

RAJESH KUMAR AGGARWAL AND ORS.

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v.

K.K. MODI AND ORS.

MARCH 22, 2006

[H.K SEMA AND DR. AR. LAKSHMANAN, JJ.]

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Code of Civil Procedure, 1908;

Order VI rule 17—Amendment of pleadings—Scope of—Held, all amendments should be allowed that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

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Order VI rule 17—Amendment of pleadings—Duty of the court—Held, is to decide whether such an amendment is necessary to decide the real dispute between the parties and if it is, the amendment will be allowed; if it is not, the amendment will be refused.

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Order VI rule 17—Amendment of pleadings—Approach of the court—Held, should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice.

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The appellants are beneficiaries of Modipon Limited Senior Executive (Officers) Welfare Trust which was formed for the general benefit of employees employed in the Fibre Division of Modipon Limited and the purpose was to provide benefits to such employees and dependent members of their families particularly for the purposes of giving them education, medical relief, facilities for sports, cultural and other activities on sound, permanent and organized basis. The respondents (defendant Nos. 1-4) are Trustees of the Trust. The Trust purchased 19, 314 equity shares of Godfrey Philips (India) Limited ('GPI') in the name of respondent No. 1 in his capacity as a trustee of the Trust. GPI issued bonus shares to its existing shareholders. Bonus shares were issued in the ratio of 1:1 in the year of 1992-93. By reason of the above, the Trust became entitled to 57, 942 shares of GPI. According to the appellant, the bonus shares issued have not been forwarded to the trust and the share certificates despatched by GPI from time to time were not received by the

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- A Secretary of the Trust. It was further stated that a new account was opened by respondent No. 1 at Oriental Bank of Commerce in his name and not in the name of the Trust and is being operated by respondent No. 1. Since the beneficiaries of the Trust were not deriving any benefit from the Trust and as such the appellants were constrained to file a suit for declaration, permanent injunction and mandatory injunction in the High Court of
- B Delhi. After filing of the written statements by the defendant no. 1 and 5, the appellant filed an interlocutory application seeking amendments to the
- C plaint to the effect that the shares were not fetching good returns and as such in the interest of justice the shares may be sold and then invested in Government Bonds and/or Securities which will be in interest of
- D beneficiaries, because at present the beneficiaries are not deriving any benefit by virtue of the said shares which are in power and possession of defendant no. 1 as is evident from the records of the case. Further amendment in the prayer to incorporate relief of mandatory injunction directing the defendants to sell the shares of GPI held by the Trust and use the sale proceeds thereof for the benefit of the beneficiaries, was also
- E sought. Single Judge of the High Court allowed the application of the appellant but the Appellate Court allowed the appeal filed by respondent No. 1 and dismissed the application of the appellants for amendment of plaint on the ground that the proposed amendment introduces a totally different, new and inconsistent case and that the application does not appear to have been made in good faith and at the instance of some one behind the curtain.

- F It was contended inter alia by the appellant that all amendments of pleadings should be allowed which are necessary for determination of the real controversies in the suit and that the amendment proposed by the appellant was necessary for determining the real controversies in the suit and the Division Bench was not right in rejecting the application at the stage of amendment when it is settled law that the Court does not enter into merits at the stage of amendment.

- G Respondent, on the other hand, contended that amendment of a plaint will not be allowed if it seeks to introduce into the plaint a new and different case which is inconsistent with the case originally made out in the plaint or, if the amendment has not been moved bona fide or in good faith, but only for the purpose of achieving some collateral objective which is not *bona fide*.

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Allowing the appeals, the Court

HELD: 1.1. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. [184-G]

M/s Ganesh Trading Co. v. Moji Ram, [1978] 2 SCC 91, referred to.

1.2. Since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. If it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

[185-A-B]

1.3. The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. [185-C-E]

Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon, [1969] 1 SCC 869, relied upon.

1.4. The cardinal principle is that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. [185-E-F]

Sampath Kumar v. Ayyakannu and Anr., [2002] 7 SCC 559, followed.

