REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2017
[Arising out of SLP(C) No.614 of 2015]

LIFE INSURANCE CORPORATION OF INDIA …Appellant

Versus

SANJEEV BUILDERS PVT. LTD. AND ORS. ....Respondents

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the judgment of the High Court of Judicature at Bombay dated 22.08.2014, in and by which, the Division Bench dismissed the appeal filed by the appellant thereby affirming the order of the Single Judge in Chamber Summons No.187 of 2014 by which the respondent No.3 was impleaded as Plaintiff No.3 in Suit No.894 of 1986.

3. The respondent No.1 filed suit No.894 of 1986 against the appellant for specific performance of the agreement of sale dated 08.06.1979 by which the appellant is said to have agreed to sell the suit property to respondent No.1 and in the alternative directing the appellant to pay a sum of Rs.10,75,021.05 with further interest on the sum of Rs.4,52,778/- at the rate of 18% per annum from the date of the suit till payment or realization. According to the appellant, the said agreement has been rescinded on 28.11.1984. The respondent No.1 is said to have assigned the interest to respondent No.2, their sister concern.

4. In the year 2014, respondent No.3-Kedia Construction Company Limited filed Chamber Summons No. 187/2014 stating that subsequent to the filing of the suit, with the consent of respondent No.2, Plaintiff No.1/respondent No.1 had assigned its interest to respondent No.3 for a consideration of Rs.23,31,000/- by an agreement for sale dated 24.08.1987. The Chamber Summons was filed to implead respondent No.3 as Plaintiff No.3 and praying to amend the suit pursuant to the agreement of sale in its favour. The appellant opposed the Chamber Summons on the ground that the respondent No.3 was not a *bona fide* assignee or a necessary party

and that the issues in the suit were framed on 31.01.2014 and that there has been an inordinate delay of 27 years in filing the application which has not been explained. It was also contended that the agreement dated 08.06.1979 in favour of respondent No.1 itself was terminated on 28.11.1984 and the respondent No.1/Plaintiff No.1 could not have transferred any right to the respondents.

5. The Single Judge held that the issue as to whether the interest of respondent Nos.1 and 2 can be transferred to respondent No.3 has to be tried in the suit and not at that stage and delay in filing the application cannot be a ground for not impleading the respondent No.3. The chamber judge held that the agreement dated 08.06.1979 permits assignment of rights and there is no requirement therein for permission being taken from the appellant. The court relied on the Madras High Court judgment in ***Mrs. Saradambal Ammal v. E. R. Kandasamy Goundar and Others*** (1947) 2 MLJ 374 wherein it was held that such assignment of contractual rights was permissible under Order XXII Rule 10 CPC. The Single Judge also relied upon the judgment of the Bombay High Court in ***Jawaharlal v. Smt. Saraswatibai Babulal Joshi and Others*** AIR 1987 Bom. 276, wherein it was held that the detailed enquiry was not needed under

Order XXII Rule 10 CPC and that there need be only a *prima facie* satisfaction that the interest has been assigned and the grounds on merits need not be considered. The court noted that though the suit was filed in 1986, the same was listed for the first time only in 2000 and then in 2007, in 2008 and later in 2014. Observing that no prejudice will be caused to the appellant, the Chamber Summons was allowed *vide* order dated 16.04.2014 and costs of Rs.10,000/- was directed to be paid to the appellant. Being aggrieved, the appellant preferred the Letters Patent Appeal which came to be dismissed holding that the proposed amendment did not affect the case of the appellant on merits and that the appellant could challenge the assignment in favour of respondent No.3 after the final decree. Being aggrieved by the dismissal of Letters Patent Appeal, the appellant has preferred this appeal.

6. Mr. Goburdhan, learned counsel for the appellant contended that when the suit for specific performance was pending from 1986 and the same was well within the knowledge of respondents, the amendment made in the year 2014 impleading respondent No.3 as Plaintiff No.3 under the guise of application under Order XXII Rule 10 CPC, is a sheer abuse of law. Counsel further submitted that there

was a gross delay of 27 years in filing the impleadment application and the High Court glossed over the law and facts and erred in allowing the application without keeping in view an inordinate delay of 27 years in filing the application.

