
(1971) 11 CAL CK 0008
In the Calcutta High Court
Case No : Suit No. 248 of 1970

Central Bank of India

APPELLANT

Vs

Srish Chandra Guha and Another

RESPONDENT

Date of Decision : 15-11-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1

Citation : AIR 1972 Cal 345

Hon'ble Judges : Ghose, J

Bench : Single Bench

Advocate : Shankar Ghosh, for the Appellant;

Judgement

Ghose, J.—This is an application for amendment of a petition filed in pro-inter esse-suo seeking inter alia to add in the said proceedings Indian Tea Association stated to be an unregistered Association of members. The petition was filed by Assam Bengal Cereals Limited, an existing Company within the meaning of Companies Act, 1956 of No. 10, Netaji Subhas Road. In the said petition the Assam Bengal Cereals Limited claimed inter alia to be examined pro-interesse-suo as to their right, title and interest in 19139 Quintals 87 Kilogramms and 805 grammes of wheat and/or Bhushi fully described in Annexure (a) to the said petition. The petitioner in the said petition also claimed a declaration to the effect that it was the absolute owner of the said goods.

2. The petition was necessitated because of the fact that on the aforesaid goods Joint Receivers were appointed by this Court on the application of the plaintiff in the Suit No. 248 of 1970. that is to say Central Bank of India. The Central Bank of India claimed to be the hypothecate or pledgee in respect of the said goods. The hypothecation or pledge was alleged to have been created by the defendants in the suit. Srish Chandra Guha and Debabrata Guha carrying on business under the name and style of Guha Rice Co.

3. After the petitioner Assam Bengal Cereals Limited made the said application in

pro-interesse-suo an order was made on the said application by me on July 20, 1970 inter alia to the following effect to wit :--

"The petitioner shall be at liberty to take delivery of the goods claimed by it on furnishing bank guarantee for the controlled price of the goods. The form of the guarantee shall be settled by Mr. S. C. Mitter of Messrs. C. C. Basu and in case of dispute as to the form, the matter may be mentioned in Court. The rights of the parties in the goods so taken delivery of by the petitioner shall shift to the monies covered by the bank guarantee".

4. Pursuant to the said order the bank guarantee in terms thereof was duly furnished by the petitioner viz., Assam Bengal Cereals Limited. A part of the goods claimed by them were handed over to them by the Joint Receivers according to the petitioner. The joint Receivers are not in possession of any goods now. Pursuant to the directions given by Court affidavits were duly filed by the parties. Thereafter the matter was directed to be tried on evidence.

5. The parties duly disclosed their documents, inspection whereof were given and taken by them respectively. In fact Examination De Benese of one of the witnesses of the petitioner is going on before Mr. Justice R. M. Datta.

6. By the proposed amendment, petitioners seek to claim a declaration in the alternative of the ownership of Indian Tea Association of the said goods upon examination of the members of the said Association in pro-interesse-suo

7. The order for appointment of Receivers was made in this suit on June 18, 1970 for the first time and the application in pro-interesse-suo was moved before the Court for the first time on July 20, 1970. Notice of motion in the instant case was taken out by special leave of the Court on August 31, 1971 i. e. after more than a year from the date of making of the said application in pro-interesse-suo by the Assam Bengal Cereals Limited, as well as the Indian Tea Association, an unregistered association of members. The applicants i. e., Kamal McNair Kidwai and Joseph Cajetan D'Souza, the Vice-Chairman and Secretary of the Indian Tea Association have applied to be added as party petitioners in the instant application in the pending application made by Assam Bengal Cereals Limited in a representative capacity, that is to say. on behalf of all the members of the said Association.

8. Mr. Shankar Ghosh, appearing on behalf of the applicants submitted that from the documents disclosed in the proceedings a view may be taken that Assam Bengal Cereals Ltd. were not the owners of the said goods but were the agents of the owners of the said goods, their principal the Indian Tea association being the owners thereof. In the premises Mr. Ghosh submits in order to avoid multiplicity of proceedings and save unnecessary additional expenses this application has been made. Mr. Ghosh cited the cases of L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co., where the original cause of action in damages for wrongful conversion of the goods was allowed to be amended by the Supreme Court by substituting the cause of action of breach of contract. Mr.

