Shanti Kumar R. Canji vs The Home Insurance Co. Of New York on 24 July, 1974

Equivalent citations: 1974 AIR 1719, 1975 SCR (1) 550, AIR 1974 SUPREME COURT 1719, 1974 2 SCC 387, 1974 MAH LJ 785, 1974 2 SERVLR 538, 29 FACLR 239, 1975 (1) SCR 550, 1975 (1) SCJ 187

Author: A.N. Ray

Bench: A.N. Ray, Kuttyil Kurien Mathew

PETITIONER:
SHANTI KUMAR R. CANJI

Vs.

RESPONDENT:
THE HOME INSURANCE CO. OF NEW YORK

DATE OF JUDGMENT24/07/1974

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
MATHEW, KUTTYIL KURIEN

CITATION:
1974 AIR 1719 1975 SCR (1) 550
1974 SCC (2) 387
CITATOR INFO :
RF 1981 SC1786 (107,116,139,152)

ACT:
Letters Patent of the Bombay High Court, Cl. 15--Judgment, what is

HEADNOTE:
The appellant filed the suit against the respondent in 1964, on the original side of the High Court, claiming six months salary in lieu of notice and gratuity. An application for amendment of the plaint in regard to damages for the right to pension was made in 1970. The respondent contended that the amendment should not be allowed on the ground inter alia that the alleged claim was barred by limitation in 1970. The trial Court allowed the amendment, but in appeal under

Cl. 15 of the Letters Patent, the order was set aside. The High Court considered the application for amendment to be a new claim based upon a new set of facts which became barred on the date of the application for amendment.

In appeal to this Court, it was contended that: (1) the order of the trial Court was not a judgment and hence not appealable under Cl. 15, and (2) the order was a discretionary order and the appellate Court should not have interfered with the exercise of discretion.

Dismissing the appeal,

HELD : (1) A judgment within the meaning of Cl. 15 would have to satisfy two tests, (a) it must be the final pronouncement which puts an end to the proceeding so far as the Court dealing with it is concerned; and (b) it must involve the determination of some right or liability though it may not be necessary that there must be a decision on the merits. [554 B]

In finding out whether any decision is a judgment within the meaning of Cl. 15, each case must be looked into in order to find out whether there is a decision determining the right or liability of the parties affecting the merits of the controversy between the parties. It is not the form but the nature of the order that has to be examined in order to ascertain whether there has been a determination of any right or liability. If an amendment merely allows the plaintiff to state a new cause of action or to ask a new relief or to include a new ground of relief all that happens is that it is possible for the plaintiff to raise further contentions in the suit, but it is not decided whether the contentions are right. Such an amendment does nothing more than regulate the procedure applicable to the suit and does not touch the merits of the controversy between the parties. Where, on the other hand, an amendment takes away from the defendant the defence of immunity from any liability by reason of limitation, it is a judgment within the meaning of Cl. 15. The reason why it becomes a judgment is that it is a decision. affecting the merits of the question between the parties by determining the right or liability based on limitation. It is the final decision as far as the Court is concerned. The respondent, in the present case, has acquired, by reason of limitation, immunity from liability, and the appellant, because of the limitation of the cause of action, has no power to render the respondent liable for the alleged claim. [554 B-C, G., 555F-H,556A-C]

(2) The order of the trial Court is not one purely based on discretion, and even with regard to discretionary orders the appellate Court can interfere where the order is unsupportable in law or is unjust. The High Court was right in holding that there we're no special circumstances to entitle the appellant to introduce the claim by amendment. [556F]

Asrumati Debi v. Kumar Rupendra Deb Raikot & Ors. [1953] S. C. R. 1159, followed.

Justice of the Peace for Calcutta v. Oriental Gas Company, 8 Bengal L. R. 433, Tuliaram v. Alagappa 1. L. R. 35 Mad. J., M. B. Sirkar & Sons v. Powell & Co. A.I.R. 1956. Cal. 630, approved. .

Charan Das v. Amir Khan 47 1. A. 255 referred to.

Dayabhai v. Murugappa Chettiar I. L. R. 13 Rang. 457 and Manohar v. Bailram I.L. R. 1952 Nag. 471, overruled.

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For the appellant: On the first point, an order allowing amendment is not a "Judgment" within the meaning of clause 15 of the Letters Patent. Divergent views have been taken by various High, Courts as to the meaning of word "Judgment". This question came before this Court also in the case of 'Asrumati devi' (1953) SCR II 59-where a question arose whether an order for transfer of a suit under clause 13 of the Letters Patent (Calcutta High Court) is not a "Judgment" within the meaning of clause 15 of the Letters Patent; and this Court took the view that an order of this character could not be regarded as a 'Judgment' but it did not determine the true meaning and scope of the word "Judg-ment", nor did it resolve a wide divergence of judicial opinion on the subject. An order to be a 'Judgment' in Cl. 15 of the Letters Patent must either determine some right or liability which is in controversy in the suit either partially or wholly; or it should terminate the proceedings even without deciding any right or liability in controversy. Any wider definition of the word 'Judgment' will make all orders appealable irrespective of their nature and irrespective of the proceeding in which they are passed. An interim order which does not determine any substantive right or liability in controversy (i.e. does not grant or refuse any part of the relief prayed for in a suit), but decides a procedural right, however important, is not a 'judgment'. An order allowing the amendment does not decide any substantive right or liability. It only permits a claim to be agitated and does not decide the claim and, therefore, the order of the single judge was not appealable. Justice of the Peace for Calcutta v. The Oriental Gas Co. 8 Bengal L.R. 433, Tuljaram v. Alagappa Chelter- I.L.R. 35 Mad., I;I.L.R. Rang. 457 and I.L.R. [1952] Nag. 471 (F.B.) referred to.

