

(1992) 04 CAL CK 0031
In the Calcutta High Court

In Re: Nirode Ranjan Ghosh Roy and Ors

Date of Decision : 23-04-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1

Citation : 96 CWN 1030

Hon'ble Judges : N.K. Mitra, J

Bench : Single Bench

Advocate : Shyama Prosanna Roy Chowdhury, Partha Pratim Mukherjee and Bhabani Prosad Mondal, for the Appellant; Ajit Kumar Roy and Sailendra Nath Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mitra, J.—In short, the facts of the case inter alia, are that the plaintiff-opposite party filed Title Suit Ne. 289/1991 in the Third Court of the learned Munsif at Sealdah against the defendant-petitioners, inter alia, for the declaration that the monthly maintenance charge/ contribution towards common expenses which have been imposed by the defendant-petitioners was illegal, arbitrary and contravened clause 20 of the West Bengal Apartment Ownership Bye-laws, 1974; for a declaration that the notice dated 31st March, 1991 issued by the defendant-petitioners was illegal-and void, and for permanent injunction restraining the defendant-petitioners from disturbing the plaintiff-opposite party's possession in the suit property and from realising; the enhanced maintenance charges at the rate of Rs. 120/- per month and for further injunction restraining the defendant petitioners from interfering with-the supply of water and /or other services in the suit property. In the said suit, the plaintiff-opposite party filed an application under Order 39, Rules 1 and 2 of the CPC and obtained an interim order which was ultimately made absolute on 25th January, 1992. Against the said order of the learned Munsif, the petitioners preferred an appeal being Misc. Appeal No. 58 of 1992 in the Court of the learned District judge, North 24-Parganas and the learned District Judge by his order NO. 5 dated 12th March, 1992 passed an order to the following effect:

Order No. 5 dated 12-3-1992.

Heard Id Advocates for both sides on the application filed by the appellant for stay of operation of the injunction order passed by Sri B.K. Chakraborty, Id Munsif. 3rd Court, Sealdah in Title Suit No. 289 of 1991 in order No. dated 25-1-92.

On due consideration of the submissions of both sides, it is ordered Without prejudice to the rights of the parties in the instant Appeal that the appellants will continue to pay the rate which was prevailing namely Rs. 60/ - per month prior to this decision in the Annual General Meeting held on 24-3-91 until further orders. The prayer for stay of the operation of the other portion of the order namely that the plaintiff appellants are restrained from interrupting the supply of water and other services including sweeping etc. is rejected at this stage.

The plaintiff-opposite party also filed an application u/s 151 of the CPC in the Trial Court praying for an order allowing the plaintiff-opposite party to contest as a candidate for Board Managers of the defendant-petitioners' association which was to be held on 28th March, 1992 allowed the said application on contest with costs. The said order has been challenged in revision in this Hon"ble Court.

2. Mr. Roy Chowdhury, learned Senior Counsel, appearing on behalf of the defendant -petitioners contends inter alia, that the application u/s 151 of the CPC filed by the plaintiff-opposite party ought to have been rejected by the learned Munsif, inasmuch as, it referred to a cause of action which was quite distinct and separate from the cause of action as mentioned in the suit itself and unless by way of amendment that cause of action was introduced in the original plaint, the application u/s 151 of the CPC was not maintainable. According to Mr. Roy Chowdhury, the impugned order therefore, was passed by the learned Munsif on an erroneous assumption of jurisdiction or in other words in excess of jurisdiction and the same cannot be sustained in law and is to be set aside.

3. Mr. Roy, learned Counsel appearing on behalf of the plaintiff opposite party, however, contends in support of the impugned order, that the order does not suffer from any error of jurisdiction on the part of the learned Munsif nor did the learned Munsif pass the said order with any material irregularity, and the cause of action referred to in the application u/s 151 of the CPC was really a corollary or incidental to the cause of action as stated in the plaint, and as such, no amendment of the plaint was even necessary in the matter. Mr. Ray in support of his contention also refers to the Division Bench Judgment of this Hon"ble Court in the case of State Bank of India Staff Association & Ors. vs. Monindra Bhattacharyya & Ors., LT. 1991 (2) HC 340.

4. Considering, however, the facts and circumstances of the case and the respective contentions of the learned Counsels of the parties, I find there is much substance in the contentions of Mr. Roy Chowdhury. The suit was filed by the plaintiff-opposite party against the defendant-petitioners only for the declaration that the enhanced maintenance charges and /or contribution to the common

expenses that had been imposed by the defendant-petitioners pursuant to the Notice dated 31st March, 1991 was not valid, legal and was ultra vires and/ or contravened clause 20 of the West Bengal Apartment Bye-laws, 1974, and for permanent injunction. In the said suit, the specific date of cause of action as mentioned by the plaintiff-opposite party was 22nd August, 1991 i.e., the date on which the defendant petitioners alleged to have threatened to stop water supply to the suit property unless the plaintiff-opposite party paid the maintenance charges at the enhanced rate as stated above. Nowhere in the plaint, there was any whisper regarding holding of any election nor any action of the defendant petitioners restraining the plaintiff-opposite party from participating in any election was made and or challenged and no relief was claimed in the suit concerning any election of the defendant opposite party. Accordingly, the application u/s 151 of the CPC filed by the plaintiff-opposite party related to a cause of action which was distinctly separate having no nexus with the suit either. Therefore, until and unless the plaint was allowed to be amended proving a nexus between the cause of action as stated in the application u/s 151 of the CPC and the cause of action as stated in the suit, the Section 151 application could not have been allowed by the Trial Court, inasmuch as, the cause of action as stated in the application u/s 151 of the CPC filed by the plaintiff-opposite party was a totally distinct and separate cause of action from what was pleaded in the plaint and it could not be said to be a cause of action ancillary to and/or co-related to the cause of action as stated in the plaint. So far as the decision in the case of State Bank of India Staff Association & Ors. (supra) is concerned, that decision is clearly distinguishable on facts. The said decision concerned a suit relating to holding of an election of an association and the subsequent events as stated in the appeal in respect of which an apprehension was mentioned and an order was prayed for, really speaking related to holding of such election, and as such, the Court interfered with and passed orders even without any amendment of plaint as the Court found on the facts and circumstances of that case that amendment was not necessary to pass an order on the subsequent events in respect of which apprehension was mentioned before the Court, as the court was of the view that where subsequent events were further evidence of the apprehension alleged in the plaint, no amendment in the plaint was required. The facts of the present case, however, are totally different. Accordingly, I hold that the said decision will be of no help to the plaintiff-opposite party so far as the present revisional application is concerned. The revisional application thus succeeds and the order under challenge is set aside for the reasons as aforesaid.

There will be no order as to costs.