A 1.5. Court should always grant leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. [186-B-D]

B *Ragu Thilak D. John v. S. Rayappan and Ors.*, [2001] 2 SCC 472, referred to.

K.K. Modi v. K.N. Modi and Ors., [1998] 3 SCC 573 and Lord Simonds, Sir John Beaumont and Sir Lionel Leach, AIR 37 (1950) PC 68, referred to.

C *Kumaraswami Gounder and Ors. v. D.R. Nanjappa Gounder (dead) and Ors.*, AIR (1978) Madras 285 FB, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5350-5351 of 2002.

D From the Final Order dated 27.8.2001 of the Delhi High Court in F.A.O. (O.S.) No. 35 of 2000 and C.M. No. 387/2000.

E Mukul Rohtagi, B.L. Wahi, Ms. Inkle Barooah and Ms. Bina Gupta for the Appellants.

S. Ganesh, Praveen Bahadur, Ms. Meghalee Barthakur, Mr. Rajan Narain, Ms. Kanika Gomber, Ms. Bharti Badesra, Ms. Rupa Barmola and M/s. O.P. Khaitan & Co. for the Respondents.

F The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. The above appeals were filed against the final order dated 27.08.2001 passed by the High Court of Delhi in FAO (OS) No.35/2000 and C.M. No. 387/2001 whereby the High Court of Delhi allowed the appeal of the respondents.

G The short facts of the case are as follows:

H By a Deed of Trust dated 01.05.1979, a Trust in the name and style of Modipon Limited Senior Executives (Officers) Welfare Trust was formed. The said Trust was formed for the general benefit of employees employed in the Fibre Division only of Modipon Limited and the purpose was to provide

benefits to such employees and dependent members of their families particularly for the purposes of giving them education, medical relief, facilities for sports, cultural and other activities on sound, permanent and organized basis. A

The appellants are beneficiaries of Modipon Limited Senior Executive (Officers) Welfare Trust. The respondents (defendant Nos. 1-4) are Trustees of the Trust and respondent No.5 is the Secretary of the Trust. The Trust purchased 19,314 equity shares of Godfrey Philips (India) Limited (in short 'GPI') in the name of respondent No.1 in his capacity as a trustee of the Trust. GPI issued bonus shares in the ratio of 1:1 to its existing shareholders. Bonus shares were issued in the ratio of 1:1 in the year of 1992-93. By reason of the above, the Trust became entitled to 57,942 shares of GPI. According to the appellant, the bonus shares issued have not been forwarded to the Trust and the share certificates despatched by GPI from time to time were not received by the Secretary of the Trust. It was further stated that a new account was opened by respondent No.1 at Oriental Bank of Commerce in his name and not in the name of the Trust and is being operated by respondent No.1. Since the beneficiaries of the Trust were not deriving any benefit from the Trust and as such the appellants were constrained to file a suit for declaration, permanent injunction and mandatory injunction in the High Court of Delhi, which was registered as Suit No. 181/97, against the respondents claiming following amongst other reliefs:- B
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- (a) a decree for declaration that defendant no.1 is not a fit and proper person to continue as trustee of Modipon Limited Senior Executive Welfare Trust;
- (b) a decree directing that defendant no.1 is removed from such office by the orders of this court; F
- (c) a decree of permanent injunction restraining defendant no.1 and/or his servants, agents and assignees from operating the saving account No.9089 opened in Oriental Bank of Commerce, New Friends Colony, New Delhi; G
- (d) a decree by way of mandatory injunction restraining defendant no.1 from depositing the dividend/bonus shares received in future from GPI in the account opened by him with defendant no.6 at Delhi and simultaneously directing him to forward the same to the secretary of the trust; H

- A (e) a decree of mandatory injunction in favour of the plaintiff to direct defendant no.1 to hand over the relevant Bonus Share Certificate in account to 9089 and dividend amounting to Rs. 15,64,434.00, or any other amount of GPI to the secretary of the Trust , i.e. defendant no.5 herein;
- B (f) pass such other order or further order/ orders as this Court may deem fit and proper in the facts and circumstances of the case.

Written statement was filed on behalf of respondent Nos. 1 & 5 before the High Court.