7. Per contra, learned Senior Counsel for the respondents Mr. Shekhar Naphade submitted that the order allowing the application in Order XXII Rule 10 CPC is in the nature of an interim order and not finally determined the rights of the parties and hence no Letters Patent Appeal will lie. The learned Senior Counsel further submitted that respondent No.3 claims as an assignee of the rights of the respondent Nos.1 and 2 and has the right to continue the suit and the order allowing impleading application does not affect the rights of the parties. It was further contended that the rights of respondent No.1 under the agreement of sale is a transferable right to sue and the assignee having acquired the right during the pendency of the suit for specific performance. It was submitted that the provisions of Order XXII Rule 10 CPC enables the assignee to make an application to the court to implead as party to continue the suit for which the provisions of Limitation Act do not apply. It was submitted by a well-reasoned order that learned Single Judge allowed the Chamber

Summons and the Division Bench rightly dismissed the appeal and the impugned order does not suffer from any error of law warranting interference.

8. We have carefully considered the rival contentions and perused the impugned judgment and materials on record.

9. First contention is that the order of Single Judge was not a '*judgment*' finally affecting the rights of the parties and the non-maintainability of Letters Patent Appeal. Clause 15 of Letters Patent provides for intra-court appeals against the judgment of Single Judge of the High Court. The right of the Letters Patent Appeal to the High Court depends upon whether or not the decision of the Single Judge appealed from affects the merits of the question between the parties and their valuable rights. Whether an order is a '*judgment'* or *an 'interlocutory order'* depends upon whether or not, it has finally decided the rights of the parties and whether it has the effect of affecting the rights of the parties. For an order to be a '*judgment*', it is not always necessary that it should put an end to the controversy or terminate the suit. An '*interlocutory order'* determining the rights of the parties in one way or other is also a '*judgment'.*

10. Elaborating upon nature of '*interlocutory order*' or "*judgment*" and observing that the Letters Patent Appeal would lie from the judgment which would affect the vital and valuable rights of the parties and which work serious injustice to the parties concerned, in ***Shah Babulal Khimji v. Jayaben D. Kania and Anr.*** (1981) 4 SCC 8, it was held as under:-

> "**106.** Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the letters patent.
> .....
> **114.** In the course of the trial, the trial Judge may pass a number of orders whereby some of the various steps to be taken by the parties in prosecution of the suit may be of a routine nature while other orders may cause some inconvenience to one party or the other, e.g., an order refusing an adjournment, an order refusing to summon an additional witness or documents, an order refusing to condone delay in filing documents, after the first date of hearing an order of costs to one of the parties for its default or an order exercising discretion in respect of a procedural matter against one party or the other. Such orders are purely interlocutory and cannot constitute judgments because it will always be open to the aggrieved party to make a grievance of the order passed against the party concerned in the appeal against the final judgment passed by the trial Judge.
>
> **115.** Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned. Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.
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> **116.** We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to

> a judgment within the meaning of the letters patent. Suppose the trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases, although the order passed by the trial Judge is purely discretionary and interlocutory, it causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore, though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the letters patent. This is what was held by this Court in *Shanti Kumar case (1974) 2 SCC 387*, as discussed above.
>
> **117.** Let us take another instance of a similar order which may not amount to a judgment. Suppose, the trial Judge allows the plaintiff to amend the plaint by adding a particular relief or taking an additional ground which may be inconsistent with the pleas taken by him but is not barred by limitation and does not work serious injustice to the defendant who would have ample opportunity to disprove the amended plea taken by plaintiff at the trial. In such cases, the order of the trial Judge would only be a simple interlocutory order without containing any quality of finality and would therefore not be a judgment within the meaning of clause 15 of the letters patent." [**Underlining added**]

11. Applying the above principle to the case in hand, we find that the order allowing the application impleading respondent No.3 as assignee (Order XXII Rule 10 CPC) after 27 years of filing of the suit vitally affects the valuable rights of the appellant. The order allowing amendment of plaint by impleading respondent No.3 as 'Plaintiff No.3' on the basis of alleged assignment of agreement dated 24.08.1987 decides a vital question which concerns the rights of the parties and hence is a '*judgment'* to maintain the Letters Patent Appeal. In our view, allowing of such application after 27 years of filing suit for

specific performance would cause serious prejudice to the appellant-defendant depriving valuable right of defence available to the appellant and hence the order of Single Judge allowing the Chamber Summons is a '*judgment*' within the meaning of Clause 15 of the Letters Patent Appeal.

