Life Insurance Corporation Of India vs Sanjeev Builders Private Limited on 1 September, 2022

Bench: Chief Justice, S. Ravindra Bhat

RE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5909 OF 2022
(Arising out of SLP(C) No. 22443 of 2019)

LIFE INSURANCE CORPORATION OF INDIA .…APPELLANT

Versus

SANJEEV BUILDERS PRIVATE LIMITED & ANR. ….RESPONDENTS

JUDGMENT

J.B. PARDIWALA, J.

1. Leave granted.

2. This appeal is at the instance of a defendant in a suit filed by the respondents herein (original plaintiffs) for the specific performance of contract based on an agreement dated 08.06.1979 and is directed against the judgment and order passed by the High Court of Judicature at Bombay dated 13.12.2018 in the Appeal [L] No. 499 of 2018, arising from the order passed by a learned Single Judge on its ordinary original civil jurisdiction side in the Chamber Summons No. 854 of 2017 in the Suit No. 894 of 1986 dated 11.09.2018. The Chamber Summons was allowed by the High Court at the instance of the plaintiffs, permitting the plaintiffs to amend the plaint. The order passed by the High Court in the Chamber Summons came to be affirmed by a Division Bench in the Appeal [L] No. 499 of 2018. The High Court permitted the plaintiffs to amend the plaint, seeking to enhance the amount towards the alternative claim for damages.

FACTUAL MATRIX

3. It appears from the materials on record that the respondents herein are the original plaintiffs and the appellant herein is the original defendant in the Suit No. 894 of 1986, pending as on date in the

High Court of Judicature at Bombay on its original side. The said suit has been instituted seeking specific performance of the agreement dated 08.06.1979. In the alternative, the plaintiffs have also prayed for damages. The plaintiffs moved the Chamber Summons No. 854 of 2017, inter alia, seeking enhancement of the amount towards damages on the grounds, more particularly, set out in the affidavit filed in support of the said chamber summons.

4. The learned Single Judge of the High Court allowed the chamber summons referred to above, vide the order dated 11.09.2018, keeping the issue of limitation open and also permitting the defendant, appellant herein, to file additional written statement.

5. The appellant herein preferred an appeal against the said order which came to be dismissed vide the impugned order dated 13.12.2018.

6. Being aggrieved and dissatisfied with the impugned order passed by the High Court referred to above, the appellant (original defendant) is here before this Court with the present appeal. SUBMISSIONS ON BEHALF OF THE APPELLANT

7. The learned senior counsel appearing for the appellant, vehemently, submitted that the High Court committed a serious error in passing the impugned order. He would submit that the High Court overlooked the order passed by this Court in the Life Insurance Corporation of India v. Sanjeev Builders Pvt. Ltd. & Ors., (2018) 11 SCC 722 between the same parties, arising from the same suit proceedings.

8. The learned counsel would submit that the High Court should not have permitted the plaintiffs to amend the plaint after a period of thirty-one years, more particularly, when the earlier amendment seeking to implead the assignee as the plaintiff No. 3 in the suit was declined by this Court vide the judgment and order dated 24.10.2017 passed in the Life Insurance Corporation of India (supra).

9. The learned counsel would submit that the High Court failed to consider that the amendment was hit by the provisions of Order II Rule 2 of the Civil Procedure Code, 1908 (for short, the 'CPC'). He would submit that the amendment could be said to be even hit by the principle of constructive res judicata.

10. The learned counsel pointed out that at the time when the suit came to be instituted, the damages to the tune of Rs. 1,01,00,000/- [Rs. One Crore & One Lakh only] in the alternative was prayed for. By way of amendment the damages now prayed for is to the tune of Rs. 4,00,01,00,000/- [Rs. Four Hundred Crore & One Lakh only].

11. In such circumstances referred to above, the learned counsel appearing for the appellant (original defendant) prayed that there being merit in his appeal, the same may be allowed and the impugned order passed by the High Court may be set aside and the original amendment application filed by the plaintiffs be rejected. SUBMISSIONS ON BEHALF OF THE RESPONDENTS

12. The learned senior counsel appearing for the respondents herein (original plaintiffs) on the other hand, submitted that no error, not to speak of any error of law, could be said to have been committed by the High Court in passing the impugned order. It is submitted that the question of limitation has been kept open by the High Court that may be agitated by the defendant in the trial and the defendant has also been permitted to file its additional written statement.

13. The learned counsel would submit that the suit is yet to be adjudicated; and in such circumstances, the delay in amending the plaint for the purpose of enhancing the amount towards damages would not cause any serious prejudice to the defendant.

14. The learned counsel further submitted that the provisions of Order II Rule 2 of the CPC cannot be made applicable to an application seeking amendment of plaint.

15. The learned counsel in the last submitted that the decision of this Court rendered in the case of Life Insurance Corporation of India (supra) between the same parties was altogether in a different context. In the said appeal before this Court, the issue was whether the assignee could have been impleaded as one of the plaintiffs in the suit after a period of twenty-seven years from the date of institution of the suit?

16. In such circumstances referred to above, the learned counsel appearing for the plaintiffs prays that there being no merit in this appeal, the same may be dismissed with costs.

