

RAJASTHAN HIGH COURT

M/s. M.K.M. Moosa Bhal Amin, Kota

Vs.

Rajasthan Textile Mills, Bhawanimandi

First Appeal No. 24 of 1972

(S.N. Modi, J.)

17.12.1973

JUDGMENT

S.N. Modi, J.

1. This first appeal is brought from the judgement and decree of the District Judge, Kota, dated 23-9-71 dismissing the plaintiff's suit for recovery of money.
2. The plaintiff is a registered-firm carrying on business at Kota. The defendant carries on business at Bhawanimandi, district Jhalawar under the name and style of Rajasthan Textile Mills. The defendant purchased between 5-5-62 and 18-13-82 asbestos cement sheets worth Rs. 78,254.24 paise and certain hardware articles worth Rs. 4,936.31 P. as total Rs. 83,190.55 P. and paid Rupees 72,896.63 P. on various dates leaving a balance of Rs. 10,203.92 P. When the balance was not paid, the suit out of which this appeal has arisen was instituted against the defendant on 6-8-63 for the recovery of Rs. 10,293.92 P. as principal and Rs. 721/- by way of interest at the rate of 12% per annum total Rupees 11,014.92 P. The defendant contested the suit and pleaded that Rajasthan Textile Mills is not a legal person and no suit was maintainable against it. It was further pleaded that the plaintiff had agreed to allow 8% discount or the amount of goods sold by it but no such discount was deducted from the bills. The defendant claimed deduction of Rs. 5,945.45 P. on account of discount. The defendant also disowned its liability to pay interest. The learned District Judge after framing proper issues and on consideration of the evidence led by the parties held that the defendant was entitled to discount of 5% from the amount of the bills. He further, held that the plaintiff was not entitled to get any Interest on the amount claimed by him. He

dismissed the suit placing reliance, on a decision of the Division Bench of the Calcutta High Court in *Modi Vanaspati Manufacturing Co. v. Katihar Jute Mills (P.) Ltd.*,¹ on the ground that the defendant Rajasthan Textile Mills is not a corporate body and consequently it can neither sue nor be sued. Hence this appeal by the plaintiff.

3. There is no controversy that Rajasthan Textile Mills is an undertaking owned by Satlaj Cotton Mills Ltd., Amritsar, a limited company functioning under the Companies Act. Rajasthan Textile Mills as such is neither a partnership firm nor a limited company registered under the Companies Act. It is Satlaj Cotton Mills Ltd. which carries on its business at Bhawanimandi in the name and style of Rajasthan Textile Mills, that is, in the name or style other than its own. It is further not in dispute that the transactions were entered into by the plaintiff with Rajasthan Textile Mills. The contention of the learned counsel for the plaintiff is that since the proprietor, namely, Satlaj Cotton Mills Ltd. carried on its business in the name of Rajasthan Textile Mills, the suit in the business name of the company is competent. He, however, conceded and rightly that Rajasthan Textile Mills is not a legal entity or a juristic person and unless the provisions contained in Order 30, Rule 10, Civil Procedure Code are availed of as applicable, the present suit was not maintainable. Order 30, Rule 10, Civil Procedure Code reads as under:-

"Order 30 Rule 10 - Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply."

Rule 10 enables a person to sue another in the assumed name. The underlying principle appears to be to facilitate suits against those who carry on business in the name other than their own. It is common experience that the business is carried on from one part of the world to another through post and goods are supplied on orders on credit. The person residing at distant places and supplying goods on credit cannot be expected to know the names of the persons or the proprietors carrying on the business in the firm name which ordered the goods. It is to facilitate commercial transactions that Order 30, Rule 10 was enacted.

The dispute which arises in this case is whether Order 30, Rule 10 applies to a company carrying on business in the assumed name or style. The learned District Judge expressed the view that the words used in Order 30, Rule 10, namely, "any

person carrying on business in a name or style other than his own", suggest that the person referred to is a natural person and not a juristic or a limited company. The learned District Judge in support of his view has placed reliance on the Calcutta case, referred to above. In that case, it was laid down that the word 'person' used in Order 30, Rule 10 refers to individuals and not to corporations carrying on trade in the assumed name. With great respect to the learned Judges who decided that case, I am unable to agree with the view that the expression 'person' used in Order 30, Rule 10 does not include within its ambit a limited company and is restricted to individual persons.

Section 3, clause (42) of the General Clauses Act runs as under:-

"In this Act and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context -

(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

Keeping in view the above definition of the word 'person', it is obvious that a limited company falls within the purview of the expression 'person' used in Rule 10 of Order 30, C.P.C., unless, of course, the Civil Procedure Code contains anything in the subject or context which is repugnant to the notion of the limited company falling within the purview of the expression 'person' used in Rule 10 of Order 30. Civil Procedure Code I do not find anything repugnant in the subject or context to justify that the meaning given in the General Clauses Act to the word 'person' should not be assigned to the expression 'person' used in Rule 10 of Order 30, C.P.C, I am supported in my view by a Full Bench decision of the Allahabad High Court in *Rajendraprasad Oil Mills, Kanpur v. Smt. Chunni Devi*,³ In that case, the following question was referred to the Full Bench for being answered :

"Whether a limited company falls within the meaning of the expression 'person' as used in Rule 10 of Order 30 of the Civil Procedure Code ?"

