

The State Of West Bengal vs Pam Developments Private Limited on 9 January, 2025

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Bench: Bela M. Trivedi

2025 INSC 69

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
[Arising out of SLP (C) No. 11392 of 2024]

THE STATE OF WEST BENGAL
& ORS.

...APPELLANT(S)

VERSUS

PAM DEVELOPMENTS PRIVATE
LIMITED & ANR.

...RESPONDENT(S)

JUDGMENT

SATISH CHANDRA SHARMA, J.

1. Leave granted.

2. The Appellants challenge order dated 08.01.2024 in G.A. No. 11 of 2022 in C.S. No. 102 of 2016 whereby and whereunder the Ld. Single Judge of the High Court at Calcutta allowed the application filed by the present Respondent/original Applicant of issuance of notice under Section 80 of the Code of Civil Procedure, 1908 [hereinafter “CPC”] for incorporating the amendment and prayer by way of amendment in the original plaint.

3. At the outset, it is imperative to take note of the relevant background facts and the chequered litigation history between the parties that are germane to the present dispute.

BACKGROUND

4. Appellant No. 4 / Superintending Engineer, Public Works Department [hereinafter “PWD”], Kolkata floated a tender on 04.12.2013 for the strengthening of the Howrah-Amta Road from 7.90 Km to 11.80 Km [hereinafter “the Project”]. The Respondent emerged as the successful applicant and accordingly, an agreement was entered into by Appellant No. 4 and the Respondent on 23.04.2014, wherein the stipulated date for completion was 19.08.2014. The work was not completed by the stipulated date, and accordingly the Appellant No. 4 extended the timeline for the project while imposing a penalty rate. Ultimately, on 14.05.2015 Respondent’s security deposit came to be forfeited in light of non-completion of work.

5. Vide order dated 07.07.2015, Appellant No. 4 debarred the Respondent from participating in any tender floated by it for the next two years [hereinafter “the First Debarment Order”]. The First Debarment Order was set aside by the High Court at Calcutta¹ on the consideration that the Respondent was not put on notice. Consequently, Appellant No. 4 issued a show-cause notice dated 18.09.2015 for debarment to the Respondent and issued a memo dated 08.03.2016, requesting the latter to appear before the Debarment Committee.

6. Aggrieved by memo dated 08.03.2016, Respondent preferred a civil suit, being C.S. No. 102 of 2016 [hereinafter “Civil Suit”], along with an application for an injunction, being G.A. No. 1339/2016, before the High Court at Calcutta. In the Civil Suit, the Respondent challenged the authority of the Appellants in issuing the memo requesting appearance in the debarment proceedings on the ground that the penalty for debarment is outside the scope of the contract in question and dehors the same. The Respondent also relied on the penalty amount imposed by the Appellants for the same cause of action to buttress its position. Further, and more critically, the Respondent claims that it has suffered a loss of around Rs. 2,21,61,296/- on account of the First Order of Debarment, which was wrongfully imposed. The Respondent has made several other claims which are not important to go into in this appeal.

7. The High Court at Calcutta disposed of G.A. No. 1339/2016 while granting liberty to the Respondent to contest all grounds, including that of jurisdiction and composition before the Debarment Committee itself. Thereafter, for the next two years the Committee issued orders dated 01.12.2016, 06.03.2017, 22.05.2017, and finally on 31.10.2017 [hereinafter “Underlying Debarment Order”], debarring the Respondent from participating in any tender floated by it for the next two years. Orders dated 01.12.2016, 06.03.2017, and 22.05.2017, were respectively set aside by the High Court at Calcutta vide orders dated 06.02.2017², 22.03.2017³, and 02.08.2017⁴ on the ground of procedural lapses on the part of the Appellants in conducting the Debarment proceedings. Finally, against the Underlying Debarment Order, the Respondent preferred G.A. No. 173 of 2018 in C.S. No. 102 of 2016 which came to be rejected vide order dated 24.01.2020, wherein the High Court at Calcutta observed - “It is not for the Court at this stage to speculate on the effect of that debarment already suffered by the plaintiffs on a tender process which is yet to happen. The issue as to whether or not the petitioner was correctly debarred as sought to be done in the present case, is an issue which need not to be decided in this application. Such issue is kept open.”

8. At the close of this litigation history, the Respondent filed an application, being G.A. No. 7 of 2019 in C.S. No. 102 of 2016 GA No. 84 of 2017 in CS No. 102 of 2016.

GA No. 877 of 2017 in CS No. 102 of 2016.