ANALYSIS

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions of law fall for the consideration of this Court:

> 1. Whether the High Court committed any material irregularity or jurisdictional error going to the root of the matter in passing the impugned order?
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> 2. Whether the provisions of Order II Rule 2 CPC can be made applicable to an amendment application?
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> 3. Whether the amendment of plaint for the purpose of enhancing the amount towards damages could be said to be hit by the doctrine of constructive res judicata?
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> 4. Whether the judgment and order passed by a coordinate Bench of this Court in the case of Life Insurance Corporation of India (supra) between the same parties has any bearing on the present appeal?
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> 5. Whether the present appeal is covered by the proviso to Section 21(5) and Section 22(2) resply of the Specific Relief Act, 1963 (47 of 1963) (for short, 'the Act 1963')?

18. Before adverting to the rival contentions canvassed on either side and before we deal with the orders passed by the High Court permitting the plaintiffs to amend the plaint with respect to the prayer clause, let us consider, the laws on the question of allowing or rejecting a prayer for amendment of the pleadings, more particularly, when the plea of limitation was taken by one of the parties.

19. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation. In L.J. Leach & Co. Ltd. & Anr. v. Jardine Skinner & Co., AIR 1957 SC 357, this Court at paragraph 16 of the said decision observed as follows:

> "16. It is no doubt true that courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice....."

20. Again in T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board & Ors., (2004) 3 SCC 392, this Court observed as follows:

> "2. .....The law as regards permitting amendment to the plaint, is well settled. In L.J. Leach and Co. Ltd. v. Jardine Skinner and Co. [AIR 1957 SC 357 : 1957 SCR 438] it was held that the Court would as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it.
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> 3. It is not disputed that the appellate court has a coextensive power of the trial court. We find that the discretion exercised by the High Court in rejecting the plaint was in conformity with law."

21. So far as the answer to the specific plea that the claim of damages is barred by limitation and cannot be permitted at this stage is concerned, it becomes necessary to examine the various judicial pronouncements of this Court. The principles governing an amendment which may be permitted even after the expiry of the statutory period of limitation were laid down by the Privy Council in its judgment in Charan Das & Ors. v. Amir Khan & Ors., AIR 1921 PC 50. In this case, the Privy Council laid down the principles thus:

> ".....That there was full power to make the amendment cannot be disputed, and though such a power 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 Mohummud Zahoor Ali v. Rutta Koer, where such considerations are outweighed by the special circumstances of the case, and their Lordships are not prepared to differ from the Judicial Commissioner in thinking that the present case is one."

22. It would be useful to also notice the observations of this Court in, Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil & 2 Ors., 1957 SCR 595 : AIR 1957 SC 363, wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. In this case, this Court laid down the principles which would govern the exercise of discretion as to whether the court ought to permit an amendment of the pleadings or not. This Court approved the observations of Batchelor, J., in the case of Kisandas Rupchand & Anr. v. Rachappa Vithoba Shilwant and Ors. reported in ILR (1909) 33 Bom 644, when he laid down the principles thus:

> "10. ....."All amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties ... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I understand it, is that amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same : can the amendment be allowed without injustice to the other side, or can it not?"....."

23. This Court has repeatedly held that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation. In this behalf, in Ganga Bai v. Vijay Kumar & Ors., (1974) 2 SCC 393, this Court held thus:

> "22. .....The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court....."

24. Again in M/s Ganesh Trading Co. v. Moji Ram, (1978) 2 SCC 91, this Court laid down the principles thus:

> "4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement. (See South Konkan Distilleries & Anr. v. Prabhakar Gajanan Naik & Ors., (2008) 14 SCC 632)

26. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

27. In this behalf, in A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation, AIR 1967 SC 96 : (1966) 1 SCR 796, this Court held thus:

> "7. .....a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: Weldon v. Neale [19 QBD 394]. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:....."

28. In entitled, G. Nagamma & Anr. v. Siromanamma & Anr., (1996) 2 SCC 25, this Court considered the proposed amendment of the plaint and noticing that neither the cause of action would change nor the relief would be materially affected, allowed the same. This Court in this case noticed that in the plaintiff's suit for specific performance, the plaintiff was entitled to plead even inconsistent pleas and that in the present case, the plaintiffs were seeking only the alternative reliefs. It appears that the plaintiffs had filed a suit for specific performance of an agreement of re-conveyance. By the application under Order VI Rule 17 of the CPC for amendment of the plaint, the appellants were pleading that the transactions of execution of the sale deed and obtaining a document for re-conveyance were single transactions viz. mortgage by conditional sale. They also wanted to incorporate an alternative relief to redeem the mortgage. At the end of the prayer, the plaintiff sought alternatively to grant of a decree for redemption of the mortgage. This amendment was permitted by this Court.

29. In Pankaja & Anr. v. Yellappa (dead) by lrs. & Ors., (2004) 6 SCC 415, this Court held that it was in the discretion of the court to allow an application under Order VI Rule 17 of the CPC seeking amendment of the plaint even where the relief sought to be added by amendment was allegedly barred by limitation. The Court noticed that there was no absolute rule that the amendment in such a case should not be allowed. It was pointed out that the court's discretion in this regard depends on the facts and circumstances of the case and has to be exercised on a judicial evaluation thereof. It would be apposite to notice the observations of this Court in this pronouncement in extenso. The principles were laid down by this Court thus:

> "12. So far as the court's jurisdiction to allow an amendment of pleadings is concerned, there can be no two opinions that the same is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications. This Court in numerous cases has held that the dominant purpose of allowing the amendment is to minimise the litigation, therefore, if the facts of the case so permit, it is always open to the court to allow applications in spite of the delay and laches in moving such amendment application.
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> 13. But the question for our consideration is whether in cases where the delay has extinguished the right of the party by virtue of expiry of the period of limitation prescribed in law, can the court in the exercise of its discretion take away the right accrued to another party by allowing such belated amendments.
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> 14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed.

