

Beeharry v MauBank Ltd

2022 IND 31

CN474/15

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr. Rajiv Kumar Beeharry

Plaintiff

v/s

MauBank Ltd

Defendant

RULING (NO. 1) (PROPOSED AMENDMENTS TO THE PLEA)

By way of his Second Amended Proceipe dated 13-05-16, the Plaintiff is claiming from the Defendant Company the sum of Rs34 843 865/- together with Interests at 12% per annum on the Severance Allowance payable from the date of termination of employment to the date of final payment, with Costs.

The Defendant, in its Plea dated 15-06-16, is denying the said Claim, and is moving for the Second Amended Proceipe to be dismissed, with Costs.

Each Party was assisted by Learned Senior Counsel, and the Proceedings were held in English for the purposes of the Arguments.

Before the start of the Trial, Learned Senior Counsel for the Defendant Company moved to amend the Plea in terms of the Proposed Defendant's Second Amended Plea To The Second Amended

Proceipe dated 09-12-21 and the Notice Of Motion For Amendment Of The Defendant's Plea (undated), to which Learned Senior Counsel for the Plaintiff objected.

The matter was set for Arguments.

Case For The Plaintiff

Learned Counsel for the Plaintiff objected to the Motion for Amendment of the Plea on the following grounds:

- 1) It is not open to the Defendant Company to renew a Motion for Amendment which has already been adjudicated upon or to otherwise seek to make a fresh Motion for Amendment on terms which are substantially the same as an Amendment which was not granted;
- 2) The Motion for Amendment amounts to an Abuse Of Process inasmuch as:
 - a) it amounts to a collateral attack against the Ruling of the Learned Magistrate dated 11-07-19 and the Judgment of the Supreme Court dated 13-01-21;
 - b) the proposed Amendments are so consequential that they in fact create a new document; and
 - c) the proposed addition of paragraph 2(f) of the Proposed Amended Plea is unnecessary, as confirmed by the Defendant Company's own Stand before the Supreme Court and the observations of the Supreme Court in light of the Defendant Company's Stand; and
- 3) The Proposed Amendments amount to a *révocation d'aveu judiciaire* and therefore cannot be allowed.

Learned Senior Counsel for the Plaintiff offered oral Submissions and put in Arguments on the Proposed Defendant's Second Amended Plea (undated), and Authorities in support of his Submissions.

Case For The Defendant Company

Learned Senior Counsel for the Defendant Company moved to amend the Plea in terms of Proposed Defendant's Second Amended Plea To The Second Amended Proceipe dated 09-12-21 and the Notice Of Motion For Amendment Of The Defendant's Plea (undated) on the following grounds:

- 1) The proposed Amendments are to dispel all doubts about the Defence and do not purport to change the essence/substance of the Original Plea;
- 2) The Motion for Amendment is being made bona fide;
- 3) There is no *révocation d'aveu judiciaire*;
- 4) To uphold the Defendant Company's Right to a Fair Trial;
- 5) The Ruling of the Learned Magistrate cannot be overlooked; and
- 6) There is no specific Rule barring the Defendant Company from renewing its Motion for Amendment, and the Court has a discretion whether to entertain such Motion in the Interests of Justice or not.

Learned Senior Counsel for the Defendant Company offered oral Submissions, and put in the Defendant's Written Arguments on Proposed Second Amendment To The Plea dated 13-12-21 (unsigned) and Supplemental To Defendant's Written Arguments On Proposed Second Amendment To The Plea dated 17-12-21 (unsigned), and Authorities in support of his Submissions.

Analysis

The Court has duly considered the oral Submissions of each Learned Senior Counsel, and the Court has also given due consideration to the Written Submissions and Authorities submitted to the Court by each Learned Senior Counsel in support of their respective Submissions.

Now, the present matter is being started anew, given the then Ag. President of the Industrial Court is no longer on the Bench.

Learned Senior Counsel for the Plaintiff submitted that it was not open to the Defendant Company to renew its Motion for Amendment to the Plea, in light of the Ruling of the then Ag. President of the Industrial Court dated 11-07-19, which has already determined the said issue, and as the case might drag on indefinitely were there further changes in Postings in the Judiciary and were the Defendant Company allowed to make the same Motion before each new Bench.

