
(1992) 09 BOM CK 0024
In the Bombay High Court
Case No : C.R.A. No. 1128 of 1988

Bachhraj Factories Pvt. Ltd.

APPELLANT

Vs

Paramsukkhadas and Others

RESPONDENT

Date of Decision : 08-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 18

Citation : AIR 1993 Bom 175

Hon'ble Judges : M.S. Deshpande, J

Bench : Single Bench

Advocate : Mr. S.A. Patil, Mr. S.P. Palshikar, for the Appellant;

Judgement

1. The applicant, who was defendant No. 1 before the trial Court, challenges the order dated 11-7-1988 by which the trial Court permitted the plaintiff to incorporate in the plaint the portions which were to be introduced by the amendments allowed on 27-2-1970 and 1-9-1987. By the first amendment, certain portions were to be incorporated in the plaint, and by the second, the names of the legal representatives of the deceased third defendant were to be brought on record. The amendments were not incorporated in the plaint within fourteen days of the order, and an application came to be made nearly 17 years, after the first order for amending the plaint. The correctness of the orders allowing amendments has not been challenged and the only grievance of the applicant is that the power of carrying out the amendment under Order 6, Rule 18, CPC should not have been exercised, when there was a gross delay of nearly 17 years in incorporating the amendment as per order dated 27-2-1970.

2. The trial Court observed that no prejudice was likely to be caused to the opposite party by allowing the amendments and the amendment was allowed to be carried out, in spite of the gross delay, without putting the plaintiff to terms. Shri S. D. Patil, learned Counsel for the non-applicants, while supporting the order, stated that he would not contest the proposition that the plaintiff should have been put to terms and that he is willing to pay such costs as may be

imposed by this Court in revision, and any suitable order regarding payment of costs may be made.

3. With regard to the amendment that was to be made, pursuant to the order dated 1-9-1987, the submission was that the plaintiff was bound only to have the notices issued to the legal representatives of the deceased defendant No. 3 and the ministerial act of amending the plaint should have been performed by the officials of the Court, and reliance was placed on H.H. Darbar Alabhai Vajsurbhai Vs. Bhura Bhaya, . In that case, an order had already been made for the legal representatives of the two respondents to be brought on record and this Court observed that it was no part of the appellants' duty to take the necessary steps to carry out the Court's order for substitution of the names of the heirs of the deceased respondents who were properly served with notices in order to correct the record of the Court in terms of the order, and that was a ministerial function which the Court's establishment was charged to perform. If it was not performed or neglected, the fault would not lie with the appellants.

4. What is being overlooked is that the position is now different in para 96(3) of Chapter VII of the Civil Manual issued by this Court for the guidance of the Civil Courts and Officers subordinate to it, if the application is made within the prescribed period of limitation, the Court shall order, without issuing previously any notice to the proposed legal representatives, that the plaint be amended by adding the legal representative as a party to the suit in place of the deceased defendant and that summons in form No. 6 be issued to him.

5. The duty of carrying out the amendment to the plaint would obviously be that of the plaintiff, if the applicant was to amend the plaint by bringing the legal representatives of the deceased defendant No. 3 on record. Clearly, the party whose pleading it is, would be charged with the duty of amending that pleading, and in view of para 96(3) of Chapter VII of the Civil Manual, the duty cannot be regarded as one which is expected to be performed by the ministerial staff of the Court, and the non-applicant No. 1's submission on this point, cannot be accepted.

6. Since the trial Court has allowed the amendment to be carried out, after the gross delay, without imposing any conditions, and in view of the offer made by Shri S. D. Patil to abide by the conditions which may be imposed, it is sufficient, in the circumstances of the present case, to direct the non-applicant No. 1 to pay the costs of the revision application, quantified at Rs. 100/- (Rupees One hundred). With these directions, the rule is discharged.

Order accordingly.