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T.N. ALLOY FOUNDRY CO. LTD.

v.

T.N. ELECTRICITY BOARD AND ORS.

FEBRUARY 12, 2004

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[V.N. KHARE, CJ., S.B. SINHA AND S.H. KAPADIA, JJ.]

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*Pleadings—Amendment of—Suit for damages filed in March, 1993—Application for amendment for enhancement of claim of damages filed in July 1998—Single Judge of High Court allowing the amendment—Letters Patent Bench rejecting the application—Held, appellate court has a co-extensive power of the trial court—Discretion exercised by letters patent Bench of High Court in rejecting the plaint was in conformity with law—Suit—Amendment of plaints.*

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*L.J. Leach and Co. Ltd. and Anr. v. Messrs. Jardine Skinner and Co.,*  
**AIR (1957) SC 357 = [1957] SCR 438, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7615 of 2002.

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From the Judgment and Order dated 10.7.2001 of the Madras High Court in O.S. No.30 of 2000.

T.L.V. Iyer, Ramesh Babu M.R. for the Appellant.

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A.T.M. Sampath, P.N. Ramalingam, V. Balaji and Ms. Aarthi Radhakrishnan for the Respondent Nos. 1-2.

Ms. Revathy Raghavan (NP), for Respondent Nos. 3-4.

The Order of the Court was delivered

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The appellant herein is incorporated under the Indian Companies Act and started its commercial production in the year 1982. It appears that subsequently it became sick. It is alleged that the appellant-Company could not run because of non-supply of electrical energy by the respondents herein. It is under such circumstances, the appellant herein filed a suit for damages against respondents for the damage suffered during the period commencing

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from 28th March, 1983 to 16th October, 1992. The said suit was filed sometime in March, 1993 on the Original Side of the Madras High Court. In July, 1998, the appellant herein filed an interlocutory application for amendment of the plaint. By the said application for amendment, the appellant sought to enhance its claim for damages. The learned Single Judge of the High Court allowed the amendment, as prayed for. The respondents herein went in appeal before the Letters Patent Bench before the High Court and the Bench set aside the order of the learned Single Judge and allowed the appeal. It is against the said order and judgment, the appellant is in appeal before us.

Shri T.L.V. Iyer, learned senior counsel, appearing for the appellant, urged that the view taken by the High Court in rejecting the amendment of the appellant was erroneous. The law as regards permitting amendment to the plaint, is well settled. In *L.J. Leach and Co. Ltd. and Anr. v. Messrs. Jardine Skinner and Co.*, AIR (1957) SC 357 = [1957] SCR 438, it was held that the Court as a rule decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered and does not affect the power of the Court to order it.

It is not disputed that the appellate court has a co-extensive power of the trial court. We find that the discretion exercise by the High Court in rejecting the plaint was in conformity with law.

For the aforesaid reason, we do not find any merit in the appeal. It fails and is, accordingly, dismissed. There shall be no order as to costs.

R.P.

Appeal dismissed