The Full Bench after a review of a large number of decisions, answered the question as follows :-

"A Limited Company falls within the meaning of the expression 'person' as used

in Rule 10, Order 30 of the Civil Procedure Code. This would be so even though the Limited Company may have been carrying on business in a name or style other than its own without any attempt to conceal its own corporate name and this fact was known to the party suing."

The learned counsel for the parties cited before me various cases on the question whether Rule 10 of Order 30 is applicable to a single, individual or to more than one individual or to association of individuals or to a joint Hindu family carrying on business in an assumed name or style. Although that question is not directly relevant for the purpose of deciding this appeal, I may point out that the High Courts in India have expressed conflicting views on the question. In *Chidambaram v. National City Bank of New York*,⁴ a Division Bench of the Madras High Court held that Order 30, Rule 10 is applicable only to a case of single individual. So did Buckland, Ag. C. J. in *Lalchand v. M.C. Boid and Co.*,⁵ and *Munshilal v. Modi Bros.*,⁶ A contrary view has been expressed in AIR 1944 Calcutta 138, AIR 1941 Patna 536, AIR 1959 Patna 200, AIR 1962 Patna 360, AIR 1956 Orissa 186 and AIR 1960 Ker 75. The latter view being in consonance with the definition of the word 'person' in clause (42) of Section 3 of the; General Clauses Act, is, in my opinion,, correct one and the expression 'person', in Order 30, Rule 10, Civil Procedure Code should be so construed as to include a limited company or association or a group of individuals like joint Hindu family. In the view I have taken I must hold that the expression 'person' in Order 30, Rule 10, Civil Procedure Code includes a limited company and such a construction is neither repugnant to the context nor to the subject or scheme of the Civil Procedure Code and is also in consonance with the language used in the Rule and the underlying principle for which the Rule has been enacted. I accordingly hold that a company can be sued in the name other than its own which is assumed for the purpose of carrying on business. In this view of the matter, the present suit against Rajasthan Textile Mills is maintainable.

4. The learned counsel for the plaintiff next challenged the findings of the lower court disallowing interest to the plaintiff. The learned District Judge disallowed interest on the ground that there was no stipulation for payment of interest in case the price of the goods supplied remained unpaid. It is contended by the learned counsel for the plaintiff that even in the absence of the contract the plaintiff is entitled to reasonable interest under Section 61(2) of the Sale of Goods Act, 1930. The supply in the present case had been effected up to 18-9-62 and in normal case the price of the goods ought

to have been paid by the defendant within a reasonable time of the deliveries but the payment had been delayed for nearly a year and the plaintiff was obliged to institute the present suit for the recovery of the price. In such circumstances, the lower courts should have exercised discretion in favor of the plaintiff and awarded interest on the amount of the price of the goods under Section 61(2) of the Sale of Goods Act I therefore allow interest at the rate of six per cent per annum which I consider to be a reasonable rate of interest. The learned counsel for the defendant has contended that the lower court ought to have awarded discount of 8 per cent instead of 5 per cent on the amounts of the bills pertaining to hardware articles if not on the asbestos cement sheets. The contention is well founded. P.W. 1 Sefuddin who is a partner of the plaintiff-firm, admitted in his statement that there was an agreement to pay commission @ 8% on the cost of hardware articles, such as, cement pipes and other fittings and 5% discount on asbestos cement sheets. In view of the above statement, the defendant is entitled to discount of 8 per cent on the total sale of hardware articles amounting to Rupees 4,936.31 P. and 5 per cent discount on the remaining sum of Rs. 78,254.24 P. The total amount of discount comes to Rs. 4,308.72 P. On deduction of the amount of discount the principal amount which remains due to the plaintiff comes to Rs. 5,985.20 P. The amount of interest on the principal sum up to the date of suit at the rate of six per cent per annum comes to Rs. 180/-. The total amount due to the plaintiff thus comes to Rupees 6,165.20 P. up to the date of the suit.

5. In the result, the appeal is allowed the decree of the lower court is set aside and the suit is decreed against the defendant for Rs. 6,165.20 P. The plaintiff shall get pendent lite and future interest upto the date of realization at the rate of six per cent per annum on the principal sum of Rs. 5,985.20 P. The parties shall give and take costs according to their success and failure in this Court as well as in the court below.

Appeal allowed.

Cases Referred.

1. AIR 1969 Cal 496
2. AIR 1969 All 1 (FB)
3. AIR 1969 All 1 (FB)
4. AIR 1936 Mad 707
5. AIR 1934 Cal 810

6. (1947) 51 Cal WN 563