- C On 23.09.1998, the appellants filed an application being I.A. No. 8479/1998 under Order VI Rule 17 read with Section 151 C.P.C. seeking leave of the Court to amend the plaint and to incorporate the following amendments to the original plaint of the appellants:-

- D “12(a) The beneficiaries of the trust are not deriving any benefit from the creation of the Trust since 1991-1992 and as such the object of the Trust has been frustrated. The Trust as of date owns 77256 shares of GPI, but 57942 of the shares are in the exclusive power and possession of defendant no.1. Only 19314 shares of GPI are in the possession of defendant no. 5 being the Secretary of the Trust. It is stated that GPI declared a dividend of Rs 7/- per share in the year 1996-1997 when the market price of the shares was between Rs. 250-300/- per share which means a mere 2.5% return on the investment per annum. If the said GPI shares were to be sold and then invested in Government Bonds/Securities the investment would yield a minimum (return of 10% to 12% per annum). It is pertinent to mention that since 1991-92, even the dividend declared on GPI shares are being solely appropriated by the defendant no.1 to the exclusion of the beneficiaries. Since defendant no.1 who is holding the said shares of the Trust is deriving benefit by holding the shares, the beneficiaries of the Trust are being deprived from the benefit which they are entitled to. It is in the interest of justice that the said shares may be sold and then invested in Government Bonds and/or Securities which will be in interest of beneficiaries, because at present the beneficiaries are not deriving any benefit by virtue of the said shares which are in power and possession of defendant no.1 as is evident from the records of the case.
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Similarly, the appellants sought amendment in paragraph 15 and want to incorporate relief of mandatory injunction as per prayer (b-1) to be read as under:- A

| RELIEF | VALUATION FOR THE PURPOSES OF JURISDICTION | COURT FEE | COURT FEE PAID | B |
|---|--|-----------|----------------|---|
| For the Relief of Mandatory Injunction (as per prayer b-1) herein | Rs. 130.00 | Rs.130.00 | Rs.13.00 | C |

Pass a decree of Mandatory injunction directing the defendants to sell the shares of GPI held by the Trust and use the sale proceeds thereof for the benefit of the beneficiaries.” D

The application was filed under Order VI Rule 17 C.P.C. Respondent No.1 filed reply to the said application. The appellants filed their rejoinder to the reply of respondent No.1 to the said application.

The learned single Judge of the High Court, vide his order dated 31.08.1994, allowed the application of the appellant seeking relief of amendment to the plaint. Respondent No.1 herein filed First Appeal against the order of the learned single Judge which was registered as FAO (OS) No. 35/2000 whereby the learned single Judge had allowed the application of the appellants seeking the relief of amendment of plaint. The Appellate Court allowed the appeal filed by respondent No.1 and dismissed the application of the appellants for amendment of plaint on the ground that the proposed amendment introduces a totally different, new and inconsistent case and that the application does not appear to have been made in good faith and at the instance of some one behind the curtain. Aggrieved against the said order, the above civil appeals have been filed. E
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We heard Mr. Mukul Rohtagi, learned senior counsel appearing for the appellants and Mr. S. Ganesh, learned senior counsel appearing for the contesting respondents along with other counsel for the parties.

Elaborate and lengthy submissions were made by learned senior counsel H

A appearing on either side by inviting our attention to the pleadings, annexures filed and the judgments impugned.

B Mr. Mukul Rohtagi submitted that the High Court is not justified in disallowing the amendment of the plaint so as to defeat the valuable rights of the appellants. He would further submit that the Court was not correct in
C dismissing the application in view of the settled position of law that all amendments of pleadings should be allowed which are necessary for determination of the real controversies in the suit and that the amendment proposed by the appellant was necessary for determining of the real controversies in the suit. This apart, the Division Bench was not right in
D rejecting the application at the stage of amendment when it is settled law that the Court does not enter into merits at the stage of amendment. According to Mr. Rohtagi, the appellants sought an amendment that the shares be sold and then invested in Government Bonds and/or securities which will be in the interest of beneficiaries because presently the beneficiaries were not deriving any benefit by virtue of the said shares which are in power and possession of respondent No.1 as is evident from the records.