Ghosh also cited *Nichhalbhai Vallabhai and Others Vs. Jaswantlal Zinabhai and Others*, for the proposition that although Indian Tea Association was not formally a party petitioner in the pending application it was in substance the petitioner in the pending application through its agent the Assam Bengal Cereals Ltd. Thus adding in these circumstances of Indian Tea Association at the present moment is merely a formal matter. Mr. Ghosh also relied on *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, Amendment in the said case was allowed on the ground that the firm which had sued as the plaintiff through the manager could not do so because the provisions of Order 30 of the Civil P. C. did not apply to the case of a proprietorship concern. It was heard however that in substance it was the person constituting that firm who had instituted the said suit. So amendment was allowed only to rectify the mis-description of the plaintiff by bringing in the proprietor of the firm as the plaintiff suing as such proprietor of the said firm. In *Nichhalbhai Vallabhai and Others Vs. Jaswantlal Zinabhai and Others*, the averments made by mistake in the plaint by describing the plaintiff as a present member of the joint family was allowed to be deleted by way of amendment on the ground that the suit was in substance a suit for partition and that averment was really made through inadvertence.

9. A proceeding in pro inter esse suo is not provided for either in the CPC or in the Rules of the Original Side of this Court. This is a procedure imported into this country from England. In order to do justice to a person, the Court allows that person to come in and be examined as to his title to the goods or property over which the Court has appointed Receiver in a Proceeding between persons other than the said person. That is done so that no person may suffer because of any order that may be passed by the Court. It is the right in such a proceeding of that person who claims to be the owner of the goods or property to be examined as to his title to the said goods or property. It is in that sense a personal right of that person only. That person cannot in my opinion in such a proceeding ask the Court to examine some other person with regard to that person's right or title in the goods or property over which the Court has appointed a Receiver.

10. In the pending proceeding the interest of the Original applicant i. e. the interest of the Assam Bengal Cereals Ltd. was directed to be examined. Further subsequent to the making of the said application an order was passed on 20th July, 1970 directing the Joint Receivers to hand over the said goods to Assam Bengal Cereals Ltd. upon its furnishing security in the sum of Rs. Assam Bengal Cereals Ltd. along with National and Grindlays Bank Ltd. agreed to indemnify or pay to the Central Bank of India the value of the said goods being the sum of Rs. in the event Assam Bengal Cereals Ltd. fails to establish its title as the owner of the said goods. The said bond or the agreement has been acted upon by the parties. It cannot now be ordered by amending the original petition that even if Assam Bengal Cereals Ltd. fails to establish its title to the said goods but the Indian Tea Association establishes its title there to Assam Bengal Cereals Ltd. or the National and Grindlays Bank Ltd. jointly or severally shall not be liable to pay the said sum to Central Bank of India The right, title and interest in the

said goods of the parties in the said proceeding on 20th July, 1970 stood shifted to the said money under the said bond. That position cannot be changed now in my opinion in the instant application.

11. It is not that the members of the said Indian Tea Association or the Association or the applicants did not know of the said suit or the proceedings therein. The Indian Tea Association and/or the applicants had knowledge of the said suit filed by the Central Bank of India as long ago as 18th June, 1970. They stood by; they did not take any step in the matter. The Assam Bengal Cereals Ltd. by furnishing the said Bank guarantee mentioned above has taken away the said goods. The aforesaid facts, to say the least, show want of diligence on the part of Indian Tea Association. A summary procedure in the form of an application in pro inter esse suo be resorted to or allowed to be resorted to only by a party who shows the utmost diligence. See Sreedhar Chaudhury Vs. Nilmoni Chaudhury and Others, . An examination pro interesse suo is never ordered unless the applicant shows diligence.

12. Now there is no goods in the possession of the Joint Receivers in regard to which there may be an examination in pro interesse suo of the Indian Tea Association. Therefore, in my opinion, no application can be made now for examination in pro interesse suo by any person. If the Indian Tea Association is directed to be added it shall be deemed to have made the application in pro interesse suo only when the order for its addition is made.

13. The Indian Tea Association cannot in my view be added as a party petitioner at this stage.

14. For the reasons stated above pass the following order :--

Leave is given to the petitioner Assam Bengal Cereals Ltd. to amend the petition as shown in red ink in paragraph 3-A of the draft petition being Annexure "D" thereto. Leave is given to re-verify the petition after such amendments are effected. Amendments be effected on the signed copy of the minutes upon the applicant's Solicitor's undertaking to Court to have this order drawn up and filed. The applicant must pay the cost of this application. Leave is given to the respondents to file an affidavit-in-opposition to the amended petition within three days of the service upon them of an amendment copy of the petition. All parties to act on a signed copy of the minutes.