GA No. 2416 of 2017 in CS No. 102 of 2016.

seeking to amend the plaint in order to bring on record subsequent facts necessary for effective adjudication. While this application was dismissed as “not pressed”, the Respondent filed another application for amendment of the plaint, being G.A. No. 11 of 2022 in C.S. No. 102 of 2016 [hereinafter “the Underlying Application”]. The Respondent prayed to amend the plaint and the prayer on the ground that several facts had taken place after the Civil Suit was filed resulting in a continuous cause of action, whereby it is pertinent to bring those facts on record in order to adjudicate upon the dispute. The Appellants strongly contested the Underlying Application by stating that it is identical to G.A. No. 7 of 2019, i.e. the first amendment application, which was dismissed.

9. Vide order dated 08.01.2024 [hereinafter the “Impugned Order”], the High Court categorically held that the amendment sought for by the Respondent amounts to a continuous cause of action and will not change the nature and character of the Civil Suit. In fact, the memo dated 08.03.2016 forms the subject matter of the Civil Suit between the parties, and is a continuation to the show-cause notice dated 18.09.2015. Further, it noted that the issue of whether the Respondent has been correctly debarred or not by the Appellants has been kept open vide order dated 24.01.2020. Consequently, the impugned order concludes that the entire circumstances are in continuation to the memo dated 08.03.2016.

SUBMISSIONS BY THE PARTIES

10. Challenging the Impugned Order, the Appellants submit that subsequent events of debarment give rise to a fresh cause of action for which a fresh suit is to be filed, regardless of the parties being the same. Accordingly, it is their case that the Underlying Debarment Order dated 31.10.2017 gave rise to a fresh cause of action for which the Respondent did not take any steps for initiating action, resulting in now being time-barred. Therefore, the proposed amendment changes the character and the nature of the suit.

11. The Appellants’ next submission is that the first application for amendment was dismissed as not pressed while no liberty was given to file afresh. Accordingly, as per Order XXIII Rule 1 and 4 of the CPC, the Respondent has abandoned its claim which formed a part of the first application and it cannot be permitted to amend its claim on the same grounds.

12. The Appellants also urge this Court to consider that the Respondent has not issued a notice to the Appellants under Section 80 of the CPC as a fresh cause of action has been introduced. In order to buttress the same, the Appellants rely upon *Bishandayal & Sons v. State of Orissa & Ors.*⁵

13. The counsel for the Appellants has further relied upon the Limitation Act, 1963 [hereinafter “the Limitation Act”] to submit that the prescribed limitation period of three years started running from 31.10.2017, i.e. the date of the Underlying Debarment Order, and expired on 13.10.2022 considering the COVID-19 exclusion. Whereas, the amendment was filed on 05.12.2022, which is beyond the limitation period.

14. Per Contra, the Respondent has submitted that it has severely suffered on account of erroneous blacklisting orders for the period of two years starting on 07.07.2015 up until 22.05.2017. Thereby, the Respondent has not been able to participate in any tender during that period, facing financial, business, and reputational losses. Further, the Respondent argues that it has the legal right to amend the plaint as the cause of action is continuous on account of the fact that G.A. No. 173 of 2018 was disposed of by order dated 24.01.2020, while keeping the issue open between the parties.

15. The counsel for Respondent argued that there are three vital dates to consider whether the amendment application is barred by the laws of res judicata. The first amendment application was filed in July, 2019 and was dismissed as (2001) 1 SCC 555 withdrawn on 13.01.2021. Subsequent facts that arose pursuant to the order dated 24.01.2020 were incorporated in the Underlying Application. Pertinently, all subsequent events transpired in the Civil Suit itself by way of several interlocutory applications. In fact, all other debarment orders were set aside, and only the issue of the legality of the Underlying Debarment Order was kept open. Finally, the Respondent urges that all the subsequent facts sought to be brought on record is a replica of all the facts in the several applications.

DISCUSSIONS AND FINDINGS

16. We have heard learned counsels for both the parties and perused the record in detail. While expressing no opinion on the merits of the Civil Suit itself, we have no hesitation in holding that the Impugned Order is valid and the Underlying Application is to be allowed.

17. The short points that fall to our consideration are, first, whether the Underlying Application is legally sustainable; and second, whether the Respondent ought to serve notice upon the Appellants under Section 80 of the CPC. We will deal with each issue in turn.

