Jai Jai Ram Manohar Lal

Vs

National Building Material Supply Gurgaon

Civil Appeal No. 697 of 1966

(J.C. Shah,A.N. Grover JJ)

17.03.1969

JUDGMENT

SHAH, J. -

1. On March 11, 1950, Manohar Lal s/o Jai Jai Ram, commenced an action in the Court of the Subordinate Judge, Nanital, for a decree for Rs. 10,130/12/- being the value of timber supplied to the defendant - the National Building Material Supply, Gurgaon. The action was instituted in the name of "Jai Jai Ram Manohar Lal" which was the name in which the business was carried on. The plaintiff Manohar Lal subscribed his signature at the foot of the plaint as "Jai Jai Ram Manohar Lal, by the pen of Manohar Lal", and the plaint was also similarly verified. The defendant by its written statement contended that the plaintiff was an unregistered firm and on that account incompetent to sue.

2. On July 18, 1952, the plaintiff applied for leave to amend the plaint. Manohar Lal stated that "the business name of the plaintiff is Jai Jai Ram Manohar Lal and therein Manohar Lal the owner and proprietor is clearly shown and named. It is a joint Hindu family business and the defendant and all knew it that Manohar Lal whose name is there along with the father's name is the proprietor of it. The name is not an assumed or fictitious one". The plaintiff on those averments applied for leave to describe himself in the cause title as "Manohar Lal proprietor of Jai Jai Ram Manohar Lal" and in Paragraph 1 to state that he carried on the business in timber in the name of Jai Jai Ram Manohar Lal. Apparently no reply was filed to this application by the defendant. The subordinate Judge granted leave to amend the plaint. He observed that there was no doubt that the real plaintiff was Manohar Lal himself, that it was Manohar Lal who intended to file and did in fact file the action, and that the amendment was intended to bring what in effect had been done in conformity with what in fact should have been done".

3. The defendant then filed a supplementary written statement raising two additional contentions - (1) that Manohar Lal was not the sole owner of the business and that his other brother were also the owner of the business; and (2) that in any event the amendment became effective from July 18, 1952, and on that account the suit was barred by the law of limitation.

4. The Trial Judge decreed the claim for Rs. 6, 568/6/3. Against that decree an appeal was preferred to the High Court of Allahabad. The High Court being of the view that the action was instituted in the name of a "non existing person" and Manohar Lal having failed to over in the application for amendment that the action was instituted in the name of "Jai Jai Ram Manohar Lal" on account of some bona fide mistake or omission, the Subordinate Judge was incompetent to grant leave to amend the plaint. The High Court after making an extensive quotation from the judgment of this

Court in Purushottam Umedbhai and Company v. Messrs. Manilal and Sons ((1961) 1 SCR 982) bserved that the action could not be instituted in the name of the Karta of the Hindu undivided family in his representative capacity or else all the members of the joint family must joint as plaintiffs. The Court then observed :

> "The suit instituted by the joint Hindu family business in the name of an assumed business title was a suit by a person, who did not exist and was, therefore, a nullity. Hence there could be no amendment of the description of such plaintiff who did not exist in the eye of law. The court below was in obvious obvious error in thinking otherwise and allowing the name of Manohar Lal to be added as proprietor of the original plaintiff Jai Jai Ram Manohar Lal, which was neither a legal entity nor an existing person who could have validity instituted the suit".

The High Court was also of the opinion that the substitution of the name of Manohar Lal as a plaintiff during the pendency of the action took effect from July 18, 1952, and the action must be deemed to be instituted on that date : the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. The plaintiff has appealed to this Court with special leave.

5. The order passed by the High Court cannot be sustained. Rules of procedure are intended to be handmaid to the administration of justice. 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 mala fide, 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. In Amulakchand Mewaram and Others v. Babulal Kanalal Taliwala, Beaumont, C.J., in delivering the judgment of the Bombay High Court set out the principles applicable to cases like the present and observed :

> " ..... the question whether there should be an amendment or not really turns upon whether the name in which the suit is brought in the name of a non-existent person or whether it is merely a misdescription of existing persons. If the former is the case, the suit is a nullity and no amendment can cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposing party can be compensated for by costs."

In Amulakchand Mewaram's case (supra) a Hindu undivided family sued in its business name. It was not appreciated at an early stage of the suit that in fact firm name was not of a partnership, but was the name of a joint Hindu family. An objection was raised by the defendant that the suit as filed was not maintainable. An application to amend the plaint, by substituting the names of the three members of the joint family for the name of the family firm as plaintiffs, was rejected by the Court of First Instance. In appeal the High Court observed that a suit brought in the name of a firm in a case not within Order XXX, C.P. Code being in fact a case of misdescription of existing persons, leave to amend ought to have been given.

6. This Court considered a somewhat similar case in Purushottam Umedbhai's case (supra). A firm carrying on business outside India filed a suit in the firm name in the High Court of Calcutta for a

decree for compensation for breach of contract. The plaintiff then applied for amendment of the plaint by describing the names of all the partners and striking out the name of the firm as a mere misdescription. The application for amendment was rejected on the view that the original plaint was no plaint in law and it was not a case of misnomer or misdescription, but a case of a non-existent firm or a non-existent person suing. In appeal, the High Court held that the description of the plaintiff by a firm name in a case where the Code of Civil Procedure did not permit a suit to be brought in the firm name should not properly be considered a case of description of the individual partners of the business and as such a misdescription, which in law can be corrected and should not be considered to amount to a description of a non-existent person. Against the order of the High Court an appeal was preferred to this Court. This Court observed (at p. 994) :

"Since, however, a firm is not a legal entity the privilege of suing in the name of a firm is permissible only to those persons who, as partners, are doing business in India. Such privilege is not extended to persons who are doing business as partners outside India. In their case they still have to sue in their individual names. If, however, under some misapprehension, persons doing business as partners outside India do file a plaint in the name of their firm they are misdescribing themselves, as the suit instituted by them, they being known collectively as a firm. It seems, therefore, that a plaint filed in a court in India in the name of a firm doing business outside India is not by itself a nullity. It is a plaint by all the partners of the firm with a defective description of themselves for the purpose of the Code of Civil Procedure. In these circumstances, a civil court could permit, under the provisions of Section 153 of the Code (or possibly under Order VI, Rule 17, about which we say nothing), an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the Court in determining the real question or issue between the parties."

These cases do no more than illustrate the well-settled rule that all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties, unless by permitting the amendment injustice may result to the other side."

7. In the present case, the plaintiff was carrying on business as commission agent in the name of "Jai Jai Ram Manohar Lal". The plaintiff was competent to sue in his own name as Manager of the Hindu undivided family to which the business belonged; he says he sued on behalf of the family in the business name. The observations made by the High Court that the application for amendment of the plaint could not be granted, because there was no averment therein that the misdescription was on account of a bona fide mistake, and on that account the suit must fail cannot be accepted. In our view, there in no rule that unless in an application for amendment of the plaintiff it expressly averred that the error, omission or misdescription is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.

8. Since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises : the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff, on the date on which it was originally instituted.

9. In our view, the order passed by the Trial Court in granting the amendment was clearly right, and the High Court was in error in dismissing the suit on a technically wholly unrelated to the merits of the dispute. Since all this delay has taken place and costs have been thrown away, because the defendant raised and persisted in a plea which had no merit even after the amendment was allowed by the Trial Court, he must pay the costs in this Court and the High Court. The appeal is allowed

and the decree passed by the High Court is set aside. It appears that the High Court has not dealt with the appeal on the merits. The proceedings will stand remanded to the High Court for disposal according to law on the merit of the dispute between the parties.

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