Supreme Court of India
A. K. Gupta And Sons vs Damodar Valley Corporation on 10 September, 1965
Equivalent citations: 1967 AIR 96, 1966 SCR (1) 796
Author: A Sarkar
Bench: Sarkar, A.K.

PETITIONER:
A. K. GUPTA AND SONS

Vs.

RESPONDENT:
DAMODAR VALLEY CORPORATION

DATE OF JUDGMENT:
10/09/1965

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
DAYAL, RAGHUBAR
RAMASWAMI, V.

CITATION:
1967 AIR 96 1966 SCR (1) 796
CITATOR INFO :
R 1968 SC1165 (31)
E 1971 SC2177 (10)
R 1978 SC 484 (9)
R 1985 SC 817 (16)
RF 1990 SC 897 (9)

ACT:
Code of Civil Procedure (Act V of 1908), s. 153 0. 2 r. 2 and 0. 6, r. 17--Amendment of plaint-When may be allowed.

HEADNOTE:
The appellant filed a suit against the respondent claiming a declaration that, on a proper interpretation of one of the clauses of the contract between them, the appellant was entitled to an enhancement of 20% over the tendered rates. The plaint stated, that work had been done under the contract and that the value of the suit for purposes of jurisdiction was Rs. 65,000, but as it was a suit for a declaration only, court fees on that basis had been paid. The appellant also reserved the right to sue later for the amount found due. The respondent contested the suit on the ground that the suit was not maintainable in the form in which it was framed, and disputing the correctness of the

interpretation of the clause suggested by the appellant stated that it was ever ready and willing and was still willing to pay the legitimate dues of the appellant. The issue regarding maintainability of the suit was not pressed by the respondent at the hearing; and the other issue regarding the interpretation of the clause of the contract having been decided by the trial court in favour of the appellant, the suit was decreed and leave was granted under 0. 2, r. 2, Civil Procedure Code, 1908, to sue later for the amount due. On appeal the issue as to maintainability was resuscitated and the High Court decided it in the respondent's favour because of the proviso to s. 42 of the Specific Relief Act, 1877, and also held that the trial court was not right in granting leave under 0. 2, r. 2. The High Court rejected a petition for amending the plaint by including a prayer for a decree for Rs. 65,000 or such other amount as may be found due on proper account being taken then made by the appellant on the ground that the claim for money was time-barred long before the petition for amendment was made, and because there were no special circumstances justifying the grant of the amendment.

HELD : (Per Sarkar and Ramaswami,JJ.) (i) If there was any case where the respondent was not entitled to the benefit of the law of limitation, the instant case was that one. It was a case in which the claim for money was in substance in the plaint from the beginning though it had not formally been made and so the respondent could not legitimately claim that the amendment would prejudicially affect his right under the law of limitation, for really he had no such right. [801 A-C]

A party is not allowed to set up a new case or a new cause of action by amendment, but it is well recognised that where the amendment does not constitute the addition of a new cause of action or raise a new case,, but amounts to no more than a different or additional approach to the facts already on the record, the amendment will be allowed even after the expiry of the statutory period of limitation. The expression "new cause of action" in this context means, a new claim made on a new basis constituted by new facts, and "new case" means a new set of ideas. [799 F-H; 800 B-D]

The amendment was necessary for a decision of the real dispute between the parties which was : what were their rights under the contract; and that dispute was clearly involved in the plaint as originally framed.

7 97

It was the contract which formed the cause of action on which the suit was based and the amendment sought to introduce a claim based on the same cause of action, that is, the same contract and introduced no new case or facts. Indeed, the facts on which the money claim sought to be added was based, were not in dispute, and the absence of details of work was not a legitimate ground for refusing the amendment. The respondent had notice of the amount of

claim, was fully aware that the ultimate object of the appellant in filing the suit was to obtain payment of that amount, and had specifically expressed in the written statement, its willingness to pay the appellants legitimate dues. [800 F-H 802 C, D-E]

I. T. Leash & Co. v. Jardine Skinner & Co. [1957] S.C.R. 438; Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil, [1957] S.C.R. 595.

Charan Das v. Amin Khan, L.R. 47 I.A. 255, applied.

Per Raghubar Dayal, J. (Dissenting) : An amendment which would enable a plaintiff to make a claim which has become time barred is as a rule to be refused and the Court would exercise its special power to allow such amendment only when there are special circumstances in the case. Such special circumstances can be said to exist only when the amended claim was at least intended to be made by the plaintiff who had given in the plaint all the necessary facts I,,) establish the claim but had, due to clumsy drafting, not been able to express himself clearly in the pliaint and to couch his relief in the proper legal form. Such circum-stances justify an amendment not really as a judicial concession to the plaintiff to save him from any possible loss but on the ground that the original claim in the plaint, though defectively stated, really amounted to the claim sought to be made by the amendment, so that, it does not in reality offend against the law of limitation but serves the interests of justice. [813 H; 814 A-C]