On the second point, it is settled law that an appellate Court will not interfere with such an order passed by the trial Court in exercise of its discretion without exceeding the limits, of its power, unless it acted perversely or unless the view taken by it is clearly wrong. The amendment sought for became necessary as on the true and full dis-closure of the terms of Pension Rules, the Appellant was found to be entitled to damages in lieu of pension.

The principle of res judicata did not apply as the earlier order of the Single Judge allowing the first amendment application partly on 19-1-1970 did not deal with the claim for mortised damage now sought to be added.

For the Respondent: There is no need to go into the larger

question because judged by the tests laid down by all the High Courts including the Nagpur High Court, the decision of the trial Court in the instant case allowing the amendment, is a judgment within the meaning of Cl. 15 of the Letters Patent. By reason of the amendment of the plaint, the claim made in the amended plaint dates back to the date of the plaint. The application for amendment was filed in April, 1970 and by that time, the claim for pension was clearly barred by limitation. By allowing amendment, the valuable right which had accrued to the defendant to resist the claim for pension, has been lost the defendants cannot therefore, once the amendment is allowed raise the plea of limitation. There is a clear negation of valuable right of
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the defendant which is undoubtedly a determination of right or liability as between the two parties. There is difference between the amendment which does not take away the right of the defendant to plead limitation and an amendment which affects the rights of the defendants to raise the plea of limitation 1946 Calcutta 630; 1946 Bom. 361; AIR 1972 Bombay 27 ; 1967 (2) M.L.J. (FB) referred to.
35 Madras at p. 9 lays down the law that the fact that the order is one allowing the amendment, is not decisive and that if in any proceeding, the defendants could have succeeded by the Court passing an order as prayed for, that itself is sufficient to make a decision a judgment and the fact that the defendant's contention was negatived i.e. an order prayed by him was not passed; does not make the decision any the less a judgment under Cl. 15. 29 Bombay 249, 253 in [1953] S.C.R. 1159, 1168. 70 Ca. W.N. 670,[1971] S.C.R. 783 referred to.
By allowing the amendment, the right is conferred upon the plaintiff and it carries with it the fastening of liabilities upon the defendants.
The decision on a vital points adverse to the defendant which goes to the root of the matter and which becomes final and conclusive, so far as the court passing of the order is concerned, would amount to a Judgment because the order is to the effect that the plaintiff is entitled to make the claim negativing the right of the defendants which has accrued to him by lapse of time.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1991 of 1971. From the Judgment and, Order dated the 29th March, 1971, of the Bombay High Court and Bombay in Appeal No. 87 of 1970. V.M. Tarkunde and Rameshwar Nath for the appellant K.S. Ramamurthy and B.R. Agarwal for the respondent. The Judgment of the Court was delivered by RAY, C. J.-This is an appeal by certificate from the judgment dated 29th March, 1971 of the High Court of Bombay. The appellant filed this suit on 2 September, 1964 in the High Court of Bombay and claimed six months salary in lieu of

notice and gratuity for 16 years of service. In the year 1965 the appellant asked for discovery by the respondent of documents relating to pension scheme for foreign employees. The application for discovery was dismissed in the month of November, 1965.

On 16 December, 1969 the appellant took out a Chamber Summons for amendment of the plaint. The proposed amendments were twofold. The first set of amendment related to averments in support of the claim for gratuity which had already been alleged in the plaint.

The second set of amendment related to averments in support of a claim for Rs. 850 per month by way of pension as and from 1 February, 1964 during the life time of the appellant. By an order dated 19 January, 1970 the appellant was allowed to amend the plaint in respect of the claim for gratuity. The appellant's proposed amendment in support of the claim for pension was refused.

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

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

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

Counsel for the appellant submitted that 'judgment' means a decision finally adjudicating the rights between the parties. It was emphasised that a judgment would be a decision on substantive rights of parties. 'Amendment' was submitted to be a procedural right. Counsel for the appellant relied on the decision in Dayabhai v. Murrugappa Chettiar I. L. R. 13 Rang. 457 and Manohar v. Baliram I.L.R. 1952 'Nag. 471 in support of the proposition that 'judgment' means and is a decree in a suit by which the rights of the parties in the suit are determined.

The locus classics is the decision of the High Court of Calcutta in Justice of the Peace for Calcutta v. Oriental Gas Company 8 Bengal L.R. 433 where Sir Richard Couch, C. J. said "We think that 'judgment' means a decision which affects the merits of the question between the parties by determining some right or liability. It may be either final or preliminary, or interlocutory, the difference between them being that a final judgment determines the whole cause or suit, and a preliminary or interlocutory judgment determines only a part of it, leaving other matters to be determined."

