CALCUTTA HIGH COURT

M.B. Sirkar and Sons

Vs.

Powell and Co

A.F.O.O. No. 156 of 1955

(Chakravartti, C.J. and Sarkar, J.)

06.06.1956

JUDGMENT

Chakravartti, C.J.

1. This is an appeal from an order of P.B. Mukharji, J., dated 22-6-1955, by which the learned Judge allowed an amendment of the respondent's plaint. By that amendment, the original defendant in the respondent's suit, which was shown as a firm, was converted into a company of the same name. The appellant before us which is the company so substituted as the defendant, complains that the amendment took away from it a valuable right which had accrued to it by efflux of time and, therefore, it ought not to have been allowed, particularly since there were no special circumstances in the case entitling the respondent to the indulgence.

2. The facts are as follows. The respondent is a firm, said to be carrying on business as a supplier of marbles and other flooring materials as, also a contractor doing marble, mosaic and other flooring work. On 23-11-1953, the respondent instituted a suit on the Original Side of this Court For the recovery of a sum of Rs. 5,989-13-6 for work done and labour and materials supplied against "M.B. Sarkar and sons, a firm carrying on business as jewellers at Nos. 167 and 167C, Bowbazar Street, Calcutta." The plaint stated that the work had been done For the defendant firm and the materials had been supplied to it under orders placed by the firm through one of its partners, one Gostha Behary Sarkar. The plaint proceeded to state that the value of the work done and the materials supplied was Rs. 7,989-13-6 of which a sum of Rs. 2,000 had been paid by four several cheques, leaving as the balance outstanding the amount claimed in the suit. The relief asked for was in the usual alternative forms, that is to say, besides asking for a decree for a specified sum, the plaintiff also asked in the alternative for an order for accounts and, in the further alternative, a decree for damages or compensation. The plaint stated that the work had been commenced on 12-10-1950 and had been completed "in or about April, May, 1951." It is thus clear that any suit brought on that cause of action after May, 1954, would be barred by time.

3. On the same day that it filed its plaint, the Solicitors For the plaintiff respondent addressed a letter to Messrs B.N. Basu and Co., another firm of solicitors practising in this Court, and enquired of them whether they would accept service of the Writ of Summons on behalf of the

defendant firm. It is stated that not having received any reply, the respondent caused certain searches to be made in the office of the Registrar of Firms and ascertained thereform the names of the firm's partners. That was on 20-1-1954. Thereafter, on 3-2-1954, the respondent obtained an order from the Master for an extension of the returnable date of the Writ of Summons and also leave to serve the writ on one Pulin Behary Sarkar, as one of the partners of the defendant firm and or the person in charge of the control and management of the firm's business. The Writ of Summons was actually served on Pulin Behary Sarkar on 19-2-1954. There can thus be no doubt that the respondent was proceeding on the footing that the defendant it had sued was a firm.

4. On 4-3-1954, Messrs. B.N. Basil and Co. addressed a letter to the respondent's Solicitors, in which it was stated that they had entered appearance in the suit on behalf of the defendant company which had been wrongly sued as a firm. Apparently, no notice was taken of that intimation. Messrs. B.N. Basu and Co., in their turn, took out a Master's Summons on 18-3-1954, for an extension of time to file the written statement and such extension was granted by an order made on the 24th of March following, extending the time till 27-4-1954. Actually, the written statement was filed on the 12th of April.

5. The written statement purported to be, as it was bound to be, a written statement filed on behalf of 'the defendant.' It was, however, stated in the very first paragraph that the defendant denied that it was a firm and then it was added that the defendant was a company, duly registered under the Indian. Companies Act without the addition of the word 'limited'. The written statement proceeded to plead to the merits only to the extent of saying that the company which was filing the written statement had no knowledge of the allegations contained in the plaint and then, going into further detail, it denied that the defendant had ever placed any orders for any materials with the plaintiff respondent or had had any work executed by it. The drawal of certain cheques in favour of the plaintiff respondent was admitted, but it was explained that they had been drawn and issued at the request and on account of a third party, called Messrs. Oriental Construction Corporation Limited. The written statement concluded by asserting that the suit was not maintainable and that the plaintiff respondent was not entitled Co claim any relief against the defendant.