There can be no straitjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

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16. This view of this Court has, since, been followed by a three-Judge Bench of this Court in the case of T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board [(2004) 3 SCC 392]. Therefore, an application for amendment of the pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation, on the contrary, application will have to be considered bearing in mind the discretion that is vested with the court in allowing or disallowing such amendment in the interest of justice.

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18. We think that the course adopted by this Court in Ragu Thilak D. John case [(2001) 2 SCC 472] applies appropriately to the facts of this case. The courts below have proceeded on an assumption that the amendment sought for by the appellants is ipso facto barred by the law of limitation and amounts to introduction of different relief than what the plaintiff had asked for in the original plaint. We do not agree with the courts below that the amendment sought for by the plaintiff introduces a different relief so as to bar the grant of prayer for amendment, necessary factual basis has already been laid down in the plaint in regard to the title which, of course, was denied by the respondent in his written statement which will be an issue to be decided in a trial. Therefore, in the facts of this case, it will be incorrect to come to the conclusion that by the amendment the plaintiff will be introducing a different relief."

30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.

31. In Ragu Thilak D. John v. S. Rayappan & Ors., (2001) 2 SCC 472, this Court also observed that where the amendment was barred by time or not, was a disputed question of fact and, therefore, that prayer for amendment could not be rejected and in that circumstances the issue of limitation can be made an issue in the suit itself like the one made by the High Court in the case on hand.

32. In a decision in Vishwambhar & Ors. v. Laxminarayan (Dead) through Lrs. & Anr., (2001) 6 SCC 163, this Court held that the amendment though properly made cannot relate back to the date of filing of the suit, but to the date of filing of the application.

33. Again, in Vineet Kumar v. Mangal Sain Wadhera, (1984) 3 SCC 352 : AIR 1985 SC 817, this Court held that if a prayer for amendment merely adds to the facts already on record, the amendment would be allowed even after the statutory period of limitation.

IMPUGNED ORDERS

34. We now proceed to look into the two orders passed by the High Court i.e. one by the learned Single Judge and the other in the appeal by the Division Bench.

35. The learned Single Judge in Sanjeev Builders Pvt. Ltd. & Ors. v. Life Insurance Corporation of India, 2018 SCC OnLine Bom 15283, while allowing the Chamber Summons and permitting the plaintiffs to amend the plaint, observed thus:

> "5. It is the case of the applicant as submitted by Ms. Panda that while filing the suit, plaintiffs quantified the estimated damages likely to be caused to them by reason of non performance at Rs. 1,01,00,000/- The value of the suit property increased during the pendency of the suit. According to plaintiffs' estimate, the value of the property today can be estimated to be Rs. 400,01,00,000/- and if the court is not inclined to grant specific performance, then the damages which plaintiffs would suffer on account of non performance by the defendants under the agreement should be Rs. 400,01,00,000/-. Therefore, there is already claim for damages but what plaintiffs are seeking today is only enhancing the claim, of course subject to provisions of Section 73 of the Contract Act.
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> 6. Ms. Paranjape submitted that after 30 years, this application is filed for enhancement and therefore, ex-

facie the increased amount is barred by limitation. Ms. Paranjape submitted that though the settled position in law is that courts are generally liberal with pre-trial amendment, when ex-facie claim appears to be barred by limitation, the court should not permit the amendment.

7. What one should keep in mind is this figure of Rs. 400,01,00,000/- can tomorrow go up or go down. Plaintiffs are only estimating it to be the amount which according to plaintiffs, is the loss which they would suffer. Whether that is the right estimate can be decided only at the time of trial. Even in para 12 of the plaint plaintiff has stated ".....suffered loss and damages which they estimate at....." In prayer clause-(b)(v) plaintiff pray "..... or such other sum as this Honourable Court may deem just and proper....." Further, if this figure of Rs. 1,01,00,000/- is not amended as prayed in this Notice of Motion, defendant will object the attempt of plaintiff to claim more as damages saying plaintiff cannot go beyond what is averred in the plaint. Due to situation beyond the control of plaintiff, this suit has remained pending for almost 32 years. Chances of suffering greater prejudice is more if the amendment is not allowed. It is clarified that plaintiff will still have to prove every penny it is claiming as damages.

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10. Admittedly, the trial is yet to begun though issues have been framed long ago.

11. In the circumstances, keeping open rights and contentions of defendants to raise the issue of limitation which the court will decide at the time of trial, Chamber summons allowed in terms of prayer clause-(a) and accordingly disposed."