E Mr. Rohtagi, learned senior counsel for the appellants, in support of his contention placed strong reliance on the following three judgments of this Court being *M/s Ganesh Trading Co. v. Moji Ram* [1978] 2 SCC 91, *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*, [1969] 1 SCC 869 AIR (1969) SC 1267, *Ragu Thilak D. John v. S. Rayappan and Ors.*, [2001] 2 SCC 472.

F Per contra, Mr. Ganesh, learned senior counsel for the respondent submitted that the judgment of the Division Bench is completely in line with the settled legal position that an application for amendment of a plaint will not be allowed if it seeks to introduce into the plaint a new and different case which is inconsistent with the case originally made out in the plaint or, if the amendment has not been moved bona fide or in good faith, but only for the purpose of achieving some collateral/objective which is not bona fide.
G According to Mr. Ganesh, the amendment sought to be introduced by the appellants amendment application set up a case which was altogether new and different and also directly contrary to and inconsistent with the case made out in the original plaint. In this connection, Mr. Ganesh invited our attention to several paragraphs in the pleadings filed by both the parties. It was contended that the case made out in the original plaint is one that is
H confined strictly and solely to respondent No.1/Defendant No.1 alone and the

reliefs prayed for are also on that basis and footing. In contrast, the new case sought to be made out by amending the plaint is against all the respondents, and this is clear from the submissions and contentions set out in the proposed prayer (b-1) which is directed against all the respondents and not merely against respondent No.1. He would further submit that the case made out in the original plaint was based on the Deed of Trust dated 01.05.1979 and the appellants purport to seek to enforce their right as beneficiaries in terms of the said Deed of Trust. In contrast, the case which was sought to be made out in the proposed amendments was directly contrary to and inconsistent with the specific terms of the said Deed of Trust dated 01.05.1979. Therefore, the appellants by moving these amendments seeking an order for realisation of the investments held by the Trust and the investment of such monies in a different manner that is a change or alteration of the investments. It was further submitted that the contentions put forward by the appellants/plaintiffs in the original plaint were based on the provisions of Sections 60 and 61 of the Indian Trusts Act which provide that the beneficiary of a Trust has a right, subject to the provisions of the Trust, to have the Trust property protected, and the Trustees compelled to perform their duties and restrained from committing any contemplated or probable breach of Trust. In other words, Sections 60 and 61 of the Trusts Act authorise the beneficiary to enforce the instrument of the Trust as against the Trustees and to enforce the implementation of the terms of the instrument of the Trust. The case which was sought to be made out in the proposed amendments was totally alien and extraneous to the ambit and purview of Sections 60 and 61 of the Trusts Act. Essentially, in the proposed amendments, the appellants seek an order for a material amendment and a complete re-writing of the instrument of the Trust, which is directly contrary to what is contemplated and provided by Sections 60 & 61. It was also submitted that the proposed amendments are also utterly lacking in *bonafides* or good faith and that the suit was targeted at Mr. K.K. Modi respondent No.1/Defendant No.1 and the only object of the suit was clearly to ensure that K.K. Modi Group would be denied the voting power in respect of the GPI shares held by the Trust. Our attention was also drawn to the various IAs filed and argued before the High Court and the orders passed thereon. Concluding his argument Mr. Ganesh submitted that the present application for amendment is an abuse of the process of Court and this Court ought not to entertain such frivolous applications. Mr. Ganesh, in support of his contention, relied on the following judgments:-

1. *K.K. Modi v. K.N. Modi and Ors.*, [1998] 3 SCC 573,

- A 2. *Lord Simonds, Sir John Beaumont and Sir Lionel Leach*, AIR 37 (1950) PC 68,
3. *Kumaraswami Gounder and Ors. v. D.R. Nanjappa Gounder (dead) and Ors.*, AIR (1978) Madras 285 FB.

B We have carefully gone through the relevant pleadings, annexures and the judgment rendered by the learned single Judge and of the learned Judges of the Division Bench of the High Court.

