LATEST JUDGMENTS

Nandkishore Lalbhai Mehta v. New Era Fabrics Pvt. Ltd. & Ors., 2015 (7) SCALE 665.

- All the necessary and material facts should be pleaded by the party in support of the case set up by it. No party can be permitted to travel beyond its pleadings. The purpose of pleadings is to give each side an intimation of the case of the other side to be met, and to enable courts to determine what is really at issue between the parties.
- Court cannot make out a case which is not pleaded. A question which does not arise from the pleadings and which was not a subject matter of an issue, cannot be decided by the court. The court should confine its decision to the questions raised in the pleadings.
- Pleadings must be liberally construed. Instead of emphasizing on the form of the pleading, the substance of the pleading should be considered. The court cannot, suo motu, make out a case which is not pleaded, if

- However, if the document is not in itself inadmissible in evidence and is exhibited, no objection as to its admissibility or mode of proof cab be raised subsequently. Such objection has to be taken at the first available opportunity. If such objection is not raised, it would amount to waiver.
- Foundation for leading secondary evidence has to be laid in the pleadings. Secondary evidence is inadmissible until the non-production of the original is accounted for. In case of secondary evidence, the court has an obligation to decide the question of admissibility of a document before exhibiting it.
- Mere admission of a document in admission does not amount to its proof. If a witness merely identifies his/her signature on a photocopy, it does not amount to admission of the contents of such photocopy.
- Admissibility of a document or contents thereof may

Banganga Cooperative Housing Society Ltd. and Ors. v. Vasanti Gajanan Nerurkar and Ors., 2015 (5) BomCR 813.

Hon'ble Shri Justice G. S. Patel

- ✓ No Evidence Affidavit under Order XVIII Rule 4 of the CPC can be allowed to be 'withdrawn'. It is evidence as soon as it is affirmed.
- ✓ The Evidence Affidavit cannot contain matter that is irrelevant, inadmissible or both; or is in the nature of arguments, submissions or prayers. This is not 'evidence' as required by law. Were it to be attempted from the witness box, it would not be permitted; and hence it cannot be allowed to creep in merely because it happens to be placed on affidavit.
- ✓ It is permissible, and in fact often necessary, for a Court, with a view to expedition and to avoid a needlessly protracted cross-examination on irrelevancies and matter that is not 'evidence' to order that any such material that does not constitute evidence be struck off or be ordered or directed to be ignored without fear of adverse consequence.
- ✓ Merely because the material is in the form of an

- ✓ Where an Evidence Affidavit is filed and the witness or deponent, though otherwise available, is not made available for cross-examination, the well-established consequences in law will follow. Specifically, the opposite party will be entitled to submit that an adverse inference be drawn against such a witness or the party who fails to produce that witness for cross-examination; and, further, that should that evidence contain any admissions, these may be used by the other party; but so much of the evidence as is against the party entitled to cross-examination but which has gone untested for want of production of the witness will be liable to be ignored.
- ✓ Order XVIII Rule 4 requires two things: (1) what is stated must constitute examination-in-chief; and (2) it must be stated in the form of an affidavit. Order XVIX tells us what an affidavit cannot contain and to what it must be restricted; and the Evidence Act tells us what can constitute examination-in-chief or evidence and what cannot. Therefore, if any portion of a purported Evidence Affidavit does not conform to these two exacting requirements, it is simply not examination-in-chief at all and cannot be allowed to pass into the evidentiary record of the trial.

ANR., Criminal Applications 716, 717 & 718 of 2015, decided on 12.2.16.

Hon'ble Smt. Justice Anuja Prabhudessai.

- ✓ The object of Section 200 is to test whether the complaint makes out sufficient ground for the purpose of issuing process. The amended sub-section (1) of Section 202 Cr.P.C makes it obligatory that when the accused resides beyond the jurisdiction of the court, the Magistrate shall, before issuing process, enquire into the case himself or direct investigation to be made by a police officer or such other person as he thinks fit. The object is to find out whether or not there is sufficient ground to proceed against the accused. It is meant to ensure that innocent persons residing beyond the jurisdiction of the Magistrate are not harassed by unscrupulous persons by filing false or vexatious complaints.
- ✓ These ingredients and conditions of section 138 of the N.I. Act are to be satisfied mainly on the documentary evidence keeping in mind the presumptions under section 118 and 139 of NI Act and section 27 of General Clauses Act as well as the provisions of section 146 of the Act.
- ✓ The provisions of Section 142 to 147 lay down a Special Code for the trial of offences under the Chapter XVII of the N.I. Act.