36. While affirming the aforesaid order, the High Court in Appeal (L) No. 499 of 2018 held as under:

> "4. Undisputedly, trial is yet to commence. The amendment has been allowed by the learned Single Judge by giving cogent and sound reasons. Merely because the Plaintiffs are permitted to amend the plaint does not mean that the claim which has been made by the Plaintiffs by way of amendment would be granted by the Court. Defendants can always file an additional Written Statement to contest the claim of the Plaintiffs. In such additional Written statement, Appellants can also raise a ground with regard to limitation which will have to be gone into by the learned Single Judge. In any case, in the present case, Appellants have also filed additional Written Statement so as to meet the grounds brought on record by way of amendment.
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> 5. In that view of the matter, we do not find that this is a fit case to interfere with the discretion exercised by the learned Single Judge. Appeal is therefore rejected." LIFE INSURANCE CORPORATION OF INDIA (SUPRA)

37. We now proceed to give a fair idea, as regards the judgment rendered by a coordinate Bench of this Court in the case of Life Insurance Corporation of India (supra) dated 24.10.2017.

38. The said appeal before this Court arose out of the judgment of the High Court of Bombay dated 22.08.2014 in and by which the Division Bench dismissed the appeal filed by the appellant herein Life Insurance Corporation of India (for short, 'LIC') thereby affirming the order of the Single Judge in the Chamber Summons No. 187 of 2014 by which the respondent No. 3 therein was impleaded as the plaintiff No. 3 in the Suit No. 894 of 1986.

39. It appears from the pleadings, more particularly, the facts recorded in the judgment rendered by the coordinate Bench that in the year 2014, the respondent No. 3 therein, namely, the Kedia Construction Company Ltd. filed the Chamber Summons No. 187 of 2014 stating that subsequent to the filing of the suit for the specific performance of contract, with the consent of the respondent No. 2, plaintiff No. 1/respondent No. 1 had assigned its interest to the respondent No. 3 for a consideration of Rs. 23,31,000/- by an agreement for sale dated 24.08.1987. The chamber summons was filed to implead the respondent No. 3 therein as the plaintiff No. 3 with a prayer to amend the plaint pursuant to the agreement of sale in its favour. The appellant herein (LIC) had opposed the chamber summons on the ground that the respondent No. 3 therein was not a bona fide assignee or a necessary party and that the issues in the suit were framed on 31.01.2014 and there had been an inordinate delay on 27 years in filing the application which had not been properly explained.

40. In the aforesaid set of facts, this Court while allowing the appeal filed by the appellant herein (LIC) held as under:

> "11. The stand of Respondent 3 is that it claims as an assignee of the rights of Respondents 1 and 2 and that it has the right to continue the suit under Order 22 Rule 10 CPC and the provisions of limitation, do not apply to such an application. To appreciate merits of this contention, we may usefully refer to Order 22 Rule 10 CPC, which reads as under:
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> Order 22 — Death, Marriage and Insolvency of Parties "10. Procedure in case of assignment before final order in suit.—(1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against the person to or upon whom such interest has come or devolved.
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> (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)." Under Order 22 Rule 10 CPC, when there has been an assignment or devolution of interest during the pendency of a suit, the suit may, by leave of the court, be continued by or against person to or upon whom such interest has been assigned or devolved and this entitles the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the court for leave to continue the suit. When the plaintiff assigns/transfers the suit during the pendency of the suit, the assignee is entitled to be brought on record and continue the suit. Order 22 Rule 10 CPC enables only continuance of the suit by the leave of the court. It is the duty of the court to decide whether leave was to be granted or not to the person or to the assignee to continue the suit. The discretion to implead or not to implead parties who apply to continue the suit must be exercised judiciously and not arbitrarily.

12. The High Court was not right in holding that mere alleged transfer/assignment of the agreement would be sufficient to grant leave to Respondent 3 to continue the suit. From the filing of the suit in 1986, over the years, valuable right of defence accrued to the appellant; such valuable right of defence cannot be defeated by granting leave to the third respondent to continue the suit in the application filed under Order 22 Rule 10 CPC after 27 years of filing of the suit. The learned Single Judge was not right in saying that impleading Respondent 3 as Plaintiff 3 would cause no prejudice to the appellant and that the issues can be raised at the time of trial.

13. In a suit for specific performance, application for impleadment must be filed within a reasonable time. Considering the question of impleadment of party in a suit for specific performance after referring to various judgments, in Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd. [Vidur Impex and Traders (P) Ltd. v. Tosh Apartments (P) Ltd., (2012) 8 SCC 384 :

> (2012) 4 SCC (Civ) 1] the Court summarised the principles as under : (SCC p. 413, para 41) "41. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of

an application for impleadment are:

41.1. The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.

41.2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.

41.3. A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.

41.4. If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.

41.5. In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.

41.6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment." In light of the above principles, considering the case in hand, in our view, the application filed for impleading Respondent 3 as Plaintiff 3 was not filed within reasonable time. No explanation is offered for such an inordinate delay of 27 years, which was not kept in view by the High Court.

14. Be it noted that an application under Order 22 Rule 10 CPC seeking leave of the court to continue the suit by the assignee/third respondent was not actually filed. Chamber Summons No. 187 of 2014 was straightaway filed praying to amend the suit which would have been the consequential amendment, had the leave to continue the suit been granted by the court.