Order 6 Rule 17 of CPC reads thus:

C “(17) *Amendment of Pleadings* - 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:

D Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

E This rule declares that the Court may, at any stage of the proceedings, allow either party to alter or amend his pleadings in such a manner and on such terms as may be just. It also states that such amendments should be necessary for the purpose of determining the real question in controversy between the parties. The proviso enacts that no application for amendment should be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter for which amendment is sought before the commencement of the trial.

F The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

G Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real

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question in controversy between the parties.

In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

We shall now consider the proposed amendment and to see whether it introduces a totally different, new and inconsistent case as observed by the Hon'ble Judges of the Division Bench and as to whether the application does not appear to have been made in good faith. We have already noticed the prayer in the plaint and the application for amendment. In our view, the amendment sought was necessary for the purpose of determining the real controversy between the parties as the beneficiaries of the Trust. It was alleged that respondent No.1 is not only in exclusive possession of 57,942

A shares of GPI and the dividend received on the said shares but has also been and is still exercising voting rights with regard to these shares and that he has used the Trust to strengthen his control over GPI. Therefore, the proposed amendment was sought in the interest of the beneficiaries and to sell the shares and proceeds invested in Government bonds and or securities. A reading of the entire plaint and the prayer made thereunder and the proposed amendment would go to show that there was no question of any inconsistency with the case originally made out in the plaint. The Court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide. There are a plethora of precedents pertaining to the grant or refusal of permission for amendment of pleadings. The various decisions rendered by this Court and the proposition laid down therein are widely known. This Court has consistently held that the amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The amendments sought for by the appellants has become necessary in view of the facts that the appellants being the beneficiaries of the Trust are not deriving any benefit from the creation of the Trust since 1991-92 and that if the shares are sold and then invested in Government bonds/securities the investment would yield a minimum return of 10-12%. It was alleged by the appellants that respondent No.1 is opposing the sale in view of the fact that if the said shares are sold after the suit is decreed in favour of the appellants, he will be the loser and, therefore, it is solely on account of the attitude on the part of respondent No.1 that the appellants have constrained to seek relief against the same.

We shall now consider the argument of the learned senior counsel for the respondent on Sections 60 and 61 of the Trusts Act. It was submitted by the appellants that since respondent No.1 did not act in a *bonafide* manner as a result of which the appellants were compelled to file the suit before the High Court in the capacity of the beneficiaries of the Trust and that the amended plaint is not alien and extraneous to the ambit and purview of Sections 60 and 61 of the Trusts Act.

We shall now consider the judgments cited by learned senior counsel for the appellants:-

1. *M/s Ganesh Trading Co. v. Moji Ram*, [1978] 2 SCC 91

This Court held that the main rules of pleadings in Order 6, CPC, 1908, show that provision for the amendment of pleadings subject to such terms as to costs and giving to all parties concerned necessary opportunities to meet

exact situations resulting from any amendment, are intended for promoting the ends of justice and not for defeating them. This Court further held that the amendment only sought to give notice to the defendant on facts which the plaintiff would and could have tried to prove in any case. Such notice was given only by way of abundant caution so that no technical objection can be taken that what was sought to be proved was outside the pleadings.

2. *Jai Jai Ram Manohar Lal v. National Building Material Supply, Gurgaon*, [1969] 1 SCC 869 It was held that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.

3. *Ragu Thilak D. John v. S. Rayappan and Ors.*, [2001] 2 SCC 472

Sethi, J. speaking for the Bench has observed that the amendment sought would change the nature of the suit originally filed was not a reason for refusing application for amendment and that the dominant purpose of Order VI Rule 17 was to minimise litigation and that the plea that the relief sought for by way of amendment was barred by time is arguable in the circumstances of the case. This Court further observed in para 5 as under:

“5. After referring to the judgments in *Charan Das v. Amir Khan*, AIR (1921) PC 50, *L.J. Leach & Co. Ltd v. Jardine Skinner & Co.*, AIR (1957) SC 357, *Ganga Bai v. Vijay Kumar*, [1974] 2 SCC 393, *Ganesh Trading Co. v. Moji Ram*, [1978] 2 SCC 91 and various other authorities, this court in *B.K. Narayana Pillai v. Parameshwaran Pilla*, [2000] 1 SCC 712 held: (SCC p.715, para 3)

“3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is

A equally true that courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties.