6. As I have already stated, the appellant company filed its written statement on 12-4-1954. According to the petition, the Solicitors For the plaintiff respondent asked for a copy of the written statement on 28-4-1954, but the Solicitors For the appellant company did not send the memo of their charges till the 4th June next. On that very day, the charges were paid and a copy of the written statement was supplied to the respondent's Solicitors. Apparently, just as the respondent had taken no notice of the letter of 4-3-1954, sent to its Solicitors by Messrs B. N. Basu and Co., so it took no notice or at least no immediate notice of the assertion contained in the written statement that the defendant sued was not a firm, but a company. According to the petition itself, it was not till December. 1954, that the plaintiff respondent caused a search to be made in the Office of the Registrar of Joint Stock Companies and discovered that Messrs. M.B. Sarkar and Sons had been incorporated-as a private limited company on 11-4-1945 and that Gostha Behary Sarkar was the Managing Director of the company. Even after that discovery, no steps of any kind were taken for amending the plaint. The petition states that only a week before it was made, the result of the discovery made at the search at the Office of the Registrar of Joint Stock Companies was discussed at a conference of the respondent's lawyers and it was thereafter that the respondent was advised to have the cause title and the suit register amended by

describing the defendant as a company and making other consequential amendments. The application for amendment was actually made on the 20th of May. 1955. It prayed that the cause title-and the suit register might be amended by deleting the word 'firm' from the description of the defendant and by substituting in its place the words 'a company incorporated under the Indian Companies Act having its registered office at 124/1, Bow Bazar Street, Calcutta and', and that the body of the plaint might also be amended by deleting the word 'firm' wherever the words 'defendant firm' occurred and by substituting in its place the word 'company' and lastly by describing Gostha Behary Sarkar as the Managing Director in place of partner. All those amendments were allowed by the learned Judge by the order against which the present appeal is directed.

7. On behalf of the plaintiff respondent, a preliminary objection was taken by Mr. Mitter that the order appealed from was not appealable. He pointed out that no appeal lay under the Code from an order allowing an amendment of a plaint and no appeal could lie under the Rules of the Original Side either unless the order could be said to be a 'judgment' in the sense in which that term had been interpreted and defined by the leading decisions of this Court. It was contended further that an order allowing an amendment of a plaint could not possibly be a judgment, because by it no question regarding the merits of the case was decided between the parties. In support of his contention,. Mr. Mitter relied upon the decisions of this Court in *Upendra Narain Roy v. Janaki Nath Roy*[1], and of the Bombay High Court in *Sheshgiri Das v. Sunderrao*[2],

8. I do not think that the authorities relied on by Mr. Mitter support the proposition contended for by him. Neither is it supported by reason, if it is to be taken as an absolute proposition. It is quite true that if an amendment merely allows the plaintiff to state a new cause of action or to ask s. new relief or to include a new ground of relief, all that is done is that it is made possible For the plaintiff to raise certain further contentions in the suit, but it is not decided that those contentions are right. When an amendment is of that character, it may undoubtedly be said that, by allowing it, the Court does no more than regulate the procedure applicable to the suit and does not decide any question which touches the merits of the controversy between the parties. There may, however, be other types of amendment by which a question of substance between the parties is directly or indirectly, but nevertheless, finally, so far as the suit is concerned, decided. The present case itself is an apt illustration of an amendment of the latter kind. If the appellant company had been merely added' as a new party to the suit in addition to the defendant originally impleaded no question affecting any rights of the appellant company would have been decided, because in spite of having been impleaded in the suit, it would be open to the appellant company to contend that, as against itself, the suit must be deemed to have been instituted when the amendment had been allowed or at least the application for amendment had been made and, consequently, the suit, so far as it was a suit against the appellant company, was time-barred. Here, however, the appellant company has not been added as a party, but substituted For the original defendant. There can be no question that if the suit had been brought on the date on which the amendment was