15. As pointed out earlier, the application was filed after 27 years of filing of the suit. Of course, the power to allow the amendment of suit is wide and the court should not adopt hypertechnical approach. In considering amendment applications, court should adopt liberal approach and amendments are to be allowed to avoid multiplicity of litigations. We are conscious that mere delay is not a ground for rejecting the amendment. But in the case in hand, the parties are not rustic litigants; all the respondents are companies and the dispute between the parties is a commercial litigation. In such facts and circumstances, the amendment prayed in the chamber summons filed under Order 22 Rule 10 CPC ought not to have been allowed, as the same would cause serious

prejudice to the appellant. In our view, the impugned order, allowing Chamber Summons No. 187 of 2014 filed after 27 years of the suit would take away the substantial rights of defence accrued to the appellant and the same cannot be sustained.

16. In the result, the impugned judgment [LIC v. Sanjeev Builders (P) Ltd., 2014 SCC OnLine Bom 4811] is set aside and the appeal is allowed. Chamber Summons No. 187 of 2014 in Suit No. 894 of 1986 stands dismissed. No order as to costs."

41. Thus, from the aforesaid, it is evident that a coordinate Bench of this Court took the view that impleading the respondent No. 3 therein as the plaintiff No. 3 would cause a serious prejudice to the appellant. This Court took the view that no explanation was offered for an inordinate delay of twenty-seven years, which was overlooked by the High Court. Even while allowing the appeal filed by the appellant herein, the coordinate Bench of this Court observed that mere delay would not be a ground for rejecting the amendment. However, in the facts of the case, since the parties not being rustic litigants and all the respondents therein being companies and the dispute being a commercial litigation, the amendment could not have been permitted after twenty-seven years of the suit, as it would take away the substantial rights of defence accrued in favour of the appellant (LIC).

42. We are of the view that the judgment and order passed by the coordinate Bench of this Court in the Life Insurance Corporation of India (supra) has no application so far as the present appeal is concerned. The appellant herein cannot succeed in the present appeal merely on the strength of the judgment and order passed by this Court in the Life Insurance Corporation of India (supra). ORDER II RULE 2 OF THE CPC

43. In the present appeal, the principal argument of the learned counsel appearing for the appellant is that the amendment application should have been rejected by the courts below applying the principle of Order II Rule 2 of the CPC.

44. The said provision is set out below:

> "Order II Rule 2 of the Code of Civil Procedure:
>
> 2. Suit to include the whole claim.-(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim.-Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue for one of several reliefs.-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration A lets a house to B at a yearly rent of Rs. 1200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907."

45. The expressions "omits to sue" and "intentionally relinquish any portion of his claim" give an indication as to the intention of the legislature in framing the said rule. The term 'sue' can mean both the filing of the suit and prosecuting the suit to its culmination, depending on the context of the provision. In the present case, the legislature thought it fit to debar a plaintiff from suing afterwards for any relief which he/she has omitted without the leave of the court or from suing in respect of any portion of his claim which he intentionally relinquishes. Order II Rule 2(1) provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.

46. The provision of Order II Rule 2 of the CPC has been well discussed by the Privy Council in the case of Mohd. Khalil Khan & Ors. v. Mahbub Ali Mian & Ors., AIR 1949 PC 78, held as under:

> “The principles laid down in the cases thus far discussed may be thus summarized :
>
> (1.) the correct test in cases falling under Or. 2, r. 2, is “whether the claim in the new suit is, in fact, founded on a cause of action distinct from that which was the foundation for the former suit.” (Moonshee Buzloor Ruheem v. Shumsoonnissa Begum.) (2.) The cause of action means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment. (Read v. Brown.) (3.) If the evidence to support the two claims is different, then the causes of action are also different. (Brunsden v. Humphrey.) (4.) The causes of action in the two suits may be considered to be the same if in substance they are identical. (Brunsden v. Humphrey.) (5.) The cause of action has no relation whatever to the defence that may be set up by the defendant, nor does it depend on the character of the relief prayed for by the plaintiff. It refers “to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.” (Muss. Chand Kour v. Partab Singh.) This observation was made by Lord Watson in a case under s. 43 of the Act of 1882 (corresponding to Or. 2, r. 2), where plaintiff made various claims in the same suit.”

47. In Upendra Narain Roy v. Rai Janoki Nath Roy, AIR 1919 Cal 904, a Division Bench of the Calcutta High Court had an occasion to consider this question. Woodroffe, J. has observed:

> ".....As regards the other point it has more ingenuity than substance. It proceeds on the erroneous assumption that the amendment was prohibited by Or. II, r. 2. This Rule does not touch the matter before us. It refers to a case where there has been a

> suit in which there has been an omission, to sue in respect of portion of a claim, and a decree has been made in that suit. In that case a second suit in respect of the portion so omitted is barred. That is not the case here. In the present case the suit has not been heard but a claim has been omitted by, it is said, inadvertence. To hold that in such case an amendment should not be allowed would be to hold something which the Rule does not say and which would be absurd. The Rule says "he shall not afterwards sue," that is, it assumes that there has been a suit carried to a decision, and a sub-sequent suit. It does not apply to amendment where there has been only one suit. As the Plaintiff had in law a right to apply for an amendment before the conclusion of his suit, it cannot be said that any rights of the Respondent in the Pabna suit are affected. Such a contention is based on the erroneous assumption that nothing could be done by way of amendment of the Calcutta suit to remove the objection that the claims on the previous mortgage or charge were not sustainable. A case would fall within Or. II, r. 2, only if a Plaintiff fails to apply for amendment before decree, and then brings another suit. The Plaintiffs are not doing that but asking for amendment in the one and only suit they have brought. This is, therefore, not a case in which the amendment either affects rights to the other party, or otherwise prejudices him."