B Amendments are allowed in the pleadings to avoid uncalled- for multiplicity of litigation.”

We shall now consider the judgment relied on by Mr. Ganesh, learned senior counsel for the respondent.

C 1. *K.K. Modi v. K.N. Modi and Ors.*, [1998] 3 SCC 573

This civil appeal was filed by K.K. Modi against K.N. Modi and Others and this judgment was relied on by Mr. Ganesh to show that the parties are litigating before different forums and that the directions issued by this Court pending final disposal of the suit in the Delhi High Court.

D 2. *Lord Simonds, Sir John Beaumont and Sir Lionel Leach*, AIR 37 (1950) PC 68,

The Privy Council, in the above case, has observed as under:-

E “The powers of amendment must be exercised in accordance with legal principles. An amendment which involves the setting up of a new case and alters the real matter in controversy between the parties cannot be allowed.”

F 3. *Kumaraswami Gounder and Ors. v. D.R. Nanjappa Gounder (dead) and Ors.*, AIR (1978) Madras 285 FB.

G Likewise, the above case was cited in regard to the permissibility of amendment by introducing a new cause of action. This Full Bench decision of the Madras High Court was cited for the proposition that when the amendment sought for sets up a totally different cause of action which ex facie cannot stand on a line with the original pleading, Courts cannot allow such application for amendment and that a pleading could only be amended if it is to substantiate, elucidate and expand the pre-existing facts already contained in the original pleadings; but under the guise of an amendment a new cause and a case cannot be substituted and the courts cannot be asked to adjudicate the alternative case instead of original case.

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This judgment is distinguishable on facts. The cause of action for filing the present suit arose on 21.10.1993 when the defendant No.1 informed that the account has been opened by him in the Oriental Bank of Commerce and that the cause of action further arose on several dates when the reminders were sent to defendant No.1 for handing over the bonus share certificates and the dividends to the Trust. It was alleged in the plaint that defendant No.1 has no authority in holding the monies of the Trust and that the dividends of the shares have not been accounted for. A further prayer by way of permanent injunction was sought against defendant No.1 and his servant's agent and assignees from operating the bank account in the Oriental Bank of Commerce, New Delhi and for a mandatory injunction restraining the defendant for depositing the dividends/bonus shares received in future from GPI in the account opened by him with the defendant No.6 Bank at Delhi. A further decree for mandatory injunction was also sought in favour of the appellants/plaintiffs to direct defendant No.1 to handover the relevant bonus shares and the dividends or any other amount of GPI to the Secretary of the Trust defendant No.5.

In the application for amendment in paras 6,7, & 8 it was submitted as follows:-

6. The plaintiffs and/or their family members, being the beneficiaries of the said Trust are not deriving any benefit from the creation of the said Trust since 1991-92. During the period in or around 1979-80, the Trust purchased 19314 equity shares of Godfrey Philips Ltd. (hereinafter referred as to GPI) and the defendant no. 1 took over the management and control of Godfrey Philips Ltd. in the year 1980 or so. The Trust as of date owns 77256 shares of GPI. But 57942 of the shares are in the exclusive power and possession of defendant no.1. Only 19314 shares of GPI are in the possession of Defendant no. 5 being the Secretary of the Trust.

7. It is stated that GPI declared a dividend of Rs. 7/- per share in the year 1996-97 when the market price was rising from Rs. 250-300/- per share which means a mere 2.5% return on the investment per annum. If the said GPI shares were to be sold and then invested in Government Bonds/Securities the investments would yield a minimum return of 10% to 12% per annum.

