

(2000) 08 BOM CK 0097

In the Bombay High Court

Case No : Civil Rev. Application No. 229 of 2000

Inderchand Mulchand Banwat

APPELLANT

Vs

Manoj Premchand Sharma and Others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Limitation Act, 1963 — Section 21

Citation : (2000) 08 BOM CK 0097

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : R.L. Khapre, for the Appellant; N.S. Badhe, for the Respondent

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—Rule. Rule made returnable forthwith by consent of parties.

2. Briefly stated, the applicant instituted suit against the respondent No. 1 on 22-7-1997 for recovery of amount towards the value of goods sold to the respondent No. 1 under bona fide belief that he was proprietor and owner of shop named "Om Medical Stores". The suit is for recovery of Rs. 9,768.65.

2.1 The respondent No. 1 filed written statement and took a stand that he is not the owner but was working in the said shop as servant and as such, the suit filed against him was incompetent. In the written statement, the name of the owner was not disclosed. The written statement was filed on 11-11-1997. Thereafter, the applicant made enquiries from the Registrar and other sources and only on 29-12-1998 became aware about the name of the owner who was none else but the brother of the respondent No. 1. In the circumstances, an application was filed before the trial Court being Exh. 24 in the pending suit being Regular Civil Suit No. 104/1997, praying that the applicant be permitted to implead respondents Nos. 2 and 3 as parties - defendants in the said suit. The said application was resisted by the respondents.

3. The trial Court, by the impugned order dated 20-12-1999 was pleased to

reject the said application. Although the trial Court has referred to various contentions raised on behalf of the respondents, however, has rejected the application on the sole ground that if the amendment was allowed, that would result into permitting the applicant to institute time barred claim against the respondents Nos. 2 and 3. It is not in dispute that this is the only reason assigned by the trial Court in para 8 of the impugned order.

4. Having heard both the sides, in my view, it is not possible to sustain the approach of the trial Court in rejecting the application on the ground that the claim against the respondents Nos. 2 and 3 had become time barred. Although the trial Court has referred to provisions of proviso to sub-section (1) of section 21 of the Limitation Act, including the decision of the Apex Court reported in *Munshi Ram Vs. Narsi Ram and Another*, , has still taken the view that the amendment as sought cannot be permitted. From the plain language of proviso to sub-section (1) of section 21, it would appear that the applicant was entitled to implead respondents Nos. 2 and 3 as party defendants in the suit which was instituted against the respondent No. 1, as the plaintiff had omitted to include respondents 2 and 3 as party defendant in good faith, the Court was under an obligation to direct that the suit as regards the respondents 2 and 3 herein shall be deemed to have been instituted on the date of presentation of plaint as against respondent No. 1. The learned counsel for the applicant has rightly relied on several decisions of the Apex Court including the decisions reported in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, and *Munshi Ram Vs. Narsi Ram and Another*, to contend that the law with regard to the purport of section 21 of the Limitation Act is no more res integra. In my view, the trial Court has clearly overlooked the well settled position while rejecting the application for proposed amendment. In the circumstances, the impugned order deserves to be quashed and set aside and instead the Application filed by the applicant Exh. 24 in regular Civil Suit No. 104/1997 deserves to be allowed by permitting the applicant to amend the plaint as prayed for in the application.

5. Revision application is allowed in the above terms. No order as to costs.