- Departing from the general rule that the criminal law can be set in motion by any person either by written complaint or oral information, the provision of section 142 of the Act mandates that the complaint under section 138 N.I.Act should be in writing and should be filed and signed by the payee or the holder in due course, as the case may be, before the concerned court. There is thus no scope to refer the case for police investigation or enquiry. The exception engrafted in section 142 serves as a safeguard against false and frivolous complaints and thus eliminates the need to hold a preliminary enquiry contemplated by section 202 Cr.P.C.
- As a general rule, Section 200 mandates examination on oath of the complainant and the witnesses present, if any, and section 202 mandates an enquiry or investigation by the police or by any other person. However, Section 145 with its non-obstante clause dispenses the need for examination of the complainant and the witnesses on oath and enables the magistrate to issue process on the basis of

- ✓ It is also pertinent to note that the Negotiable Instruments (Amendment) Act, 2015 defines and restricts the territorial jurisdiction to a court specified in Section 142 (2) (a) and (b) of the Act. The said issue of territorial jurisdiction which has to be decided on the basis of the documents, eliminates the need for further inquiry on jurisdictional issue.
- ✓ It therefore follows that the Magistrate can arrive at the requisite satisfaction about the essential ingredients of the offence including the issue of territorial jurisdiction at the end of the enquiry under Section 200Cr.P.C itself and this obviates the need of holding further enquiry under Section 202 Cr.P.C.
- ✓ This being the position, <u>further enquiry under sub section (1) of Section 202 of the Code, if held to be mandatory in complaints filed under Section 138 N.I.Act, will be nothing but ritualistic, idle and an empty formality</u>.

Merit Magnum Constructions v. Nandkumar Anant Vaity & Ors. 2014 (2) BomCR 182.

Hon'ble Shri Justice M. S. Sonak

- There is no absolute proposition that a plaint can never be rejected under Order 7 Rule 11 on the basis of the bar of limitation. This will depend upon the facts and circumstances of each case.
- Where the issue of limitation is a mixed question of law and fact or where a conclusion is not discernible from the statements in the plaint that the suit is barred by limitation, the plaint cannot be rejected by resort to Order 7 Rule 11(d) of CPC.
- Averments in the plaint, have to be accepted as correct for the purposes of deciding the

- Order 7 Rule 11 enjoins the Court to reject the plaint where it does not disclose a cause of action. However, there is no question of striking out any portion of the pleading under this Rule.
- Under Order 7 Rule 11(a), the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. There cannot be a partial rejection of the plaint.
- There cannot be any compartmentalization, dissection, segregation and inversion of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import.

Sanjay Vasant Kadam & Ors. v. State of Maharashtra.
Criminal Writ Petition No.3327 of 2015, decided on 29.10.2015.
Hon'ble Smt. Justice Anuja Prabhudessai.

- Section 311 vests powers in the court to summon any person as witness or to recall and re-examine any witness at any stage of the inquiry, trial or other proceedings under the code, provided such evidence is essential for just decision of the case. However, this discretion is to be exercised judiciously and not arbitrarily.
- The court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case. The court can exercise this power either suo moto or upon the grounds spelt out in the application of the prosecution or the accused, provided the Magistrate is satisfied that recall or re-examination of a witness, or examination of any person as a witness is essential to the just decision of the case.
- The application under Section 311 of the Cr.P.C. cannot be allowed to fill up lacuna in the case of the prosecution or of the defence. Such additional evidence must not be received to the disadvantage of the defence of the accused or to cause serious

- Sub sec.(2) of Section 254 enables the Magistrate, if he thinks fit, on the application of the prosecution or the accused, to issue summons to any witness directing him to attend or produce any document or other thing. This section does not prohibit examining any witness whose statement has not been recorded under Section 161 of Cr.P.C.
- A combined reading of Sections 161(1) and (3), 254 and 311 of Cr.P.C. leaves no doubt that the prosecution is not precluded from calling any witness at the enquiry or trial who has not been examined by the Police orally or whose statement has not been reduced into writing under Section 161(3) of the Cr.P.C.
- The prosecution can neither be confined to the evidence of only those persons whose statements had been reduced into writing under Section 161(3) nor can the recording of such statement cannot be a precondition for examining any person as a witness under section 311 Cr.P.C.