The plaint gave none of the facts which were necessary for getting a decree for Rs. 65,000 or which might justify a decree for accounting To allow the amendment of the plaint would necessity lead to a further request for furnishing details about the work done and the defendant being afforded an opportunity to put in a further written In fact it would necessitate a de novo trial on the question as to the amount due to the plaintiff. When the plaintiff could not get the relief of the amended claim on the facts mentioned in the plaint as originally filed, the cause of action for a decreefor Rs.65,000 was different from the cause of action on which thesuitordeclaration was founded. It could not be said that the plaintiff intended to sue the defendant for the recovery of Rs. 65,000 but failed to express himself clearly in the plaint and that therefore he should be allowed to make the plaint precise and clear in that regard. The fact that he reserved his right to sue for the amount indicates that he did not intend to sue for the amount; and the fact that the trial court gave him leave to sue later does not justify the amendment, because leave can be given by the court under 0. 2, r. 2 only which the plaintiff omitted to sue for a certain relief arising out of the same cause of action. [814 G; 815 B-D, F, G-H-, 816 A-B]

(ii) Per Raghubar Dayal, J : The High Court was not in error in allowing the respondent to raise the objection as to the maintainability of the suit on account of the

appellant not asking for further relief. [806 C]
It was incumbent on the trial court not to make a declaration unless further relief had beenprayed for even if the objection was not raised by the party. Further ,it could not be said that the objection was not raised by the respondentin the trial court merely because it did riot press the contention. [805 H; 806 A-B]
798

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 18 of 1963. Appeal from the judgment and decree, dated January 19, 1961 of the Patna High Court in Appeal from Original Decree No. 253 of 1955.

Niren De, Additional Solicitor-General and D. N. Mukherjee for the appellants.

Kanhaiyaji and S. P. Varma, for the respondent. The Judgment Of SARKAR and RAMASWAMI JJ. was delivered by SARKAR J. RAGHUBAR DAYAL, J. delivered a dissenting Opinion. Sarkar, j The question raised in this appeal is whether the High Court was in error in refusing permission to the appellant to amend its plaint. We think it was. The appellant had done work for the respondent under a contract which only specified the rates for different categories of work. The contract contained the following clause : "This quotation is based on prevailing labour rate of Rs. 1-4-0 per cooly but if there is increase of labour rate of more than 10% in any particular month, the proportionate increase in rate will be charged". Subsequent to the making of the contract there was an increase in the labour rate per cooly by 20%. The appellant claimed that under the clause it was entitled to the whole amount of the increase while the respondent contended that it was entitled to a part of it only. This was the only dispute between the parties in respect of the contract. There was no other dispute either concerning the quantity or quality of the work done or otherwise howsoever.

The appellant filed a suit against the respondent only claiming a declaration that on a proper interpretation of the clause it was entitled to an enhancement of 20% over the tendered rates as the sole difference between the parties was about the interpretation. The plaint stated that work had been done under the contract and that the value of the suit for purposes of jurisdiction was Rs. 65,000, but as it was a suit for a declaration only court fees on that basis had been paid. The respondent in its written statement challenged the appellant's interpretation of the clause but did not dispute any material fact or that the only dispute was about the interpretation. The written statement con- cluded by saying that the respondent "was ever ready and willing and is still ready and willing to pay the legitimate dues to the plaintiff."

Before the learned trial Judge several issues were raised but it is necessary to mention only two. One issue was as to the maintainability of the suit in the form in which it had been framed and the other issue was as to the proper interpretation of the clause. The first of these issues was not pressed at the hearing. The other issue having been decided by the trial Court in favour of the appellant, the

suit was decreed. The other issues which had been raised, had also not been pressed. The Court had further given the appellant leave under 0. 2 r. 2 of the Code of Civil Procedure to sue later for the amount due under the con- tract.

The respondent then went up in appeal to the High Court at Patna. There the issue as to the maintainability of the suit was resuscitated and pressed and it was decided in the respondent's favour because of the terms of the proviso to s. 42 of the Specific Relief Act, 1877. The correctness of this view is not challenged in this Court. In the result the High Court dismissed the suit.

Now, the appellant bad in view of the High Court's decision as to the maintainability of the suit, sought its leave to amend the plaint by adding an extra relief in the following words : "That a decree for Rs. 65,000 or such other amount which may be found due on proper account being taken may be passed in favour of the plaintiff against the defendant". The amendment having been refused the present appeal has been preferred.

It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new case or cause of action is barred : Welch v. Neale.(1) 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 : see Charan Das v. Amir Khan (2) and L. J. Leach & Company Ltd. v. Jardine Skinner and Co.(") The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to (1) 19 Q.B.D. 394.

(3) [1957] S.C.R. 438.

(2) L.R. 47 I.A. 255.

decide the rights of the parties and not to punish them for their mistakes (Cropper v. Smith) (1) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended Kisandas Rupchand v. Rachappa Vithoba(2) approved in Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil(3).

