



HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 731 of 2013

M/s Shyama Rama Structural and Power Pvt. Ltd.

versus

Andhra Bank

Order Sheet

21/10/2024	Petitioner Shri Raj Narayan Mishra appears in person. Shri Ankit Pandey, Advocate for the Respondent/Bank. <u>Heard on I.A. No.16 of 2024 filed on 23.1.2024.</u> The Petitioner has filed this application for amendment in the writ petition, while submitting order dated 3.7.2013 passed by the DRAT, Allahabad. <u>Also heard on I.A. No. 19 of 2024 for amendment</u> filed on 30.7.2024 which is in respect of addition of paragraph 10 in the relief clause seeking quashment of order dated 3.7.2013 passed by the DRAT, Allahabad in Appeal No.256 of 2013. <u>Also heard on I.A. No.21 of 2024 for amendment</u> filed on 3.9.2024.

This is an application for incorporation and amendment of cause title as earlier Andhra Bank was the party-Respondent, but, now, it is merged with Union Bank of India. As such, in place of Andhra Bank, Union Bank of India be made party-Respondent No.2.

So far as application for amendment, i.e., I.A. No.19 of 2024 is concerned, the Petitioner-in-person submitted that on 3.7.2013 the DRAT, Allahabad has dismissed his appeal, being Appeal No.256 of 2013 and just after receipt of copy he has filed the said order. However, due to inadvertent mistake, in spite of filing application for amendment, he has filed submission of document with index for taking it on record. The said submission of document was filed on 7.8.2013 in which he has annexed order of the DRAT, Allahabad dated 3.7.2013 by which his appeal was dismissed. During the course of argument, when the opposite party raised an objection that the writ petition has become infructuous as on 3.7.2013 the DRAT, Allahabad has dismissed the appeal filed by the Petitioner-in-person upon which he submitted that he has already filed order dated 3.7.2013 passed by the DRAT. However, in spite of filing application for amendment, he has filed the documents as such the application for amendment may be allowed and in the relief clause following amendment may be directed to be incorporated:

“(i) Thus, the petitioner company respectively prays to this Hon’ble High Court to quash/modified the impugned order dated 03.07.2013 of the Hon’ble Debts Recovery

Appellate Tribunal, Allahabad as well as the order dated 17.04.2013 of Hon'ble Debts Recovery Tribunal, Jabalpur and to decide the petition on merits in the interest of natural justice."

The aforesaid submission was vehemently opposed by Learned Counsel for the Respondent/Bank. It has been submitted that after lapse of about 10 years such an application cannot be allowed. The writ petition has already become infructuous and in such infructuous petition allowing of amendment application would not be in accordance with law. He has placed reliance upon an old decision of the High Court of Nagpur in **B.N. Saoji v. State of Madhya Pradesh, AIR 1956 Nag 128**. He has also placed reliance upon a decision of the Supreme Court in **Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi, AIR 1969 SC 734**. He has further placed reliance upon a judgment of the High Court of Gujarat in **Gujarat Sachivalaya and Allied Office Staff Association v. State of Gujarat, 1988 SCC OnLine Guj 119** and it was urged that the application for amendment is sans merit and it cannot be filed at a belated stage that too in an infructuous petition and as such it be dismissed with cost through out.

I have heard the Petitioner-in-person and Learned Counsel for the Respondent/Bank and also perused the material available with due care.

True it is that the application for amendment I.A. No.19 of 2024 has been filed on 30.7.2024. However, the Petitioner-in-person, who is not having proper knowledge of procedures, has earlier filed copy of the order dated

3.7.2013 passed by the DRAT, Allahabad by which his appeal was dismissed on 7.8.2013, i.e., within a short span of passing of the order. It seems that the Petitioner-in-person was under an impression that filing of copy of the order will enure the challenge of order dated 3.7.2013 and, therefore, under *bona fide* impression he has not sought any advice and he was under a hope that the order dated 3.7.2013 has already been challenged. It is in that situation when an argument was advanced by the Learned Counsel for the Respondent/Bank stating that the writ petition has become infructuous, the Petitioner-in-person fairly submitted that he has filed copy of the said order way back on 7.8.2013 as such the writ petition has not become infructuous. Facing with the aforesaid situation, on 22.7.2024, the Petitioner-in-person has taken time to file an appropriate application and accordingly application for amendment I.A. No.19 of 2024 was filed on 30.7.2024 questioning order dated 3.7.2013 passed by the DRAT.