Learned Senior Counsel for the Defendant Company submitted that there was no hard and fast rule preventing the Defendant Company from renewing its said Motion before the present Bench,

the consideration being whether it was in the Interests of Justice for the Court to entertain such Motion.

The Court finds the Authority of **ABC Motors Co Ltd v Ngan & Ors** [\[2010 SCJ 163\]](#) of particular relevance to the present matter to the effect that the present Bench is not, and cannot, sit on Appeal on the said Ruling of the then Ag. President of the Industrial Court.

Further, in light the Defendant Company's position that the Amendments granted as per the said Ruling of the then Ag. President of the Industrial Court stand good, and have been incorporated in the Proposed Defendant's Second Amended Plea To The Second Amended Proceipe dated 09-12-21, it follows that the Defendant Company is accepting the decision of the then Ag. President of the Industrial Court, as far as the proposed Amendments which have been granted.

The Defendant Company is therefore not inviting the Court to reconsider all the proposed Amendments, including the ones granted by the previous Bench, and make a determination thereon, but is only asking the Court to reconsider the proposed Amendments that were not granted by the previous Bench.

By seeking to renew its Motion for Amendment to the Plea before the present Bench, the Defendant Company is in effect picking and choosing what it accepts from the said Ruling and what it does not.

The Defendant Company cannot at the same time accept the Amendments which were granted in the said Ruling, and therefore give effect to the said Ruling in relation to the said Amendments, and reject part of the said Ruling whereby the other proposed Amendments were not granted, and ask the present Bench to consider matters which have been already determined in the said Ruling.

The said Ruling must stand as a whole.

In light of all the above, the Court is of the considered view that the Amendments granted to paragraphs 8 and 9 of the Plea as per the said Ruling stand *ab initio*, in light of the principles set out in the Authority of **ABC (supra)**:

Now, it is trite law that an amendment allowed by the Court dates back in general to the time of the original pleading and the action continues as though the amendment has been ab initio. That principle of the retroactivity of amendments of pleadings is to be found in the decision on **Warner v Sampson [1959] 1 QB 297** which was referred to in the case of **Harel & Anor v Société Jean Claude Harel and Cie & Ors [1993 MR 251]**:

This principle of the retroactivity of amendments was also cited with approval in **Mutty v Bhuguth [1996 SCJ 93]** and **Dwarka Sooredoo Associates v The Municipality of Beau Bassin-Rose Hill [2002 SCJ 168]**. This principle is described in the Supreme Court Practice 1997 Vol. 1 at page 357, paragraph 20/5 – 8/2, as follows –

“Effect of amendment. An amendment duly made, with or without leave, takes effect, not from the date when the amendment is made, but from the date of the original document which it amends; and this rule applies to every successive amendment of whatever nature and at whatever stage the amendment is made. Thus, when an amendment is made to the writ, the amendment dates back to the date of the original issue of the writ and the action continues as though the amendment had been inserted from the beginning: “the writ as amended becomes the origin of the action, and the claim thereon indorsed is substituted for the claim originally indorsed” (**Collins M.R. in Sneade v Wotherton, etc, [1904] 1 K.B. 295, p. 297**). Similarly in the pleadings “once pleadings are amended, what stood before amendment is no longer material before the Court and no longer defines the issues to be tried” (Hodson L.J in Warner v Sampson [1959] 1 Q.B. 297, p. 231).”

In the result we take the view that the hearing should proceed on the basis of the pleadings as amended [...].

Also, the Court is of the considered view that it would not be judicious, in the Interests of Justice, or in order, to canvass issues which have already been determined in the said Ruling, as the said Ruling stands as a whole.

Having found as above, there is no need for the Court to address the remaining issues raised in the course of the present Arguments.

Conclusion

The Court having reached its decision only on the basis of the material placed before it, in light of all that is on Record and all the factors highlighted above, and for all the reasons given above, the Court finds that it cannot entertain the Motion for Amendment to the Plea made by the Defendant Company, and upholds the objection 1) taken by the Plaintiff.

Amended Pleadings on behalf of the Defendant Company are to be placed on Record in light of the Amendments which have been granted as per the Ruling dated 11-07-19 of the then Ag. President of the Industrial Court.

[Delivered by: D. Gayan, Ag. President]

[Industrial Court]

[Date: 06 July 2022]