[1]45 Cal 305 : AIR 1919 Cal 904

[2] ILR (1946) Bom 756 : AIR 1946 Bom 361

allowed or even on the date on which the application for amendment was made, It would not be within time. The Court does not, except in very special circumstances, allow an amendment to be made, if the effect of the amendment would be to extinguish some right already accrued to the

defendant by efflux of time. Since the Court, nevertheless, allowed the amendment in the present case, substituting the appellant company For the defendant originally impleaded, it must be taken to have done so on the footing that, by the amendment, no new party was impleaded in the suit, but only a misdescription of the original party had been corrected. It is to be noticed that it will not be open to the appellant company to question the amendment before the trial Court during the subsequent stages of the suit. Ordinarily, the fact that the order for amendment cannot itself be challenged does not place the defendant in a position of disadvantage, because he can still plead that the plaintiff is not entitled to succeed on the amended plaint, either on account of the bar of limitation or on account of some other reason. Where, however, the effect of an amendment of the plaint is not merely to enable the plaintiff to raise a new contention, but to substitute a new party For the party originally impleaded which is come on the footing that the two are the same the consequence must be to take away from the new party, so substituted, his defense of limitation, if a suit brought on the date of the amendment would be time-barred. In view of such effect of an amendment of this kind, It seems to me to be beyond question that an order for amendment of the plaint in such cases, necessarily deciding, as it does, a vital question concerning the merits of the case and the rights of the newly impleaded party, is a judgment within the meaning of Clause 15 of the Letters Patent.

9. Indeed, the first of the decisions, relied upon by Mr. Mitter, itself seems to me to have so held. That was a case where the plaintiff in the mortgage suit had omitted to include in his plaint an earlier mortgage held by himself and the amendment allowed was to permit him to include it, subject, however, to the propriety and legality of the amendment being decided at the hearing of the suit. The condition appended to the order was unusual and it was adversely commented on by the Appellate Court, but that matter need not detain us here. Dealing with the contention that no appeal lay from the order allowing the amendment, Woodroffe, J., with whom Sanderson, C.J., concurred, held on the facts that the order did not determine any of the rights of the parties, but determined only a matter of procedure, namely, whether the right might be put forward for determination. After a close analysis of the facts, Woodroffe, J., concluded his discussion of this part of the case with the following observation : This is, therefore, not a case in which the amendment either affects rights accrued to the other party, or otherwise prejudices him." The clear implication, to my mind, is that if an amendment either affected rights accrued to the other party or prejudiced him in any other way, the order allowing it would be an order deciding a question touching the merits of the controversy as between the parties and would be appealable. It is significant that even after holding that the order of amendment made In that case did not decide any question of the rights between the parties, their Lordships did not proceed to hold that no appeal lay from the order. On the other hand, they assumed that an appeal might lie and then disposed of the appeal on the ground that the objections to the amendment were without substance. What the actual decision on the question of the appeal ability of the order was is correctly expressed in the head-note in the following words.

> " 'Quaere'. Whether there was an appeal or not from an order of amendment in this case."

It is thus clear that the Court did not give a decision even as to the particular order in that case and held that it was not appealable, but, on the other hand, in stating the general principles, stated-enough to indicate its view that an order for amendment might effect the rights of the parties and, if it did, it would be appealable.

10. The other decision in 'ILR (1946) Bom 756 : AIR 1946 Bombay 361 (3), is similarly qualified. The head-note represents the decision as lay general proposition that an amendment of the plaint within the meaning of Clause 15 of the Letters Patent and was not, therefore, appealable, but a reference to the judgments of the learned Judges would show at once how guarded their language was. "In my opinion," observed Kania, A.C.J., "no appeal lies in the present case". "Therefore", observed Chagia, J., as he then was, "in my opinion, the order before us is not an order which affects the-merits of the question nor does it determine any right or liability. Therefore it is not a judgment within the accepted definition of that expression as used in Clause 15 of the Letters Patent." But even if the Bombay decision held that in no case would an order, allowing an amendment of the plaint, be appealable, I do not feel pressed by its authority, since the view of this Court, which seems to me to accord better with reason, is that there is no absolute bar.
11. I would For the foregoing reasons hold that the order before us, although an order allowing an I amendment of the plaint, is appealable and that the decisions relied upon by the learned Counsel For the respondent do not debar us from so holding.