12. The stand of respondent No.3 is that it claims as an assignee of the rights of respondent Nos.1 and 2 and that it has the right to continue the suit under Order XXII Rule 10 CPC and the provisions of limitation, do not apply to such an application. To appreciate merits of this contention, we may usefully refer to Order XXII Rule 10 CPC, which reads as under:-

> **ORDER XXII: DEATH, MARRIAGE AND INSOLVENCY OF PARTIES**
> **.....**
> **10**. **Procedure in case of assignment before final order in suit.−** (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.
> (2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Under Order XXII Rule 10 CPC, when there has been an assignment or devolution of interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against person to or upon whom such interest has been assigned or devolved and this entitles

the person who has acquired an interest in the subject-matter of the litigation by an assignment or creation or devolution of interest *pendente lite* or suitor or any other person interested, to apply to the Court for leave to continue the suit. When the plaintiff assigns/transfers the suit during the pendency of the suit, the assignee is entitled to be brought on record and continue the suit. Order XXII Rule 10 CPC enables only continuance of the suit by the leave of the court. It is the duty of the court to decide whether leave to be granted or not to the person or to the assignee to continue the suit. The discretion to implead or not to implead parties who apply to continue the suit must be exercised judiciously and not arbitrarily.

13. The High Court was not right in holding that mere alleged transfer/assignment of the agreement would be sufficient to grant leave to respondent No.3 to continue the suit. From the filing of the suit in 1986, over the years, valuable right of defence accrued to the appellant; such valuable right of defence cannot be defeated by granting leave to the third respondent to continue the suit in the application filed under Order XXII Rule 10 CPC after 27 years of filing of the suit. The learned Single Judge was not right in saying that impleading respondent No.3 as Plaintiff No.3 would cause no

prejudice to the appellant and that the issues can be raised at the time of trial.

14. In a suit for specific performance, application for impleadment must be filed within a reasonable time. Considering the question of impleadment of party in a suit for specific performance after referring to various judgments, in ***Vidur Impex and Traders Private Limited and Others v. Tosh Apartments Private Limited and Others*** (2012) 8 SCC 384 summarized the principles as under:-

> "**41.** Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:
>
> **41.1.** The court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the court is necessary for effective and complete adjudication of the issues involved in the suit.
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> **41.2.** A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the court.
>
> **41.3.** A proper party is a person whose presence would enable the court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.
>
> **41.4.** If a person is not found to be a proper or necessary party, the court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.
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> **41.5.** In a suit for specific performance, the court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.
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> **41.6.** However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order

> passed by the court or the application is unduly delayed then the court will be fully justified in declining the prayer for impleadment."

In light of the above principles, considering the case in hand, in our view, the application filed for impleading respondent No.3 as Plaintiff No.3 was not filed within reasonable time. No explanation is offered for such an inordinate delay of 27 years, which was not kept in view by the High Court.

15. Be it noted that an application under Order XXII Rule 10 CPC seeking leave of the court to continue the suit by the assignee/third respondent was not actually filed. Chamber Summons No.187 of 2014 was straight away filed praying to amend the suit which would have been the consequential amendment, had the leave to continue the suit been granted by the court.

16. As pointed out earlier, the application was filed after 27 years of filing of the suit. Of course, the power to allow the amendment of suit is wide and the court should not adopt hyper technical approach. In considering amendment applications, court should adopt liberal approach and amendments are to be allowed to avoid multiplicity of litigations. We are conscious that mere delay is not a ground for rejecting the amendment. But in the case in hand, the parties are not

rustic litigants; all the respondents are companies and the dispute between the parties is a commercial litigation. In such facts and circumstances, the amendment prayed in the Chamber Summons filed under Order XXII Rule 10 CPC ought not to have been allowed, as the same would cause serious prejudice to the appellant. In our view, the impugned order, allowing Chamber Summons No.187 of 2014 filed after 27 years of the suit would take away the substantial rights of defence accrued to the appellant and the same cannot be sustained.

17. In the result, the impugned judgment is set aside and the appeal is allowed. Chamber Summons No.187 of 2014 in Suit No.894 of 1986 stands dismissed. No order as to costs.

……..……J.
[KURIAN JOSEPH]

……..……J.
[R. BANUMATHI]

New Delhi;
October 24, 2017