SOME OTHER RECENT DECISIONS

- Hamant Yashwant Dhage v. State of Maharashtra & Ors. , Criminal Appeal No.110 of 2016 decided on 10.02.2016. The Hon'ble Apex Court held that registration of an F.I.R. involves only the process of recording the substance of information relating to commission of any cognizable offence in a book kept by the officer in charge of the concerned police station. To enable the police to start investigation, it is open to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do so in explicit words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. Because

- Don Ayengia v. State of Assam, Criminal Appeals No. 82, 83 of 2016, decided on 26.01.2016. The Hon'ble Supreme Court of India held that once liability and consideration are proven by promissory note, it cannot be said that the cheque was issued as 'security'. It was observed that if non-payment of the agreed debt/liability within time specified also did not entitle the holder to present the cheques for payment, the issue and delivery of any such cheques would be meaningless and futile if not absurd.
- Shamsher Singh Verma v. State of Haryana, 2015 ALLMR(Cri) 4923. The Hon'ble Apex Court observed that the object of section 294 Cr.P.C. is to accelerate the pace of trial by avoiding time being wasted by the parties in recording unnecessary evidence. The court also analyzed the definition of 'document' as defined under section 3 of the Indian Evidence Act

L.C. Hanumanthappa v. H.B. Shivakumar (Hon'ble Shri Justice R. F. Nariman), AIR 2015 SC 3364. An amendment once incorporated under Order 6 Rule 17 relates back to the date of the suit. However, the doctrine of relation-back in the context of amendment of pleadings is not one of universal application and in appropriate cases the court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the court on the date on which the application seeking the amendment was filed. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded.

(In this case the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the Respondent should be taken away.)

Sidhappa Savali v. Mahananda Savali & Anr., Criminal Writ Petition 1464 of

Joel Avelino Noronha v. Francisco Xavier Miranda, Writ Petition No.793 of 2015, decided on 17.02.2016. (Hon'ble Shri Justice S. B. Shukre)

- The expression of sufficient cause has to be understood as denoting something which is opposite to such a conduct on the part of the tenant as is indicative of persistent defaults, which is intentional and which is borne out from the attitude of the tenant to cause harassment to the landlord. Such conduct does not include inadvertent or unintentional defaults, though persistency of defaults itself may show mala-fide intention. In other words, the discretion that has to be exercised by the authority under Section 32(4) of the Rent Act must be sound and in accordance with the well settled principles of law.
- Section 32(1) mandates monthly payments or deposits of rents and debars the tenant from contesting the proceedings even after a single default is committed by him. Rule 7 of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Rules, 1969 (the Rules of 1969, for short) lays down that such rent should be deposited within 15 days from the date on which the rent becomes due and payable by a tenant. Thus, the law has given a latitude to the tenant of not more than 15 days from the date on which the rent is due and payable for making good the mistake of not paying the rent.

BGC International Pvt. Ltd. and Ors. v. Shree Mallikarjun Shipping Office and Ors., Writ Petition No.570 of 2015, 11.01.2016. (Hon'ble Shri Justice S. B. Shukre)

- It was held that powers of the Court to grant leave to produce additional documents fall within the province of the procedural law and it is now well settled that procedural law is there for rendering assistance to the parties as well as the Court so that substantial justice is done. It has been often said that procedural law is a handmaiden of justice and the end is advancing cause of substantial justice which is to be achieved by using provisions of procedural law in an appropriate manner. These provisions are a tool for reaching a certain goal which is of substantive justice and do not constitute by themselves the goal.
- Order 7 Rule 14 is discretionary and it has to be operated in a manner that Court is able to ascertain the truth and put an end to the controversy, not on technical but on substantive grounds. In other words, it has to be construed liberally and not in a pedantic way. Of course, the extent to which the liberal interpretation of the provision should go would depend upon the facts and circumstances of each case.

THANK YOU!