8. It is pertinent to mention that since 1991-92, even the dividends declared on GPI shares are being solely appropriated by the defendant no. 1 to the exclusion of the beneficiaries. Since defendant no.1 who is holding the

A said shares of the Trust is deriving benefit by holding the shares, the beneficiaries of the Trust are being deprived from the benefit which they are entitled to. It is in the interest of justice that the said shares may be sold and then invested in Government Bonds and/or Securities which will be in the interest of beneficiaries, because at present the beneficiaries are not deriving any benefit by virtue of the said shares which are in power and possession of defendant no. 1 as is evident from the records of the case.

It is thus seen that the entire case of the plaintiff revolves around the equity shares of GPI and that the dividend declared thereon are not accounted for. Therefore, a further prayer by way of amendment was sought to amend the plaint and to incorporate clause 12a after the existing para 12 and also to incorporate the relief of mandatory injunction as per prayer b-1 directing the defendants to sell shares of GPI held by the Trust and use the sale proceeds thereof for the benefit of the beneficiaries. Thus, it is clearly seen from the above narration of facts that the amendment sought for does not introduce a new cause of action inconsistent with the case made out in the original plaint.

D It is pertinent to notice the following facts also:-

23.09.1998 Application under Order VI Rule 17 was filed on the same date, the appellant filed the amended plaint.

13.01.1999 Respondent No.1 filed reply to the application under Order VI Rule 17

22.01.1999 Appellants filed their rejoinder to the reply of respondent No.1

31.08.1999 Learned Single Judge allowed the application

25.10.1999 Respondent No.1 filed First Appeal before the Division Bench in FAO (OS) No. 35/2000

31.01.2000 Respondent No.2 filed his written statement.

11.07.2000 *Respondent No.1 filed his amended written statement to the amended plaint. (underlining is ours)*

15.09.2000 Appellants filed their application to the amended written statement of respondent No.1

10.01.2001 Admission/denial of documents was conducted by the parties and the documents were executed

20.08.2001 Learned Single Judge framed the following issues on the pleadings of the parties:

- (1) Whether the Suit is not maintainable in its present form, having been filed by only three employees of the Modipon Fibre Division "O.P.D". A
 - (2) Whether the suit has been filed by the plaintiffs at the instance of M.K. Modi Group in orders to harass defendants no. 1 and in a bid to dislodge and destabilize, defendant no. 1's control and management of GPI? "O.P.D". B
 - (3) Whether the defendant no.1 has acted bonafidely to protect the assets, properties and income of the trust and interests of the beneficiaries of the trust? "O.P.D".
 - (4) Whether the defendant no. 1 has misused the assets of the trust? "O.P.D". C
 - (5) Whether the plaintiffs are entitled to the relief claimed in the plaint in view of terms of clause 19 of the Trust?
- 27.08.2001 Appellate Court allowed the appeal filed by respondent No.1 and dismissed the application of the appellants for amendment of the plaint. D
- 03.12.2001 SLP filed
- 18.01.2002 Notice was issued in the SLP - Further proceedings in the suit was stayed until further orders. E
- 26.08.2002 Interim order dated 18.01.2002 shall continue to remain in operation during the pendency of the appeal. H

From the above noted dates, it is clearly seen that the respondents have filed their amended written statement and the appellants their replication to the amended written statement and conducted admission and denial of documents and more so the issues were framed and despite the said fact, the High Court has allowed the appeal of the respondents and dis-allowed the application of the petitioner for amendment of the plaint. F

Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in *Sampath Kumar v. Ayyakannu and Anr.*, [2002] 7 SCC 559. G

A We make it clear that we are not expressing any opinion on merits of the rival claims. Now that the amended plaint written statement and the issues have been framed it is for both parties to contest the suit on merits on the basis of the amended plaint written statement and the issues now framed.

B In the result, the Civil Appeal Nos. 5350-5351 are allowed and the order passed by the Division Bench of the High Court in FAO (OS) No. 35/2000 and CM No.3 dated 27.08.2001 stands set aside. However, there will be no order as to costs.

C The suit was filed in the year 1997. Now that the pleadings are complete and the suit is ready for trial, we request the High Court to dispose of the suit as expeditiously as possible and at any rate not later than 6 months from the date of receipt of the copy of the order from this Court or on production of the same by either party whichever is earlier.

B.K.

Appeals allowed.