It is worthwhile to mention this fact here that upon objection made by the Respondent/Bank, a Co-ordinate Bench of this Court on 18.4.2024 has dismissed the instant writ petition holding that the order dated 3.7.2013 passed by the DRAT, Allahabad has not been questioned. The dismissal of the writ petition vide order dated 18.4.2024 was subjected to a writ appeal before the Division Bench of this Court in which vide order dated 4.7.2024 by a detailed order the Division Bench of this Court has allowed the appeal and has set aside the order dated 18.4.2024 and the matter was remanded back to the Learned Single Judge to decide the

same afresh on merits after considering the pending applications filed by the writ petitioner, i.e., the applications for amendment and the applications for taking documents on record. Since the Petitioner has already filed copy of the order dated 3.7.2013 passed by the DRAT, Allahabad *bona fide* presuming that he has already challenged the order by way of filing of the document and hence he has not filed an application for amendment at that point of time. However, subsequently, I.A. No.19 of 2024 for amendment was filed on 30.7.2024. The Hon'ble Supreme Court in **Life Insurance Corporation of India v. Sanjeev Builders Private Limited, AIR 2022 SC 4256** decided by the Supreme Court has considered the validity of the amendment application and it has been held as under:

“70. Our final conclusions may be summed up thus:

(i) xxx xxx xxx

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

(iii) The prayer for amendment is to be allowed

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

(ii) to avoid multiplicity of proceedings, provided

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

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

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

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

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

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

(iii) the prayer for amendment is *malafide*, or

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

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

Now coming to the present writ petition, in which the application for amendment has been filed, while taking guidance from the aforesaid principles laid down by the Hon'ble Supreme Court, the first thing to be borne in mind is that it is a case in which the Petitioner-in-person is prosecuting his petition and further on 7.8.2013 he has filed

an application in the shape of submission of documents in which he has annexed copy of order dated 3.7.2013 passed by the DRAT, Allahabad by which his appeal has been dismissed. It seems that the Petitioner was under a *bona fide* belief that he has already challenged the order dated 3.7.2013 though specific application and relief has not been claimed. But, in light of the judgment rendered by the Supreme Court in **Life Insurance Corporation** (supra) in order to do complete justice and to decide the writ petition effectively and properly, the real controversy between the parties are required to be considered was and there would be no multiplicity of the litigation. Even if the delay, as prayed by the Learned Counsel for the Respondent/Bank, is to be considered, the same cannot be a ground to disallow the prayer for amendment. So far as the argument advanced by Learned Counsel for the Respondent/Bank stating that the amendment cannot be allowed to be made to the petition which has already become infructuous is concerned, since the Division Bench of this Court has allowed the writ appeal and the said order has remained unchallenged, therefore, this argument made on behalf of the Respondent/Bank is not sustainable and the argument is accordingly set aside.

In view of the aforesaid discussion, I am of the considered opinion that the application for amendment I.A. No.19 of 2024 filed by the Petitioner-in-person deserves to be allowed and it is accordingly allowed.

I.A. No.16 of 2024 is also in respect of submission of appellate order dated 3.7.2013 passed by the DRAT,

Allahabad, however, since by I.A. No.19 of 2024 the relief clause questioning order dated 3.7.2013 has already been allowed, therefore, amendment application I.A. No.16 of 2024 is of no use and as such it is dismissed having become redundant.

Since I.A. No.21 of 2024 is the application for making Union Bank of India a party as Respondent No.2 on the ground that Respondent Andhra Bank has been merged in the Union Bank of India, this application is also allowed.

In light of the aforesaid directions, the Petitioner-in-person is directed to make necessary amendment in the writ petition including its cause-title by **14.11.2024** as from 28.10.2024 Diwali holidays are going to be started.

The Petitioner-in-person is further directed to file amended writ petition along with all the relevant documents and annexures.

Since I have **allowed** I.As. No.19 and 21 of 2024 for amendment, I.A. No.15 of 2024 dated 23.1.2024 for taking documents on record and I.A. No.20 of 2024 dated 30.7.2024 for taking documents on record are also hereby **allowed**.

Sd/-

(Amitendra Kishore Prasad)
JUDGE