

(1978) 02 PAT CK 0025

In the Patna High Court

Case No : Civil Revision No"s. 460 and 463 of 1972

Chairman, Bihar State Electricity Board and Others

APPELLANT

Vs

Hind Agriculture Farm and Cold Storage and Others

RESPONDENT

Date of Decision : 06-02-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (1978) 26 BLJR 642

Hon'ble Judges : Madan Mohan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Madan Mohan Prasad, J.—These two applications in revision arise out of the same case and common circumstances.

2. It appears that the plaintiffs opposite party filed a suit against the Chairman of the Bihar State Electricity Board (hereinafter referred to as "the Board") and some of its officers for an injunction against them from disconnecting the supply of electrical energy and from charging at the maximum guaranteed rate for the consumption of such electrical energy.

3. The defendants appeared and filed a written statement. One of the objections taken was that the suit was not maintainable because it should have been filed against the Board which is a body corporate and could sue and be sued in its Own name. The matter was fixed up for hearing on a particular date. On that very date, the plaintiffs filed an application for amendment of the plaint by deleting the word "Chairman" in the description of the first defendant. A copy of the the aforesaid petition was given to the defendants. Both sides were heard and an order was passed allowing the amendment. It may be stated that it appears that the taking of the matter of amendment on the afore-said date and the passing of the order by the court below led to certain dif-ference between the court and the lawyers for the defendants petitioners, who ultimately filed an

application making certain allegations against the court and praying for at least a month's time for filing a revision against the order aforesaid. After allowing the amendment by the same order the learned Munsif directed issuance of notice against the lawyers of the petitioners to show cause as to why they should not be proceeded against for contempt of his court. The present applications in revision are accordingly directed against the two orders.

4. With regard to the petition filed by the advocates which is the subject-matter of O. R. 463 of 1972. It may be stated at the outset that Counsel for the petitioners sought leave to withdraw the application with a view to raise the matter before the trial court itself in the first instance. I think that in the circumstances of the present case, the prayer is reasonable and proper and ought to be granted. I would accordingly do so. This petition is, therefore, dismissed as withdrawn.

5. Coming now to the question as to whether the amendment sought for has been rightly allowed. Counsel for the petitioners urged, firstly, that by nature of the suit would change if the amendment is permitted, inasmuch as the suit which is presently directed against the Chairman would become a suit against the Board ; secondly, that at the date of the amendment aforesaid, the suit against the Board stands time-barred and, thirdly, that the court below violated the principles of natural justice by not giving sufficient time to the petitioners to file rejoinder to the application or additional written statement. I propose to examine the submissions made in the order I have put them. At the outset, however, I must state that there is no substance in any of these contentions.

6. It is true that the first defendant was described as "The Chairman, Bihar State Electricity Board, Patna" It is not, however, true that the suit was directed against the Chairman personally. The grievance made out in the plaint read as a whole is against the Board itself. The reliefs prayed for are directed as against the Board. As stated earlier, they are obviously reliefs prayed for against the Board, viz. injunction against disconnecting the supply line or from charging at a particular rate which is alleged to be illegal. Surely, neither the supply of electrical energy nor its disconnection nor charging for the supply at a particular rate are matters of personal interest to the Chairman. Obviously, they are thus reliefs against the Board and not against the Chairman individually. The suit thus, reading the averments and reliefs prayed for in the plaint, is directed against the Board and not against the Chairman.

