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

We have heard the counsel on both sides. The admitted facts are that the appellant had got insured his truck bearing registration No. HPA 6288 with the respondent No. 1 on March 28, 1983. During the course of employment of carriage of goods, the truck handed over to the driver on October 7, 1983 was not returned to the appellant. Thereby he lost the truck by an act of misfeasance of the driver. The appellant in the interregnum had the insurance renewed on April 19, 1984 operative upto April 18, 1985. On July 9, 1984, the appellant demanded payment of insured amount due to loss of the truck which liability was disclaimed by the respondents through their letter dated December 31, 1984. After exchange of legal notice and reiteration of denial thereof, case No. 34 of 1986 was instituted in the Court of the Chief Judicial Magistrate, Solan, District Solan, Himachal Pradesh, seeking a declaration that the appellant is entitled to the total loss of the truck from the Insurance Company. The Trial Court by its judgment and decree dated July 23, 1988 dismissed the suit holding that the suit for mere declaration without consequential relief for payment of compensation for the loss of truck or specified amount of compensation from the respondents was not maintainable. On appeal, the District Judge in case No.138-S/13 of 1988 by judgment and decree dated June 16, 1990 confirmed the same which was further affirmed by the High Court in Second Appeal No. 432/90 by judgment dated November 27, 1990.

Mr. R.K. Khanna, learned counsel after thorough preparation of the case and with all pursuation contended that by operation of Section 28 of the Contract Act, limitation of one year prescribed in Clause 8 of the contract is void. The appellant may sue within three years from the date of discovery of the loss of the vehicle. The courts below, therefore, were not justified in dismissing the suit. He contended that since the appellant claimed declaration of the entitlement, an application under Order 6, Rule 17 C.P.C. was filed in the appellate Court seeking consequential relief and that the District Judge and the High Court were not, therefore, right in rejecting the claim holding that the suit is barred by limitation and when the suit was initially instituted within limitation. Consequently, the relief, though during the course of the proceeding be barred by limitation, being incidental to the grant of the declaration, the appellant cannot be denied of the consequential relief. The District Judge and the High Court were not right in refusing to permit amendment of the plaint.

The question, therefore, is whether the appellant had properly framed the suit and whether the claim is barred by limitation. It is true, as rightly pointed out by Sri Rakesh Khanna, that Section 28 of the Contract Act prohibits prescription of shorter limitation than the one prescribed in the Limitation Act. An agreement which provides that a suit should be brought for the breach of any terms of the agreement within a time shorter than the period of limitation prescribed law is void to that extent. The reason being that such an agreement is absolutely to restrict the parties from enforcing their rights after the expiration of the stipulated period, although it may be within the period of general limitation. But acceptance of that contention does not per force solve the controversy in this appeal. Section 34 of the Specific Relief Act provides that any person entitled to a legal character, or to any right as to any property may, institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make such declaration and the plaintiff need not ask for such relief. However, proviso to the said Section puts the controversy beyond pale of doubt that "no courts shall make any such declaration where the

plaintiff, being able to ask for other relief than a mere declaration of title, omits to do so". In other words, mere declaration without consequential relief does not provide the needed relief in the suit, it would be for the plaintiff to seek both the reliefs. The omission thereof mandates the Court to refuse to grant the declaratory relief. In this appeal, the appellant has merely asked for a declaration that he is entitled to the payment for the loss of the truck in terms of the contract but not consequential relief of payment of the quantified amount, as rightly pointed out by the courts below. The question, therefore, is whether the amendment under Order 6, Rule 17 C.P.C. could be ordered in this background. Section 3 of the Limitation Act speaks of bar of limitation providing that subject to the provisions contained in Section 4 to 24 (inclusive), every suit instituted, after the prescribed period shall be dismissed, although limitation has not been set up as the defence. In other words, unless there is a power for the court to condone the delay, as provided under Sections 4 to 24 (inclusive), every suit instituted after the prescribed period shall be dismissed although limitation has not been set up as the defence. Order 6 Rule 17 C.P.C. envisages amendment of the pleadings. The court may at any stage of the proceedings allow either parties to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real question of controversy between the parties. Therefore, granting of amendment on such terms is also a condition for the purpose of determining the real question in controversy between the parties. The amendment to grant consequential relief sought for in this case, is as envisaged in proviso to Section 34 of the Specific Relief Act, 1963. That relief was, however, available to him, to be asked for, when the suit was filed.

Admittedly, by the date of the application for amendment filed, the relief stood barred by limitation. The question, therefore, is whether the Court would be justified in granting amendment of the pleadings in such manner so as to defeat valuable right of defence of bar of limitation given to the defendant. It is true that this Court in the case of Vineet Kumar v. Mangal Sain Wadhera reported in [(1984) 3 SCC 352 (at page 360, in paragraph 16)] held that normally amendment is not allowed, if it changes the cause of action. But it is well recognized that where the amendment does not constitute the addition of a new cause of action, or raise a new case, but amounts to not more than adding to the facts already on record, the amendment would be allowed even after the statutory period of limitation. In that case, the question of limitation was not really in issue. The question was whether the tenant was liable to be ejected. The plea was that there was an exemption period of 10 years from the purview of the Rent Control Act, if pending proceedings 10 years' period has elapsed. On that ground a new right had arisen to the tenant to take advantage of the benefit of the provisions of the Rent Control Act. In these circumstances, this Court held that the bar of limitation does not really stand in the way of the tenant to grant relief. As stated earlier, the suit was not initially instituted as one for recovery of damages nor was it founded on the relief which might have been asked for but was not claimed. In Pusupuleti Venkateswarlu v. The Motor & General Traders [(1975) 3 SCR 958) this Court dealing with the basis of cause of action and character of the right had held that "it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the is has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal (Emphasis supplied), it cannot blink at it or be blind to events which stultify or render inept the decreetal remedy. Equity justifies bending the rules of procedure,

where no specific provision of fair-play is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances (Emphasis supplied). Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the Trial Court." In other words, this Court laid emphasis that with a view to mould the relief a new fact can always be taken into account not merely by the trial court but even by the appellate court. Where the appeal is delayed even by necessary implication, the relief of amendment in that event cannot be given. In other words, to render substantial justice without causing injustice to the other party or violating fair-play, Court would be entitled to grant proper relief even at the stage of appellate forum. It is seen that the ratio of Jagdish Singh v. Natthu Singh [AIR 1992 SC 1604] is also inapplicable to the facts of this case. That case relates to a suit instituted for specific performance but without abandoning the relief of specific performance alternate relief for damages was also sought for. This Court relying upon the proviso to sub-section (5) of Section 21 of the Specific Relief Act which expressly gives power to the Court to grant amendment of the pleadings at any stage of the proceeding, permitted amendment of the plaint seeking alternate relief. The ratio therein is clearly distinguishable and does not apply to the facts of this case.

On a consideration of this case in its proper perspective, we of the view that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. He cannot be permitted to amend the plaint after the suit was barred by limitation during the pendency of the proceeding in the appellate court or the second appellate court. Considered from this perspective, we are of the opinion that the District Court and the High Court were right in refusing the prayer of amendment of the suit and the courts below had not committed any error of law warranting interference.

The appeal is accordingly dismissed but, in the circumstances, without costs.