This Court in Asrumati Debi v. Kumar Rupendra Deb Raikot & Ors. [1953] S.C.R. 1159 dealt with the question as to whether an order of transfer of a suit filed in the Jalpaiguri Court to the High Court to

be tried in its Extraordinary Original Civil Jurisdiction was a judgment within the meaning of clause 15 of the Letters Patent. it was held that an order for transfer of a suit is not a judgment within the meaning of clause 15 of the Letters Patent as it neither affects the merits of the controversy between the parties in the suit itself nor terminates or disposes of the suit on any ground. This Court in Asrumati Debi's case (supra) said that a judgment within the meaning of clause 15 of the Letters Patent would have to satisfy two tests. First, the judgment must be the final pronouncement which puts an end to the proceeding so far as the court dealing with it is concerned. Second, the judgment must involve the determination of some right or liability though it may not be necessary that there must be a decision on the merits. In this context this Court referred to observation of the Full Bench of the High Court of Madras in Tuljaram v. Alagappa I.L.R. 35 Mad. 1. The test formulated by the Madras decision is not the form of the adjudication but its effect on the suit or proceeding in which it is made. The Madras High Court said "if the effect is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, the adjudication is a judgment". It may be stated here that the Madras High Court spoke of 'judgment' on an application in a suit. The decision of the Madras High Court in Tuljaram's case (supra) was on an order for transfer of a suit under clause 13 of the Letters Patent.

This Court also noticed the view expressed by the Madras High Court in Tuljaram's case (supra) that adjudication on an application, which is nothing more than a step towards obtaining a final adjudication in the suit, is not a judgment within the meaning of the Letters Patent. In Asrumati Debi's case (supra) this Court noticed the argument advanced that if an order refusing to rescind leave to sue granted under clause 12 of the Letters Patent was a 'judgment' under clause 15 of the Letters Patent there was no difference in principle between an order of that description and an order transferring the suit under clause 13 of the Letters Patent. This Court did not express any opinion excepting observing that if leave under clause 12 of the Letters Patent was rescinded, the suit would come to an end and if an order was made refusing to rescind the leave the result would be on a vital point adverse to the defendant and it would go to the root of the suit and become final and decisive against the defendant so far as the Court making the order was concerned.

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

The present appeal concerns an application for amendment of the plaint. The suit was filed in the year 1964. The application for amendment of the plaint in regard to damages for the right to pension was made in the year 1970. An amendment, if allowed', would relate to the date of the institution of the suit. The respondent contended before the trial Court entertaining the application for amendment of the plaint that the amendment should not be allowed inter alia on the ground that the alleged claim was barred by limitation in 1970. The High Court in the present case relied on the decision of the High Court at Calcutta in M.B. Sarkar & Sons v. Powell & Co. A.I.R. 1956 Cal. 630. In

that case an amendment was allowed on Chambers Summons substituting in place of the original defendant which was described as a firm a defendant converted into a company in that name. The company so proposed to be substituted complained that the amendment took away from it a valuable right which had accrued to it by efflux of time, and, therefore, the amendment should not be allowed. The contention of the defendant was not accepted by the learned Chamber Judge. The High Court on appeal set aside the order. It was not held to be a case of mis-description of the defendant. A mis-description of a party impleaded can arise when the party really intended to be impleaded had always been the same and such intention appeared clearly from the body of the plaint in spite of the inaccurate mis-description in the cause title. In such a case, it would not be adding a new party or substituting a new party for the original one, but perfecting the identity of the party originally impleaded clearing or rectifying the inaccurate description. When the same person, whether an individual or a legal entity, remains the defendant but only the name is altered, it would be a case of mis-description. Where a new legal entity is substituted, it was held in the M. B. Sarkar case (supra) that substitution of a company for a firm would be a change of a substantial character affecting the right of a party. The effect of the amendment in the M. B. Sarkar case (supra) was to substitute a new party for the party originally impleaded and the consequence was to take away from the new party so substituted his defence of limitation that a suit brought on the date of the amendment would be barred by time. Chakravartti, C.J. in the M. B. Sirkar case (supra) said that an order for amendment of the plaint there decided a vital question concerning the merits of the case and the rights of the newly impleaded party and therefore became a judgment within the meaning of clause 15 of the Letters Patent. The right to claim that an introduction of a cause of action by amendment is barred by limitation is founded on immunity from a liability. A right is an averment of entitlement arising out of legal rules. A legal right may be defined as an advantage or benefit conferred upon a person by a rule of law. Immunity in short is no liability. It is an immunity from the legal power of some other person. The correlative of immunity is disability. Disability means the absence of power. The appellant in the present case because of the limitation of the cause of action has no power to render the respondent liable for the alleged claim. The respondent has acquired by reason of limitation immunity from any liability.

The views of the High Courts at Calcutta and Madras with regard to the meaning of 'judgment' are with respect preferred to the meaning of 'judgment' given by the Rangoon and Nagpur High Courts.

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

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

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

V.P.S. Appeal dismissed.