7. That leads me to the question whether the plaint thus contains a mis-description with regard to the first defendant. In my view, there can be no other inference except that it is so. In fact, the plaintiffs intended, the suit to be against the Board through the Chairman. If they had only put the title in the reverse and added the word "through" between the two, namely, the Board and Chairman, the description would have been proper. But just because they have put the Chairman of the Board as the first defendant it cannot be said that it is not a mis-description. A court in such circumstances has to satisfy itself whether

really the averments made in the plaint disclose a suit which is intended against a particular person, whether the reliefs prayed for are against him individually or they are against the body corporate which can be sued through its officers That is the basis test which has to be applied in such circumstances. In the present case, I have not the slightest doubt, as stated already, that the suit is really against the Board and not against the Chairman personally. In the view which I have taken, I receive support from two decisions of this court in *Radhelal v. East Indian Railway Company Limited* ILR Patna 128 and *East Indian Railway Co. Vs. Ram Lakhan Ram*, . In the case of *Radhelal* (supra) a Division Bench of this Court laid down that where upon a fair reading of the plaint it is made out that the description of the defendant is a mere error and that the Company is the real defendant, then the suit may proceed against the Company. In the case of *East Indian Railway Co. (supra)* again a Division Bench of this Court held that where there is a mis-description of the defendant in the cause title, there is complete power in the court to make the necessary correction, if the defendant had been substantially sued though under a wrong name.

8. That brings me to the next question of limitation. It is well established that where, in substance, the suit is directed against a particular party, even though there may be a description which may ultimately have to be corrected by the Court, the suit will be deemed to have been filed against such person at the date at which the plaint was originally filed. It is well known that one of the purposes of Order 1, Rule 10 of the CPC is to remove misdescription and where it is a case of misdescription and not one of substance in respect of the identity of the party concerned, there is no question of limitation. Again I would refer to the decision in *East Indian Railway Co, (supra)* where the learned Judges observed that misdescription may be removed without any regard to lapse of time. The decision in *Municipal Commissioners Vs. Gangamani Chaudhurani*, may also be seen in this connection. The second contention, therefore, fails.

9. Coming now to the third contention, it is obvious from the order that a copy of the petition for amendment was served on Counsel of the petitioners and that both parties were heard on the matter. In fact, in the petition filed by two Advocates (in O. R. 463 itself) it is stated that the senior Counsel had argued the case. The question of denial of natural justice does not, therefore, arise.

10. There is one more matter to which I would like to draw attention. The argument in the present case has been made as if the present application in revision is by the Board and not by the Chairman keeping the two distinguishable and apart. It is amusing to note, however, that the present application is again by the Chairman of the Board himself. That apart, what I am going to state, is that the Board treated this case to be against itself and acted as such in the court below. It appears that the written statement which was filed on behalf of the first defendant in the case was verified by the Under Secretary of the Bihar Electricity Board and not by the Chairman in his individual capacity. Obviously, the proper official of the Board thus filed the written statement. From petition

filed by the defendants on the 8th July, 1969, it is obvious that the suit was treated by the Board as against itself. In paragraph 3 thereof, it is stated:

That the agreement entered into between the plaintiffs and the defendants specially and in unequivocal terms laid down that the defendants shall be at liberty at any time after the demand charges, energy charges, minimum guarantee charges & etc, as set out in the schedule.

The next paragraph again says:

That it is admitted that the plaintiff entered into an agreement with the defendants...

I would appear that in the rejoinder filed by the defendants to the application for amendment of the plaint itself, the defendants described themselves as "Bihar State Electricity Board and Ors.-defendants " In another petition dated the 22nd June, 1970, also the defendants described themselves as above. It is needless to multiply instances. There are other documents on the record which show the same state of affairs, and also that the plaintiffs considered the suit to be against the Board considered the suit as against themselves. In the amendment petition itself dated 22nd June, 1970 the plaintiffs described the defendants as Bihar State Electricity Board, even though the description in the plaint was different. It is more than obvious, if at all anything can be more than obvious, that in the present case the plea raised by the Board was and is frivolous. I am constrained to observe that when a public undertaking is concerned, it should not act like a private litigant and must take an attitude of fairness and reasonableness. The Board, in my view, was improperly advised in making a mountain of a mole hill in respect of the description of the defendants and if this were avoided, perhaps, the unhappy circumstances which arose in the court below between the bench and the bar would have also been eliminated.

11. For the reasons aforesaid, I would dismiss this application. On account of there being no representation of the opposite party, there will be " no order as to costs.