The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the plaintiff to succeed" as was said in Cooke v. Gill(1) in a ,different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Ltd.(") and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new set of ideas" : Dornan v. J. W. Ellis & Co. Ltd.(1). This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new seat of ideas to the

prejudice of any right acquired by any party by lapse of time.

Now, how does the present case stand on these principles ? Does the amendment introduce a new cause of action or a new case? We do not think it does. The suit was on the contract. It sought the interpretation of a clause in the contract only for a decision of the rights of the parties under it and for no other purpose. It was the contract which formed the cause of action on which the suit was based. The amendment seeks to introduce a claim based on the same cause of action, that is, the same contract. It introduces no new case or facts. Indeed the facts on which the money claim sought to be added is based are not in dispute. Even the amount of the claim now sought to be made by amendment, was mentioned in the plaint in stating the valuation of the suit for the purpose of jurisdiction. The respondent had notice of it. It is quite clear that the interpretation of the clause was sought only for quantifying the money claim. In the written statement the respondent specifically expressed its willingness to pay the appellant's legitimate dues which could only mean such amount as might be (1) (1884) 26 Ch. D. 700,710-1 (2) (1909) I.L.R. 33 Bom. 644, 651.

(3) [1957] S.C.R. 595, 603 (4) (1873) L.R. 8 C. P. 107,116 (6) [1962] 1 All E.R. 303.

(5) [1962] 2 All E.R. 24.

due according to the rates applicable on a proper interpretation of the clause. The respondent was fully aware that the ultimate object of the appellant in filing the suit was to obtain the payment of that amount. It was equally aware that the amount had not been specifically claimed in the suit because the respondent had led the appellant to believe that it would pay whatever the court legitimately found to be due. It in fact said so in the written statement. If there was any case where the respondent was not entitled to the benefit of the law of limitation, the present is that one. The respondent cannot legitimately claim that the amendment will prejudicially effect his right under that law for really be had no such right. It is a case in which the claim for money was in substance in the plaint from the beginning though it had not formally been made.

This, therefore, seems to us to be preeminently a case for allowing the amendment. The authorities also lead us to the same view. In L. J. Leach & Co.s case(1) a suit for damages for conversion was by amendment allowed to be converted into a suit for damages for breach of contract after that claim had become barred, the necessary facts as in the case in hand, being already in the plaint. In Charan Das's case(2) an amendment adding a claim for possession after a suit for such claim had become barred was allowed in a suit which originally had only claimed a declaration of a right to pre- empt. In the last mentioned case, the plaintiff bad in spite of warning at the earliest stage refused to make the amendment which he later sought and got. It was, therefore, a case where the plaintiff had initially deliberately refused to make a claim and an amendment being allowed later permitting that claim to be raised after it had become barred. It was in a sense a stronger case than the present one where the plaintiff had omitted to make the claim initially on a wrong notion and a wrong legal advice. Punishing of mistakes is, of course, not administration of justice.

It is true that the plaint does not set out the details of the work done. But there never was any dispute about them. Indeed the respondent had prepared a final bill of the appellant's dues for the

work done under the contract and the appellant had accepted that bill as correct except on the question as 'to the proper rate chargeable under the clause. Strictly the details of the work done were not necessary in the plaint for it would be a waste of time of a court to go into them, it not being unusual to direct an enquiry by a Commissioner or a subordinate officer about such (1) [1957] S.C.R. 438 (2) I.R.

47. LA. 255.

L8Sup.C.1.165-8 details when, as in the present case, the items of work done are innumerable. It would be enough in such cases to file the details before the authority making the enquiry. Besides, in Pirgonda Hongonda Patil's case(1), in a suit for a declaration of title, this Court permitted an amendment setting out the detailed facts on which the title was claimed after the suit had become time barred. The absence of the details of the work does not furnish a legitimate ground for refusing the amendment.

It may be that as a result of the amendment, if the respondent chooses to raise a controversy about the work done, that is, about the quantity, quality and other things concerning it, which it had never raised so long, the matter will have to be gone into. That again would not justify a refusal of leave to amend. It would not mean any waste of time or money or any duplication of work. That investigation would now be made for the first time and nothing done so far would become futile. Such an enquiry was indeed directed in L. J. Leach & Co.'s case(2). The amendment sought is necessary for a decision of the real dispute between the par-ties which is, what are their rights under the contract ? That dispute was clearly involved in the plaint as originally framed. All the necessary basic facts had been stated. Only through a misconception a relief which could be asked on those facts had not been asked. It would not have been necessary to ask for it unless the respondent had at a late stage taken the point that the suit should fail without more in the absence of that relief. We find the present case indistinguishable from Charan Das's case(3).

We would for these reasons allow the appeal. The case would go back to the High Court with a direction to it to allow the amendment sought and then to decide the correct interpretation of the disputed clause and thereafter, if the occasion arose, to ascertain the amount due by a proper enquiry to be made either by the High Court or by the trial Court as the High Court may think fit. The High Court may, if the appellant asks for it, also allow an amendment setting out the particulars making up the claim of Rs. 65,000 introduced by the amendment, that is, quantity, rate etc. of the work done. The appellant will get the costs in this Court. The question of subsequent costs will be decided by the High Court. The judgment of the High Court in so far as it refused the amendment is set aside but the rest of that judgment will stand.