18. It is evident from the record that all debarment orders have arisen from the memo for appearance dated 08.03.2016, which is the genesis of the Debarment Committee. Consequently, the High Court has permitted the Committee to conduct a legal hearing, while concomitantly allowing the Civil Suit, being C.S. No. 102 of 2016, to be heard. Accordingly, the Debarment Committee issued several orders debarring the Respondent from participating in any tender floated by it for the next two years. As the process was permitted to take place side-by-side with the Civil Suit, the Respondent challenged the debarment orders by preferring interlocutory applications in the same Civil Suit.

19. The Underlying Debarment Order was issued on 31.10.2017, and challenged in G.A. No. 173/2018 in the Civil Suit. Vide order dated 24.01.2020, the High Court dismissed G.A. No.

173/2018 while keeping the issue of validity open. Specifically, the High Court held:

“The order of debarment is subsequent to the filing of the suit. The order of debarment under challenge is pursuant to an order passed by the High Court in the suit.

...The fact that the petitioner is no longer in the list of debarred candidates is not disputed.

...It is not for the Court at this stage to speculate on the effect of the debarment already suffered by the petitioner on a tender process which is yet to happen. The issue as to whether or not the petitioner was correctly debarred as sought to be done in the present case is an issue which need not be decided in this application. Such issue is kept open.”

20. What falls from the aforementioned extraction is that two years had already passed since the Underlying Debarment Order when the High Court passed the order dated 24.01.2020.

Therefore, it was inconsequential as the Respondent was no longer blacklisted. However, the High Court kept the larger issue, i.e. what is the effect and legality of the Underlying Debarment Order, open.

21. The noteworthy takeaway from the above is that the debarment orders form a continuous cause of action as they are a continuation of the memo dated 08.03.2016, which came to be impugned in the Civil Suit. A cause of action is continuing when the act alleged to be wrongful is repeating over a period of time, and consequently extending the limitation period. Cause of action is a bundle of facts giving rise to a legal right; where in the present case the cause of action is the termination of the agreement, the First Debarment Order, and the memo dated 08.03.2016.

22. We have carefully perused the Underlying Application preferred by the Respondent before the High Court. The facts sought to be brought on record relate to the subsequent debarment orders and their respective challenges. Adjudication in the Civil Suit will be incomplete and ineffective if the consequent facts are not brought on record. This is due to the fact that the subsequent debarment orders and related events form a continuous chain finding its genesis in the memo dated 08.03.2016. For instance, the Respondent has made a claim for an amount to be paid to it by penalising the Appellants for wrongfully issuing the First Debarment Order. The subsequent debarment orders all arise as a part of the same event and hence, its effect on the claim of the Respondent, if any, must be adjudicated together. Accordingly, we hold that the subsequent events form a continuous cause of action for which a fresh suit is not to be filed, as it does not change the nature and character of the Civil Suit.

23. The learned counsel for the Appellants has strongly urged that even considering the COVID-19 relaxation, the limitation period for challenging the Underlying Debarment Order expires on

14.10.2022. We find ourselves unable to agree with the said submission. The issue regarding the legality of the Underlying Debarment Order was kept open vide order dated 24.01.2020; hence forming the last event in the continuous cause of action. Accordingly, the Underlying Application is well within the limitation period taking into account the continuous cause of action.

24. The learned counsel for the Appellants has further urged that the dismissal of the first amendment application as withdrawn vide order dated 13.01.2021 precludes the Respondent from filing the Underlying Application as under

Order XXIII Rule 1 of the CPC, the same amounts to an abandonment of claim. The core of Section 12 of the CPC read with Order XXIII Rule 1 is that no suit lies on the same cause of action if the plaintiff has abandoned their claim. In the present case, the same is not attracted as the circumstances give rise to a continuous cause of action resulting in a situation where both the amendment applications were filed at different points of time and the former was not adjudicated on merits.

25. Lastly, we consider the submission made by the Appellants regarding the non-issuance of a notice as per Section 80 of the CPC prior to the filing of the Underlying Application. It is apposite to reproduce the relevant portion of Section 80 of the CPC as relied on by the Appellants:

“80. Notice.— Save as otherwise provided in sub- section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu and Kashmir)] or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of.”

26. We have already observed that the amendment sought amounts to a continuous cause of action and maintains the nature and character of the suit and to that extent, Section 80 of the CPC is irrelevant to the case at hand.

27. In view of the above, no good reasons are seen to interfere with the impugned order. The appeal stands dismissed without any order on costs.

.....J. [BELA M. TRIVEDI]J. [SATISH CHANDRA SHARMA] NEW DELHI JANUARY 09, 2025