12. Proceeding next to the appellant's objection to the amendment, it is, to put it briefly, that a firm is in law an altogether different entity from a company and, therefore, M.B. Sarkar and Sons, the Company, which was directed to be impleaded as a defendant by the amendment in question was a new party and not the same party as M.B. Sarkar and Sons, the firm, originally impleaded as the defendant. A suit brought against the company, if brought on the date the application For the amendment was made, not to speak of the date when the amendment was allowed, would have been barrel by time. The respondent not having brought any suit against the appellant company while there was yet time to do so, had lost its rights altogether and the amendment, which had made it possible for life to recover them at the expense of the appellant and which would have the effect of taking away from, the appellant its defence of limitation, ought not to have been allowed.

13. Now, it is quite true that Order 6, Rule 17, Civil Procedure Code provides that the Court may allow an amendment of the pleadings "at any stage of the proceedings". If full effect were to be given to the literal meaning of that language, questions of limitation would obviously be utterly irrelevant; but the Courts have imposed a qualification on the words of the Rule on grounds of justice and equity. The object of Order 6, Rule 17 is to aid justice by making it possible for parties, who had not framed their pleadings in a proper form, to correct the mistakes or supply the omissions with a view to bringing to the notice of the Court the real question in controversy in the suit. The Courts have said that a provision intended to advance justice cannot itself be so applied as to cause injustice to the other party and that one of the cases where injustice would be caused is where an amendment if allowed, would take away from a party a. right already accrued to it by lapse of time in such cases, the Court will not allow an amendment. This rule was laid down long ago in many cases of which '*Weldon v. Neal*[3]*'*, is always referred to as the root authority on the subject, but its scope has, to a certain extent, been modified by two decisions of the Privy Council. The Privy Council has held in '*Mohummud Zahoor Ali Khan v. Mt. Thakooranee Rutta Koer*[4]*'*, and '*Charan Das v. Amir Khan*[5]*'*, that although as a rule the power to allow an amendment should not be exercised where its effect would be to take away from a defendant a legal right which has accrued to him by lapse of time, yet there are cases where such considerations are outweighed by the special circumstances of the case. Such circumstances, however, will have to be very exceptional indeed, if by an amendment a plaintiff is to be allowed

to convert what was a bad plaint into a good one or to proceed against a party against whom he could not have proceeded. If he brought a suit For the first time on the date he I asked For the amendment or when the amendment was allowed.

14. I need not tarry long over this part of the case, because the learned Counsel For the respondent did not contend that the order appealed from was a good order, even if the appellant company were to be treated as a new party brought into the suit For the first time by the amendment in question. Indeed, he conceded, in reply to a question from my learned brother, that if he could not succeed on the ground that there had only been a misdescription in the original plaint, he was bound to tail. Still, however, I consider it right to examine briefly the position on the basis that the appellant company was a new party and see whether under the law, as it is now authoritatively settled, the respondent was properly entitled to the amendment even in such a case. The answer, in my view, must be in the negative. It is clear from the dates that if the respondent had not been inexplicably negligent or tardy, it could well have brought a suit against the appellant company within the period of limitation, even assuming that there was good cause For the initial error. It received a warning as long ago as on 4-3-1954. It saw clearly what the warning meant on 4-6-1954, when it was supplied with a copy of the written statement. In my view, it should not have even waited till the appellant company filed its written statement, but should have made the necessary enquiries which it subsequently made after receiving the letter of 4-3-1954. Be that as it may, at least after being apprised of the case when 'the appellant company had made, there was no excuse whatsoever for not making any move at all even for verifying the facts stated in the written statement till December, 1954. It ought to be noticed that when the appellant company filed its written statement, the respondent had yet had time of about a month and a half to file a suit against the appellant company. Assuming that it was prevented from acquainting itself with the exact case being to be made by the appellant company by the delay in supplying a copy of the written statement, there was no reason for further delay after a copy had been supplied. No particulars were asked for from the appellant company at all and no search was made at the office of the Registrar of Joint Stock Companies till after another six months had elapsed. What is even more surprising is that even after the discovery that M.B. Sarkar and Sons had been incorporated as a private limited company as long ago as 11-4-1945, the respondent did not think fit to take any steps towards bringing its plaint into order. It waited till the conference of its lawyers on or about 13-5-1955 and then at last made the application on which the order appealed from was made. In those circumstances, I do not find any special facts at all in this case which would justify a Court in departing from the normal rule of not allowing an amendment which would have the effect of destroying a