(1) [1957] S.C.R. 595.

(3) L.R. 47 I.A. 255.

(2) (1957) S.C.R, 438.

Raghubar Dayal, J. This appeal, on certificate granted by the High Court of Patna, is against the judgment and decree dismissing the appellant's suit for a declaration on the ground that the plaintiff had not asked for consequential relief. The High Court rejected the application presented to it for amendment of the plaint. The question for determination is whether the High Court was right in rejecting the application for amendment. The plaintiff sued for a declaration that it was entitled to enhancement of 20% over the tender rates for the different categories of excavation work as detailed in para 13 of the plaint in connection with the work of excavation in foundation of the Tilaiya Dam at Katni, P. S. Koderma, in the district of Hazaribagh. Paragraphs 1 and 2 of the plaint read :

> "1. That the plaintiff did excavation on work of different categories as contractor in connection with the excavation in foundation of the Tilaiya Dam at Katni in the district of Hazaribagh, P. S. Koderma. The contrac- tor's letter of 24th September 1949 (Annexure A) eventually became the tender for such work.
>
> 2. Paragraph of the contractor's letter stated 'This quotation is based on prevailing labour rate of Rs. 1-4-0 per cooly but if there is increase of labour rate of more than 10 % in any particular month, the pro- portionate increase in rate will be charged."

Paragraphs 3 to 11 state facts which indicate that the plaintiff had asked for the increase of the labour rate per cooly by 20% and that the enhanced rates approved by the Corporation-defendant were not accepted by the plaintiff. Paragraph 12 states that the plaintiff asked for payment under protest to which the defendant was not agreeable. Paragraph 13 mentions the enhanced rates to which the plaintiff considers himself entitled according to the proper interpretation of clause 17 of the tender. Paragraph 14 of the plaint reads "As the difference between the parties is about the interpretation of clause 17 of the letter of the contractor dated 24-9-1949 the plaintiff is advised to file the suit in the declaratory form.

The plaintiff reserves the right under O. 2, r. 2 of the Code of Civil Procedure to omit to sue in respect of amount that may be found due upon the interpretation placed by the plaintiff upon the said clause 17 which interpretation it is submitted is the proper interpretation.

The plaintiff reserves the right to sue later on for the amount found due, to him."

Paragraph 15 states that the cause of action arose on December 6, 1951 when the Corporation refused to allow the increase of 20%. Paragraph 16 gives the value of the suit for the purpose of jurisdiction to be Rs. 65,000 and said that court-fees of Rs. 20-10-4 was paid as the suit was for declaration. Paragraph 17 said that the plaintiff claimed

(i) leave under O. 2, r. 2, C.P.C.; and (ii) that it be declared that the plaintiff is entitled to enhancement of 20% over the tendered rates for the different categories of excavation work as detailed in paragraph 13 of the plaint in connection with the work of excavation in foundation of the Tilaiya Dam. The plaint contained 3 annexures. Annexure A was the letter which ultimately constituted the tender. The schedule to the tender described the class and description of work to be executed, unit of calculation and the rate of payment. Annexure B was the letter from the plaintiff to

the Executive Engineer dated March 11, 1950 stating the difficulties in the performance of the contract. Annexure C was the letter from the Executive Engineer dated March 15-16, 1950 conveying the approval of an enhancement of 10% in the rate over the tendered rate for the excavation work-from the date onward. Annexure D is the letter from the plaintiff to the Corporation dated December 26, 1951 disputing the interpretation of the Corporation. It is clear from the plaint and its enclosures that the dispute between the parties was about the rate to be paid for the different categories of work and that the plaintiff did not deliberately sue to recover the amount that might be found due upon the interpretation placed by the plaintiff upon the said clause 17.

Paragraph 13 of the written statement filed by the defendant stated that the defendant did not admit the later part of the statement in para 14 of the plaint which related to the plaintiffs reserving his right to sue later for the amount found due at the enhanced rate. The defendant, inter alia, contested the suit on the ground that the suit was not maintainable in the form in which it had been framed. Paragraph 16 of the written statement stated that the Corporation was ever ready and willing and was still willing to pay the legitimate dues to the plaintiff. Issue No. 2 of the issues framed in the case, was : 'Is the suit maintainable in its present form ?' The trial Court stated in its judgment :

> "The defendant also pleaded that the plaintiff has no cause of action, the suit is not maintainable in the present form and the court-fees paid is insufficient. But these allegations were not pressed at the time of hearing."

It accepted the contention for the plaintiff that it was entitled to over-all increase by 20% in accordance with cl. 17 of the tender. It further said :

> "No objection has been pressed as to the plaintiffs prayer regarding leave under O. 2, r. 2, C.P.C. That must therefore be allowed." It accordingly decreed the suit.