(emphasis supplied)

48. A Constitution Bench of this Court, considering the scope and applicability of Order II Rule 2 of the CPC, in the case of Gurbux Singh v. Bhooralal, AIR 1964 SC 1810, held as under:

> "6. In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The

> learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable."

49. So far as, Gurbux Singh (supra) is concerned, we may clarify that the entire consideration in the said case by this Court was to the fact that there was a relinquishment of a claim by the plaintiff therein, but the relevant point which was considered by this Court was that the relief had become time barred. The ratio of the said judgment is that the relief being barred by limitation, the Order II Rule 2 of the CPC only came in as an adjunct. However, Gurbux Singh (supra) makes it clear that the bar of Order II Rule 2 of the CPC applies only to the subsequent suits.

50. In the light of the principles discussed and the law laid down by the Constitution Bench as also the other decisions discussed above, we are of the view that if the two suits and the relief claimed therein are based on the same cause of action then the subsequent suit will become barred under Order II Rule 2 of the CPC. However, we do not find any merit in the contention raised on behalf of the appellant herein that the amendment application is liable to be rejected by applying the bar under Order II Rule 2 of the CPC. Order II Rule 2 of the CPC cannot apply to an amendment which is sought on an existing suit.

51. In the aforesaid context, we may refer to with approval a decision rendered by the High Court of Delhi in the case of Vaish Cooperative Adarsh Bank Ltd. v. Geetanjali Despande & Ors., (2003) 102 DLT 570. Paras 17 and 18 resply indicate that the bar under Order II Rule 2 of the CPC is only for a subsequent suit. These paras read as under:

> "17. Reverting to the preliminary objections raised by the appellant against the maintainability of the application for amendment, one would come across with a peculiar plea of proposed amendment being barred under Order II Rule 2 CPC. General rule enacted under Order II Rule 2.(1) CPC is that every suit must include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Order II Rule 2.(2) precludes a subsequent suit on any part of claim, which had been omitted or intentionally relinquished by the plaintiff in an earlier suit based on the same cause of action. Similarly, where the plaintiff is entitled to more than one relief in respect of the same cause of action but omits, except with the leave of the court, to sue for all such reliefs, he is debarred in view of the Order II Rule 2(3) CPC from suing afterwards for any relief so omitted.
>
> 18. A plea of bar under Order II Rule 2 CPC is maintainable only if the defendant makes out (i) that the cause of action of the second suit is the same on which the previous suit was based, (ii) that in respect of that cause of action, the plaintiff was entitled to more than one relief and (iii) that the plaintiff without leave obtained from the Court omitted to sue earlier for the relief for which the second suit is filed.(see

> "Gurbux Singh v. Bhooralal", AIR 1964 SC 1810). Clearly, Order II Rule 2 CPC enacts a rule barring a second suit in the situation indicated above. Identity of cause of action in the former and subsequent suits is essential before the bar contemplated under Order II Rule 2 CPC is set to operate. Thus, where the claim or reliefs in the second suit are based on a distinct cause of action, Order II Rule 2 CPC would have no application. Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived. " (emphasis supplied)

52. We are also not impressed by the contention raised on behalf of the appellant herein that the amendment application is hit by the principle of constructive res judicata. The principle of constructive res judicata has no application in the instant case, since there was no formal adjudication between the parties after full hearing. The litigation before this Court has come up at the stage when the courts below allowed the amendment of plaint for the purpose of enhancing the amount towards damages in the alternative to the main relief of specific performance of the contract.

SPECIFIC RELIEF ACT, 1963

53. The above takes us now to consider the proviso to Section 21(5) and Section 22(2) of the Act 1963.

54. The Act 1963 contemplates that in addition to or in substitution of a claim for performance, a plaintiff is entitled to claim compensation. Section 21 of the Act 1963 provides as follows:

> "21. Power to award compensation in certain cases. –(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach [in addition to] such performance.
>
> (2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.
>
> (3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
>
> (4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

> (5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:
>
> Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.
>
> Explanation.-The circumstances that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

55. Under sub-section (2) of Section 21, the court is empowered to award compensation for breach where it holds that there is a contract between the parties which was broken by the defendant but in the event, it decides that specific performance ought not to be granted. Sub-section (3) of Section 21 empowers the court to grant compensation for breach in addition to a decree for specific performance where it is of the view that specific performance alone would not satisfy the justice of the case. Sub-section (5), however, stipulates that compensation cannot be awarded under the section unless the Plaintiff has claimed such compensation in the plaint. This provision is mandatory.