[3](1887) 19 Q. B. D. 394 [5]47 Ind App 255
[4]11 Moo Ind App 468

defense on the ground of limitation, which had already become available to the other party. It is well settled that if a plain tiff, having had an opportunity for amending his plaint within the period of limitation, has not availed himself of the same but has allowed time to run out and has made an application only alter a valuable right has accrued to the defendant, he will not be heard in support of such an application at all : see *Banwari Ram v. Muhammad Yar Khan*[6], In the present case, the respondent company had ample opportunity to make the application, which it ultimately made, before the limitation for A suit against the appellant company had run out. It follows that the respondent cannot succeed on the ground of special circumstances outweighing the considerations on which the normal rule is based.

15. The real controversy before us, however, was on the question as to whether there had been only a misdescription in the original plaint and whether the same party was not being sought to be described by a new name and appellation. It is true that if the case be one of misdescription, no question of limitation or destruction of any valuable right already accrued to the appellant company arises. But it will be useful to consider first what 'misdescription' really means. A case can properly be said to be a case of misdescription when the party, really intended to be impleaded, had always been the same and such intention appeared clearly from the body of the plaint in spite of the inaccurate description in the cause title and what an amendment does, in such cases, is not to add a new party to the suit or substitute a new party For the original one, but to make the identity of the party originally impleaded clearer by amending or rectifying the inaccurate description. When the same person, whether an individual or a legal entity, remains the defendant but only the name is altered, there is a case of amending a misdescription. But where a new legal entity is substituted for another, it cannot correctly be said that the original error was a mere misdescription and that, by the amendment, no change of a substantial character affecting the right of any party is being affected. Common examples of misdescription are cases where a plaintiff, intending to sue a railway, sues it by its Agent without, however, claiming any person relief against him but asking for relief against the railway alone, or cases where a plaintiff, intending to sue a municipality, does so by its name and not by the Chairman and the Commissioners, as the law requires. Substitution of a company for a firm, however, appears to me to be a very different proposition.

16. Where such a substitution is made, the amendment is thought necessary not "For the purpose of determining the real question in controversy between the parties" as contemplated by : Order 6, Rule 17, but "For the purpose of determining' the controversy between the real parties".

17. Even apart from the clear distinction in law between a firm and a company, it appears to me that it is not open to the respondent, on the facts of the case, to contend that it" always intended to proceed against the same defendant, that is to say, the appellant company brought in by the amendment and that it had only misdescribed it. It is stated in para 3 of the petition that in its dealings with M.B. Sarkar and Sons the respondent dealt with Gostha Behary Sarkar. In para 8 it is stated that Gostha Behary sarkar had represented to the respondent that he and his three brothers were partners of Messrs. M.B.