On appeal, the High Court accepted the respondent's conten- tion that in view of the proviso to s. 42 of the Specific Relief Act the suit for mere declaration was not maintainable and that the trial Court was not right in granting permission under r. 2(3) of O. 2, C.P.C. to the plaintiff to institute another suit for the amount to which the plaintiff be entitled after the declaration sought for in the suit had been granted. The prayer for amending the plaint was rejected as the money claimed had become time. barred long before the prayer was made during, the arguments before the High Court and as there existed no special circumstances to justify the grant of the amendment against the interest,; of the defendant-respondent. The High Court therefore allowed the appeal and dismissed the suit. It however granted leave to appeal as the requirements of art. 133 (1) (a) of the Constitution were satisfied. Learned counsel for the appellant has contended that there exists such special circumstances in the case which would have justified, in the interests of justice, the grant of the application for amendment of the plaint and, in the alternative, contended that the High Court should not have allowed the respondent to object to the maintainability of the suit on the basis of the proviso to s. 42 of the Act and if the Court had allowed such an objection it should have, as a matter of course, allowed the application for amendment.

I Propose to dispose of the second contention first. The contention about the maintainability of the suit based on s. 42 of the Act aid had to be allowed. The Court could not make a declaration unless further relief had been prayed for. It was incumbent on the Court to comply with this requirement of law, even if not raised by the party, when it was clear that further relief could be claimed in the suit. Further, in this particular case, it cannot be said that no objection had been raised on this ground by the respondent up to the stage of the appeal in the High Court. In paragraph 2 of the written statement, the respondent questioned the maintainability of the suit in the form in which it was instituted. Issue No. 2 was framed in that connection. The contention was not given up by the respondent. It was simply not pressed on his behalf, possibly, because it felt strong on the contention on the basis of which the declaration was sought. I therefore do not consider the High Court in error in allowing the respondent to raise the objection to the maintainability of the suit on account of the plaintiff not having asked for the further relief. It does not however follow that the appellant must have been allowed, as a matter of course, to amend the plaint by adding a claim for recovery of the amount found due. The various cases relied on in support of this contention are cases in which the fresh relief claimed by way of amendment was not affected by the law of limitation and the objection to the maintainability of the suit had not been taken at an early stage of the suit. Reference need not be made to all those cases except to the one reported as Rukhmabai v. Lala Laxminarayan(1) in which this Court observed :

> "It is a well-settled rule of practice not to dismiss suits automatically but to allow the plaintiff to make necessary amendment if he seeks to do so."

Neither the question of limitation arose in that case nor did the Court consider it necessary for the plaintiff to have asked for consequential relief. The above observation cannot be taken to be a pronouncement in connection with amendments sought in the pleadings when they be with respect to claims which had become time-barred.

It is now well-settled that the Court has power to allow amendments in connection with claims which had become time- barred, if special circumstances exist and it be in the interests of justice. This is not disputed for the respondent. The real dispute between the parties is whether the circumstances of the case come within the principle laid down in the various cases. This necessarily leads to a consideration of the circumstances and the amendments sought in those cases.

(1) [1960] 2 S.C.R. 253,285.

Before referring to the cases, I may set out the provisions of the Code which empower the Court to allow amendment of pleadings. Section 153 and O. 6, r. 17, deal with the matter. Section 153 reads :

> "The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

> Rule 17 of 0. 6 reads :

> "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

These indicate that the amendment should be in such manner as may be just and that, as a rule, all such amendments shall be made as be necessary for the purpose of determining the real questions in controversy between the parties. No amendment would be just if it so prejudices the interests of the other party for which that party cannot get any relief from the Court. The amendments which must be allowed can be those in the absence of which the Court may not be able to determine the real question in controversy between the parties. The real question in controversy must be gathered only from the plaint and to some extent from the allegations in the written statement. If the point to be decided as a result of the amendment is not covered by the controversy raised by the plaint and the written statement,, the amendment is not to be allowed necessarily, for the simple reason that it is unnecessary for determining the real questions in controversy between the parties. The Court has to decide the suit instituted before it and with respect to the controversies raised in it. It follows that the amendments to be allowed relate to such matters which, due to bad drafting of the plaint, could not be clearly and precisely expressed, though the parties did really intend to have those matters determined by the Court. The object of the amendment of the pleadings is to clarify the pleadings for bringing into prominence the real controversy between the parties and not for helping a party by making such amendments which be beneficial to him in connection with some dispute between the parties, a dispute which has not been really taken to the Court for decision and which the parties did not really intend to be decided in that suit. This seems to me to be the real basis for an order of the Court in connection with such amendments sought by a party in its pleadings as would raise a claim which has become time- barred.

None of the cases referred to by the parties hold differently.

The cases which are to be considered in this connection are : Kisandas Rupchand v. Rachappa Vithoba(1); Charan Das v.Amir Khan (2) ; L. J. Leach & Co. Ltd. v. Jardine Skinner & Co.(3); and Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil(1). Reference to Kisandas's case(1) is necessary as some of the observations in that case were approved by this Court in the last case(4).