56. The proviso to sub-section (5) of Section 21 dilutes the rigours of the main provision by allowing the plaintiff who has not claimed such compensation in the plaint to amend the plaint at any stage of the proceedings and the court, it has been provided, shall at any stage of the proceedings allow an amendment for including a claim for such compensation on such terms as may be just. In Shamsu Suhara Beevi v. G. Alex & Anr., (2004) 8 SCC 569, for instance, this Court held that the High Court erred in granting compensation under Section 21, in addition to the relief of specific performance in the absence of a prayer made to that effect either in the plaint as originally filed or as amended at any stage of the proceedings

57. Section 22 of the Act 1963 contains the following provisions:

> "22. Power to grant relief for possession, partition, refund of earnest money, etc.-(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for-
>
> (a) possession, or partition and separate possession, of the property, in addition to such performance; or
>
> (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or (made by) him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the Court to grant relief under clause

(b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

58. Section 22 has a non-obstante provision which overrides the CPC. A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of sub-section (5) of Section 21, sub-section (2) of Section 22 stipulates that such relief cannot be granted by the court unless it has been specifically claimed. However, the proviso requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just. THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018

59. The Act 1963 was amended in the year 2018 and in Section 21 of the Principal Act, in sub-section (1) the words “either in addition to, or in substitution of” were deleted and the words “in addition to” were substituted in their place. As a result, damages are now available only in addition to specific performance and not in lieu thereof. This is a consequence of other amendments to the Act 1963 whereby the amending act has eliminated the discretion of courts by substituting Sections 10 and 20 resply of the Principal Act.

60. The aforesaid provisions of the Act 1963 were duly considered by the Bombay High Court in the case of Kahini Developers Pvt. Ltd. v. Mukesh Morarjipanchamatia & Ors., reported in (2013) 3 Mah LJ 440, Dr. Justice D.Y. Chandrachud, (as His Lordship then was), speaking for the Bench, very lucidly and in the most erudite manner explained as under:

“9. The object of the legislature in introducing the proviso to sub-section (5) of section 21 and to sub-section (2) of section 22 was to obviate a multiplicity of the proceedings. In Babu Lal v. Hazari Lal, (1982) 1 SCC 525:

AIR 1982 SC 818 the Supreme Court noted that the legislature “has given ample power to the Court to allow amendment of the plaint at any stage.” (At para 20 page

825). This, the Supreme Court held, would include even the stage of execution. The Supreme Court also held that a mere contract for sale or for that matter, a decree for

specific performance does not confer title on the buyer and that title would pass only upon execution of the decree. While discussing the issue of limitation, the Supreme Court held as follows:

"If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the Court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the Petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law Courts always abhor." (At para 21 page 825)

10. The same view was taken by the Supreme Court in a later judgment in Jagdish Singh v. Natthu Singh, (1992) 1 SCC 647 : AIR 1992 SC 1604:

"So far as the proviso to sub-section (5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the proceeding. That is a claim for compensation falling under section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-section (5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case section 73 of the Contract Act is invoked. This amendment is under the discipline of R.17, 0.6, C.P.C. The fact that sub-section (4) in turn, invokes section 73 of the Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction." (At para 10 page 1608) In the decision in Shamsu Suhara Beevi (supra), while holding that the High Court had erred in granting compensation under section 21, in addition to the relief of the specific performance in the absence of a prayer to that effect, the Supreme Court held that a prayer could have been made to that effect either in the plaint or by amending the plaint at any later stage of the proceeding to include the relief of compensation in addition to the relief of a specific performance. The plaint, however, in that case, was never amended and the order of the High Court was, therefore, held to be in error. These principles have also been noticed in a judgment of a learned Single Judge of this Court in Manohar Dhundiraj Joshi v. Jhunnulal Hariram Yadao, 1983 Mh.L.J. 369.

11. Since the Court is informed that an appeal has been filed against the judgment of the learned Single Judge in Harinarayan G. Bajaj (supra), we are not expressing any

> opinion on the correctness of that decision. We are, however, of the view that since the legislature has contemplated that an amendment within the meaning of the provisos to section 21(5) and section 22(2) of the Specific Relief Act, 1963 can be made at any stage of the proceeding, such an amendment would not be barred by limitation. Even as a matter of first principle, an application for amendment must be distinguished from the cause of action which is sought to be set up by the amendment. As a matter of general principle, though an application for amendment is allowed, the question as to whether the cause of action is within limitation would have to be determined and adjudicated upon. While allowing an amendment, it is always open to a Civil Court to direct that the amendment shall not relate back to the institution of the proceeding. The Court would therefore have to determine at trial whether the cause of action is within limitation or is barred. Where the legislature has contemplated that the plaint can be amended at any stage of the proceeding as stipulated in the provisos to section 21(5) and section 21(2). Such an amendment of the nature contemplated by those provisions can indeed be brought about at any stage of the proceedings."

(emphasis supplied)

61. In the case of B.K. Narayana Pillai v. Parameswaran Pillai & Anr., (2000) 1 SCC 712 relying upon the cases of A.K. Gupta (supra) and Ganesh Trading Co. (supra), this Court held that the court should adopt a liberal approach in the matter of amendment and only when the other side had acquired any legal right due to lapse of time, the amendment should be declined. It has been held as follows:

> ".....All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement."

62. In Jagdish Singh v. Natthu Singh, reported in (1992) 1 SCC 647 : AIR 1992 SC 1604, this Court had the occasion to deal with the provisions of Section 21 of the Act 1963. While analysing the aforesaid provisions, this Court laid down that if the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the court should allow the amendment at any stage of the

proceedings since that is a claim for compensation falling under Section 21 of the Act 1963 and the amendment is one under the proviso to sub-section (5) of Section 21. This Court, however, issued a note of caution by laying down that different and less liberal standards would apply if what is sought by the amendment is conversion of a suit for specific performance into one for damages for breach of contract, in which case Section 73 of the Indian Contract Act, 1872 would get invoked, and then the said amendment would be under the discipline of Order VI Rule 17 of the CPC. This Court further held that when the plaintiff by his option had made specific performance impossible then Section 21 does not entitle him to seek damages. It is also held that in Indian Law when the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance.