[6] ILR (1941) All 74 : AIR 1941 All 49

Sarkar and Sons and that the respondent believed in such representations. The story of such misrepresentation, apart from its inherent improbability that the owners of any well-established business concern, upon calling in contractors to do some flooring work for them, would have occasion to explain to them its composition and legal status, appears to accord ill with the statement made in para 4 of the petition that Gostha Behary Sarkar seldom attended the place of business. Be that as it may, the clear case made by the respondent is that Gostha Behary Sarkar represented to it that M.B. Sarkar and Sons was a firm and that he and his three brothers were its partners. It is added that the respondent believed in those representations which must mean and imply that It acted upon such belief. There was obviously nothing whatever to disturb that belief till the date when the plaint was filed and, therefore, it is not easy to see how the respondent can contend that when filing its plaint and instituting the suit, it had intended to implead anybody other than the firm, M.B. Sarkar and Sons. The case of misdescription, therefore, seems to me to takes down on the facts. It is not tenable in law either because, as I have already explained, when

one legal entity is sought to be substituted for another, it cannot possibly be said that the entity proposed to be substituted was misdescribed in the plaint as originally filed.

18. The learned Counsel For the respondent, however, stated that when his client made a search at the Office of the Registrar of Firms, it discovered that the firm, M.B. Sarkar and Sons, had been registered on 22-12-1934, but it had not found any entry showing that the firm had been dissolved and necessarily no entry as to when it had been dissolved. That fact, to my mind, instead of aiding the respondent's contention, affects it adversely, inasmuch as it makes it clearer that when framing its plaint, the respondent could not have intended to implead any entity other than a firm. The learned Counsel also pointed out, very rightly if I may say so, that the appellant company had actually entered appearance and had gone further in filing a written statement. That fact was relied upon For the contention that it was the appellant company which had really been a party to the suit throughout and that it had treated itself as such, because if the appellant company thought that it was not a party, no appearance should have been entered on its behalf. Reference in that connection was made to the decision of the Bombay High Court in the case of *The Saraspur Manufacturing Co. Ltd. v. B.B. and C.I. Bly. Co*[7].,

19. In my view, the decision relied upon is plainly distinguishable. It dealt with one of the typical cases, to which I had occasion to refer a few moments ago, where a plaintiff, intending to sue a railway company, sues it by the name of its Agent. It was held quite understandably that there was only a misdescription in the title of the railway company. But as regards the further fact that the railway had entered appearance and thus accepted the position of being a party to the suit the case stands clear of the facts before us, because in the written statement filed by the railway company, there was no protest of any kind that no suit against it had been filed at all and that the plaintiff could not recover a decree against it. In the present case, although the appellant company entered appearance, the very first thing it stated in its written statement was that it was a company and that it had had no concern With the plaintiff's suit and that the plaintiff was not entitled to recover any decree against it. If the written statement also pleaded to the merits, it pleaded only to the extent of denying that there had been any dealings as between the appellant company and the respondent at all. In such circumstances, I am unable to hold

[7]47 Bom 785 : AIR 1923 Bom 452.

that a fair inference from the appellant company having entered appearance and filed a written statement, would be that it had always been the real defendant in the suit and had been understood to be so and, therefore, the description in the plaint as 'a firm' was only a misdescription. The case seems to me to be not very different from one where a party, not amenable to the jurisdiction of a Court enters appearance and files a written statement only For the purpose of repudiating the Court's jurisdiction. Besides, what is important is not what the appellant company thought, but what the respondent had in mind in framing its plaint and when proceeding against the party with whom, according to it, it had had business relations and from whom it wanted to recover the price of its materials and the wages for its labor. If the respondent had a firm in mind, as on the facts it must be held to have had, and if a firm be in law an entity quite different from a company, as it undoubtedly is, I am wholly unable to see how it can be said that the appellant company was always the intended defendant and that the inapt description in the plaint was only a misdescription. In my view, the present case is not a case of mis-description, but a case of substitution of a new party and, therefore, unless there were special circumstances to exclude the normal rule that an amendment ought not to be allowed where the effect would be to affect rights accrued out of the law of limitation, no amendment could be

allowed. I have already shown that there were no special circumstances. The order for amendment must, therefore, be held to have been erroneously made.