In Kisandas's case(1), the plaintiff sued for dissolution of partnership and accounts alleging that in pursuance of the partnership agreement they had delivered Rs. 4,001 worth of cloth to the defendants. The Court found that the allowed agreement was not a partnership agreement but evidenced the advance of a simple loan by the plaintiffs to the defendants. The trial Court held that the plaintiffs had really delivered cloth worth Rs. 4,001 to the defendants, but dismissed the suit as no decree for dissolution of partnership and for accounts could be given and the plaintiff had not asked to amend the plaint. In the first Appellate Court the plaintiffs-appellants accepted the findings, of the trial Court that no partnership was constituted by the agreement and prayed for leave to amend by adding a prayer for the recovery of Rs. 4,001. The appellate Court was of opinion that the plaintiffs had from the first intended to sue only for the recovery of money but had been misled by their pleader, allowed the amendment to be made and ultimately decreed the claim for Rs.

4,001. On the date of the amendment, it may be noted, most of the claim had become time-barred. In the second appeal, Batchelor J., said at p. 651 :

> "Falling back, then, upon the words of the Rule, I cannot follow the argument that there would be any injustice to the appellants in allowing the amendment, for the only effect of it is to enforce their liability for a debt which was claimed, disputed, and found to be due long before the defence of limitation was available."

(1) I. L.R. 33 Bom. 644.

(3) [1957] S.C.R. 438.

(2) L.R. 47 I.A. 255.

(4) [1957] S.C.R. 595.

Earlier, after referring to the provisions of O. 6, r. 17, he had said at p. 649 :

> "From the imperative character of the last sentence of the rule it seems to me clear that, at any stage of the proceedings, 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."

These observations have been approved by this Court in Patils case (1) where the Court said, at p. 604 :

> "The same principles, we hold, should apply in the present case. The amendments do not really introduce a new case, and the application filed by the appellant himself showed that he was not taken by surprise; nor did he have to meet a new claim set up for the first time after the expiry of the period of limitation."

Batchelor J., further said, at p. 652 (Kisandas's case) (2) , after referring to certain statements of the plaintiff in the trial Court "It is difficult to imagine how the plaintiff could have more clearly professed that, whatever may have been the attitude of his obstinately unskilful pleader, he for his part had no concern with the alleged partnership but was suing simply to recover his debt. I think, therefore, that the Subordinate Judge would have been well advised if he had paid more attention to the substance of the suit before him, and taken command of it himself rather than handed over the conduct of the suit to a manifestly inexpert pleader; had he taken this view of his duty as presiding Judge, the slight technical difficulty which stood in his way would have been easily removed."

In Patil's case(1) amendment was allowed in the following circumstances. The plaintiff had obtained a decree for possession against defendant No. 2. He was obstructed during execution proceedings by defendant No. 1. His objection under O. 21. r. 97 was dismissed and therefore he filed a suit under O.

21, r. 103 for a declaration that he was entitled to recover possession of the suit properties from defendant No. 1. The contents of (1) [1957] S.C.R, 595.

(2) 33 Bom. 644.

the plaint did not give the facts or the grounds on which the plaintiff based his title to the properties in suit as against defendant No. 1. This difficulty was pointed out by defendant No. 1 and subsequently the plaintiff asked for permission to give further and better particulars of the claim made in the plaint. This application was rejected by the trial Court. The trial Court did not allow this prayer and dismissed the suit. The High Court allowed the amendment of the plaint and this Court agreed with the order of the High Court. It is clear, as was observed by the Court at p. 604, that this was not a case where a new claim was made by the amendment but was a case where the incomplete particulars given in the plaint were sought to be made complete by giving further particulars. The main object of the plaintiff was to get a declaration of his right to possession against defendant No. 1. It was to achieve this object that be instituted the suit. He did not specify how he had a right to that property as against defendant No. 1 who was said to have no right to refuse delivery of possession to him. The only principle which can be deduced from this case is that amendment of the plaint can be allowed to make the plaint complete in particulars which would help in determining the real dispute between the parties, as raised by the plaint itself as originally presented.

Before dealing with Charan Das' case(1) reference may be made to the case reported as Mohummud Zahoor Ali Khan v. Mussumat Thakooranee Rutta Koer(2) which has been referred to in Charan Das' case(1). In this ease the plaintiff brought a suit against several persons on the allegations that defendant No. 1 had borrowed certain money on a simple money bond executed on August 9, 1856 and that the other defendants claimed her property and that therefore the suit be decreed against defendants and the property mentioned in the plaint, with interest to date of realisation. Defendant No. 1 had also executed another bond on November 28, 1857 to secure a further advance and 'had thereby pledged her zamindari estate to the plaintiff. The suit was however not based on the second bond. The Privy Council found that the suit should be dismissed against defendants other than defendant No. 1 and that it was open to the defendant to ask for a decree for payment of an amount due on the bond against defendant No. 1, but could not claim a decree against the property on the basis of the second bond. In that connection it was observed at p. 473 (1) L.R. 47 I.A. 255. (2) 11 M.I.A. 468.