63. The legal position, therefore, in respect of scope and ambit of Section 21 of the Act 1963 is clear and made so more by the ratio of the aforesaid decision of this Court.

64. The plaintiffs in the original plaint claimed for compensation in addition to a decree for specific performance of the agreement to sell. Therefore, strictly speaking the provisions of Section 21 of the Act 1963 are not attracted to the facts of the present case. The intention of the plaintiffs in seeking for amendment of the plaint appears to be to get an enhanced amount of compensation than what was originally claimed in the original plaint which was restricted only to Rs. 1,01,00,000/-. The aforesaid intention becomes apparent when the averments made in the application praying for amendment are looked into inasmuch as, the plaintiffs have stated that in view of the fact that in last 30 years there had been a tremendous escalation of the value of the suit property which has an adverse effect on the quantum of damages, compensation, relief sought for the breach of contract by the appellant/defendant. According to the plaintiffs the raising of the amount of compensation to Rs. 400,01,00,000/- from Rs. 1,01,00,000/- as claimed in the original plaint has been necessitated in view of undue delay in the prosecution of the suit which was not earlier foreseen, which in turn has caused more damage to the plaintiffs through the years and therefore, they have sought to raise the amount of compensation to the present value as stated above from Rs. 1,01,00,000/-.

65. However, the argument of the learned counsel appearing for the appellant in regard to the two provisos referred to above, is quite curious. The argument is that the power of the court to permit the plaintiff to amend the plaint in a suit filed for the specific performance of contract flows from Sections 21 and 22 resply of the Act, 1963 & the proviso to the sub-section (5) of Section 21 of the Act 1963 may entitle the plaintiff to amend the plaint, provided the plaintiff has inadvertently or otherwise omitted to pray for compensation. The argument proceeds on the footing that in the present case, as the plaintiff specifically prayed for compensation in the plaint, later if he seeks to amend that part of the relief, the sub- section (5) of Section 21 of the Act 1963 would be an embargo for the court to do so. We do not find any merit in this argument of the learned counsel appearing for the appellant.

66. The two provisos referred to above, deal with the question of permitting the plaintiff to amend his plaint. It is not, as if, in the absence of these two provisos, it is not permissible in law for the plaintiff to carry out an amendment in his pleading by introducing a relief for enhanced compensation. Rule 17 of Order VI of the CPC does confer power on a Court to allow a party to alter

or amend his pleading in such manner and on such terms as may be just. This rule does not stop at that, but it further says that all such amendments should be made as may be necessary for the purpose of determining the real question in controversy between the parties. It is pertinent to note that this provision which empowers the court in its discretion to permit a party to amend his pleadings, was already on the statute book, when the Specific Relief Act, 1963 was enacted. It can, therefore, be presumed that when the latter legislation was on the anvil, the Parliament was aware of this power of the court to permit amendment of pleadings. Therefore, it cannot be successfully urged that a suit for specific performance falling under the provisions of the Act, 1963 would not be governed by the provisions of the CPC. It is, therefore, clear that to such a suit the provisions contained in Order VI Rule 17 of the CPC would apply and a plaintiff who has earlier failed to incorporate the reliefs for compensation or who has incorporated the reliefs for compensation but seeks amendment in the same, could seek the permission of the court to introduce these reliefs by way of amendment.

67. It is important to note that sub-section (5) of Section 21 of the Act 1963 was originally introduced to resolve the confusion over whether the court had the power to grant compensation in a claim for specific performance in absence of any pleading to that effect under the provisions of the Act 1963. Prior to the enactment of the Act 1963 the Law Commission in its 9th Law Commission Report while referring to the diverse opinions expressed by the High Courts recommended that in no case should compensation be decreed unless it is claimed by a proper pleading.

68. In The Arya Pradeshak Pritinidhi Sabha, Sindh, Punjab & Bilochistan v. Lahori Mal & Ors., (1924) 6 Lah LJ 286 : AIR 1924 Lah 713, the Lahore High Court had held that the court has the power to award damages in substitution of or in addition to specific performance even though the plaintiff has not specifically claimed the same in its plaint and written submissions. As against, the Madras High Court in Somasundaram Chettiar v. Chidambaram Chettiar, AIR 1951 Mad 282 held that the court could not award damages in absence of a specific claim for damages.

69. In Somasundaram Chettiar (supra), the Madras High Court held that the rationale for not allowing a claim for damages in a suit for specific performance without a specific pleading is based on the principle that the plaintiff must establish its claim for damages and the defendant must be put on notice and correspondingly have an opportunity to adduce evidence that the damages claimed are excessive or that the plaintiff has not suffered any damages.

70. Our final conclusions may be summed up thus:

> (i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)

71. In the overall view of the matter, we are convinced that we should not disturb the impugned order passed by the Division Bench of the High Court, affirming the order passed by the learned Single Judge allowing the amendment application filed at the instance of the plaintiffs.

72. In the result, this appeal fails and is hereby dismissed with no order as to costs.

73. Pending application, if any, stands disposed of.

.....J. (ANIRUDDHA BOSE) .....J. (J.B. PARDIWALA) New Delhi;

September 1, 2022.