20. The above is sufficient For the disposal of the appeal, but I cannot part with the case without making some observations on two matters. One concerns the form in which the order has been drawn up. The application was an application for an amendment of the plaint and the amendment sought was that M.B. Sarkar and Sons, impleaded as a firm, should be altered to M.B. Sarkar and Sons, impleaded as a company. The specific prayers are to be found in prayers (1) and (2) of the petition. The learned Judge made an order in terms of prayers (1) and (2) which means that he directed a company to be substituted for a firm as the defendant and then he proceeded to give certain further directions. Yet, the order, as drawn up, states, after setting out the order for amendment, that "the defendant firm" shall be at liberty to file an additional written statement within a certain time and that the plaintiff firm shall pay the costs of the application to "the defendant firm". It is extraordinary that in drawing up an order by which a company was substituted for a firm as the defendant, anybody should still say, alter the amendment had been made, that "the defendant firm" shall be entitled to do certain things and shall be entitled to receive certain payments thereby negativing amendment altogether. It appears from the draft order, as corrected by the respondent's Solicitors, that they did suggest the correction of the word 'firm' into 'company', but obviously the suggestion was not accepted by the Officer settling the order and he stuck to the word 'firm'. I do not think that the duties of the respondent's Solicitors ended as soon as they suggested the proper corrections, because the order had been made at their instance and it was their clear duty to have it drawn by in the proper form by, If necessary, mentioning the matter to the learned I Judge and not to leave it in the condition in which we find it now. But whatever their faults of omission may have been, there can be no excuse whatsoever for an experienced Assistant Registrar of this Court to make the mistake of describing the substituted defendant as 'a firm' and persisting to that mistake, even after it had been pointed out. Such laxity affects the credit of the Court and I hope any more instances of it will not be seen.

21. The other matter to which I desire to refer is the condition of the paper-book. For sometime past we have been noticing with a feeling of distress the growing carelessness, exhibited by Solicitors of this Court in preparing petitions and paper-books. Petitions are hardly ever revised, with the result that innumerable typing mistakes remain uncorrected and the papers are handed up to the Court in a condition which makes it difficult to follow their contents. Proofs of paper-books, it would seem, are hardly ever read. In the present case, pp. 25 to 27 of the paper book purport to show the amendments allowed by the Court as worked out in the body of the original plaint. Yet, the word 'firm' for which the word 'company' was to be substituted, remains untouched throughout, although in the original, of which these pages purport to be a copy, the word is every where scored through in red ink. How curious the result has been will appear from the cause-title, as ostensibly amended. It reads as "M.B. Sarkar and Sons, a Company, etc., and firm carrying on business as Jewellers," which invests the concern with the dual status of a firm and a company. There is a Rule in the Rules of the Original Side, namely Rule 50 of Chap. 38, which provides that if it appears to the Appellate Court at the hearing of an appeal that the appeal cannot be conveniently proceeded with by reason of the paper-book having been negligently or inaccurately prepared, the Court can direct the attorneys responsible For the preparation of the paper-book to pay such costs as it may determine. I refrain from making any order under the Rule in the present case, but, at the same time, I desire to make it clear that if the laxity which has been growing is not checked, the Court will be compelled to make itself unpleasant and take

such steps as may be open to it to improve the acting on the Original Side in the case of such Attorneys as do not realise their responsibility. For the purpose of this case, I would only observe that if the papers are handed over to the Court in such a condition, the special reason for maintaining a particular class of legal practitioners whose duty and privilege is only or mainly to act would seem to disappear.

22. For the reasons given earlier, this appeal is allowed. The order of P.B. Mukharji, J., dated 22-6-1955, is set aside, except so far as it directed the plaintiff respondent to pay the appellant company the costs of the application before him, and the plaintiff respondent's application for amendment is dismissed.

23. The appellant will have its costs of this appeal and also costs of the trial Court, the latter under the order of P.B. Mukharji, J., hereby, to that extent, maintained.

Sarkar, J.

24. I agree.

Appeal allowed.