> "Though this Committee is always disposed to give a liberal construction to pleadings in the Indian Courts, so as to allow every question fairly arising on the case made by the pleadings to be raised and discussed in the suit, yet this liberality of construction must have some limit. A plaintiff cannot be entitled to relief upon facts or documents not stated or referred to by him in his pleadings, and the only thing that can be rightly insisted on by the plaintiff here is a decree for payment against Rutta Koer."

The Privy Council however considered whether inasmuch as the suit was wholly misconceived, whether the proper course was not to dismiss the appeal altogether without prejudice to the right of the plaintiff-appellant to bring a new suit against defendant No. 1 upon the first point, and decided

that would not be the proper course as the fresh suit might be resisted on the ground of being barred by limitation, and as in the circumstances of the case such a defence in the fresh suit would be inequitable. The Privy Council therefore allowed the plaintiff to amend his plaint so as to make it a plaint against defendant No. 1 alone for the recovery of money due on a bond. Here again the defect was in the frame of the suit and did not relate to the real claim with respect to which the sought relief from the Court. The plaintiff sought recovery of money due on the bond executed by defendant No. 1. He however framed a suit not only against defendant No. 1 but against other defendants as well and claimed a decree of money against all of them and against the property. His suit was allowed to continue by making proper amendment with respect to part of the original claim, i.e., with respect to the recovery of money alone against defendant No. 1. This case shows that amendment of the plaint was allowed so as to make it a plaint against defendant No. 1 alone for the recovery of the claim even though if the original suit for that recovery had been instituted at the time it would have been barred by limitation.

In Charan Das' case(1) the plaintiff sued for a declaration of his right to pre-empt certain property. The suit so framed was not maintainable in view of s. 42 of the Specific Relief Act, as the further relief for possession was not asked. The trial Court rejected the application for amending the plaint and dismissed the suit. The appeal against the dismissal of the suit was allowed and the suit was remanded for decision upon merits with (1) L.R. 47 I.A. 255.

liberty to the plaintiffs to amend their plaint by adding a claim for possession and by ante-dating the plaint according to the dates of the original suits. The Privy Council approved of the permission for the amendment of the plaint and, after quoting with approval the observations of the Judicial Commissioner to -the effect :

> "however defective the frame of the suit may be, the plaintiffs' object was to pre-empt the land; their cause of action was one and the same whether they sued for possession or not" said at p. 262 :
>
> "If this be so, all that happened was that the plaintiffs, through some clumsy blundering, attempted to assert rights that they undoubtedly possessed under the statute in a form which the statute did not permit. But if once it be accepted that they were attempting to establish those rights, there is no sufficient reason shown for disturbing the judgment of the Judicial Commissioner, who thinks they should be at liberty to express their intention in a plainer and less ambiguous manner. It may be noticed that in the claim the relief sought is so awkwardly set out that it would be quite open to the interpretation that +,hey had in fact claimed pre-emption and not a declaration of right . . . . "

These observations, again, make it clear that amendment was allowed with respect to a, claim which, at the time when it was made, would have been time-barred because that claim could be spelt out of the original plaint which was held to be defectively framed. A defect in the frame of the plaint was not considered sufficient to disallow amendment and to dismiss the suit. The amendment of the plaint was necessitated to clumsy drafting. The plaintiff was allowed to express his intention in a

plainer and less ambiguous manner. It was these considerations which, according to the Privy Council, outweighed the consideration that the power of amendment should not as a rule be exercised where its effect be to take away from a defendant a legal right which had accrued to him by lapse of time and brought the case within the principle laid down in Ali Khan's case(1). The next case to be considered is Leach & Co.'S Case(2). In That case the plaintiff had filed a suit for damages for conversion (1) 11 M.I. A. 468. (2) [1957] S.C.R. 438.

against the defendants on the allegation that they were the agents of the plaintiffs. This plea failed. On appeal, the appellate Court held that the parties stood in the relationship of seller and purchaser and not agent and principal. This Court, on further appeal, agreed with the findings of the appellate Court +,hat the, suit for damages on the footing of conversion must fail. The plaintiffs, however, applied to this Court for amendment of the plaint by raising, in the alternative, a claim for damages for breach of contract for non-delivery of the goods. The application was opposed on the ground that it introduced a new cause of action and a suit on that cause of action would be barred by)imitation. This Court considered there was force in the objection but, after giving due weight to it, was of the opinion that it was a fit case in which the amendment should be allowed as the new claim was based on a clause of the same agreement on which the suit had been founded and therefore could not be said to be foreign to the scope of the suit and as the prayer in the plaint was itself general and merely claimed damages. This Court observed at p. 450 "Thus, all the allegations which are necessary for sustaining a claim for damages for breach of contract are already in the plaint. What is lacking is only the allegation that the plaintiffs are, in the alternative, entitled to claim damages for breach of contract by the defendants in not delivering the goods." Here again, the amendment allowed related to the form of relief which could be claimed on the basis of the facts alleged in the plaint and a clause of the document on the basis of which the suit was founded. The defect in the plaint was in giving a correct shape to the legal claim which was open to the plaintiff and the relief sought could be covered by the original relief which was couched in general language. It may further be mentioned that the amendment was considered just as the defendants themselves had cancelled the contract without strictly complying with the terms of the contract and the Court felt that the justice of the case required that the amendment be granted. It would appear from the various cases discussed above that an amendment which would enable a plaintiff to make a claim which has become time-barred is as a rule to be refused and that the Court would exercise its special power to allow such amendment only when there be special circumstances in the case. The nature of those special circumstances is to be gathered from those cases in which such an amendment was allowed. It appears to me that such special circumstances can be only when the amended claim was at least intended to be made by the plaintiff who had given in the plaint all the necessary facts to establish the claim but had due to clumsy drafting not been able to express himself clearly in the plaint and to couch his relief in the proper legal form. Such circumstances justify an amendment not really as a judicial concession to the plaintiff to save him from any possible loss but on the ground that the original claim in the plaint, though defectively stated, really amounted to the claim sought to be made by the amendment. Looked at in this way, the permission to amend does not in reality offend against the law of limitation and serves the interests of justice. At this stage I may properly refer to what was said by the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung(1). In that case the Privy Council had to consider whether the amendment allowed by the Judicial Commissioner, on appeal against the order of the District Judge, could be allowed in law or not. It observed at p. 216 :

> "All rules of Court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but none the less no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit.

It was held that the claim after amendment would be based on a different cause of action from that on which the original claim was based and therefore was not the real question in controversy between the parties in that suit. To allow the new claim would be to go outside the provisions of O.6, r. 17, C.P.C.

I may now consider whether the fact,% of the present case are such as would justify the amendment of the plaint sought by the plaintiff-appellant. The plaint in the present case gives no facts which are necessary to establish before the plaintiff can get a decree for Rs. 65,000 or which may justify a decree for accounting. The schedule attached to the tender, Annexure A, shows that different rates of payment were agreed upon different basic, as unit of calculation for different type of work. The plaint nowhere B indicates the amount of work done under each category and unless (1) L.R. 48 I.A. 214.

the plaintiff sets out the amount of work done he cannot certainly make out any claim for payment to him. It is said that the amount due to the plaintiff can be worked out on accounting on the basis of the bills tendered by him and to which the defendant had not raised any objection. No reference to such bills has been made in the plaint. Nothing is said in the plaint that the defendant had agreed to the bills tendered. To allow the amendment of the plaint would necessarily lead to a further request for the furnishing of these details about the work done and that would necessarily lead to the defendants being afforded an opportunity to put in a further written statement in connection with the fresh facts which would come on the record. In fact the amendment sought would necessitate practically a de navo trial on the question as to what amount the plaintiff is entitled from the defendant on account of the work done. The amended claim cannot be decreed on the facts on the record.

When the plaintiff cannot get the relief, sought to be added as a result of the amendment on the facts mentioned in the plaint originally, it is clear that the cause of action for a decree for Rs. 65,000 is different from the cause of action on which the suit for declaration was founded. For the suit as originally instituted the plaintiff had merely to prove the terms of the contract between the parties and to show that his interpretation of these terms was the correct one and that interpretation justified the declaration sought. A suit based on one cause of action cannot be allowed to be changed into a suit based on another cause of action.

It cannot be said that the plaintiff intended to sue the defendant for the recovery of Rs. 65,000 but failed to express himself clearly in the plaint and that therefore he be allowed to make the plaint precise and clear in that regard. The plaintiff knew that he could make a claim for money and in para 14 reserved the right under O. 2, r. 2 C.P.C. to omit to sue in respect of that amount that be

found due upon interpretation placed by him on cl. 17 of the tender. This indicates that he did not intend to sue for the amount due to him and that he anticipated the possibility of later suing for the recovery of the amount deliberately not sued for in the suit. This circumstance also justifies the rejection of his prayer for amendment. The fact that the trial Court, by its judgment, allowed leave under O. 2, r. 2 of the Code to sue for the amount due subsequently is no circumstance to justify the amendment now sought. The omission of the dependent to press any objection against the prayer of the plaintiff for leave under O. 2, r. 2 is not such a special circumstance which should justify the amend-

ment sought. Leave under O. 2, r. 2 can be sought by the plaintiff and can be given by the Court with respect to a plaintiff's not suing for certain relief arising out of the same cause of action as subr. (3) provides that 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 omitted. It has been shown above that the cause of action for the relief of declaration was different from the cause of action for the claim of money. The relief for the money due did not arise from the cause of action on which the relief for declaration was based.

I am therefore of opinion that the High Court was right in not allowing the amendment sought by the plaintiff. The appeal therefore fails and I would dismiss it with costs.

ORDER The appeal is allowed in accordance with the majority judg- ment.