

(1985) 04 DEL CK 0026

In the Delhi High Court

Case No : Criminal Revision Appeal No. 1103 of 1982

International Air Transport Association

APPELLANT

Vs

Aziz Fatima Hasnain and Another

RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Citation : AIR 1985 Delhi 381 : (1985) 28 DLT 208

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Advocate : Vinay Bhasin, Dinkar Goswami, R.S. Swamy and Dilip Vasudevan, for the Appellant;

Judgement

Sultan Singh, J.

(1) This revision u/s 115 of the CPC (for short "the Code") is directed against the judgment and order dated 30th July, 1982 of the Addl. District Judge, Delhi rejecting the petitioner's application under Order 1 rule 10(2) of the Code.

(2) Briefly these are the facts. Smt. Aziz Fatima Hasnain, plaintiff- respondent No. 1 filed a suit for Rs. 50,000/. as damages against Pakistan International Airlines (defendant No. 1- Respondent No. 2) and International Air Transport Authority Canada, (petitioner-defendant No 2) She has alleged that she was scheduled to travel on 29th August, 1980 by Pakistan International Airlines flight from New Delhi to Karachi and Karachi to Jeddah by Flight No. Pk 733, that she had a valid ticket, which was handed over to her by the Pakistan International Airlines office (defendant No. 1) at New Delhi, that her ticket was okayed, that she reached the air port on 29th August, 1980 in time and after necessary formalities she boarded the plane but she was bodily removed from the plane. On account of the alleged humiliation etc, she has claimed Rs. 50,000.00 against defendant No. 1 by way of damages. No relief is claimed against defendant No. 2. The petitioner made an application dated 15th March, 1982 under Order 1 rule 10(2) of the Code that the plaintiff wrongly described it as International Air

Transport Authority" when it was actually known as International Air Transport Association". The petitioner has also alleged that the relief sought by the plaintiff is only against Pakistan International Airlines (defendant No. 1) and the petitioner was never involved, that the plaintiff has not made any allegation or claim against defendant No. 2, that it is neither a necessary nor a proper party. It was Therefore prayed that the name of defendant No. 2 be struck out from the plaint under Order 1 rule 10(2) of the Code. The plaintiff contested the application.

(3) The trial court rejected the application on the ground that the application was not filed at a proper stage and it was not proper to strike out the name of defendant No. 2, that the question of misguide is to be decided in the light of the pleadings at the relevant stage and that the defendant No. 2 has not filed its written statement.

(4) Learned counsel submits that the trial court has acted illegally in the exercise of its jurisdiction in rejecting the said application and the name of defendant No. 2 should be struck out as it has been improperly joined as defendant within the meaning of Order 1 rule 10(2) of the Code.

(5) Order 1 rule 10(2) of Code reads as under :

"COURT may strike out or add parties (2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

Sub-rule (2) of rule 10 of Order 1 of the Code deals with the striking off the name of any party improperly joined whether as plaintiff or defendant. The power to strike off the name of any party improperly joined can be exercised at any stage of the proceeding i.e. even before the filing of the written statement. Such an order can be passed suo mot or on the application of the party. The question for determination is whether the party was improperly joined as plaintiff or defendant. If the court concludes that the plaintiff or defendant has been improperly joined the name of such party can be struck out. The party introduced to a litigation who has no connection with the relief claimed in the plaint, is neither a necessary nor a proper party. The court can Therefore strike out under this rule the name of any such party.

(6) The trial court has not determined whether defendant No. 2 was improperly joined. It rejected the application on the ground that it was not a proper stage. As already stated, such an application can be filed at any stage even before the filing of the written statement. In the instant case it is to be determined whether defendant No. 2 has been improperly joined in the present suit. The plaint shows

that there is no allegation against defendant No. 2. The only allegation is that Pakistan International Airlines (defendant No. 1) is a member of International Air Transport Authority (defendant No. 2). Reference to defendant No. 2 is made only in paras 18, 24 and in those places it has been mentioned that defendant No. 2 has been arrayed as a proforma defendant because it is a proper party as defendant No. 1 is a member of defendant No. 2. No other allegation concerning defendant No. 2 has been made in the prayer. In the prayer clause a decree for Rs. 50,000.00 is claimed against defendant No. 1 only by way of damages. Learned counsel for the plaintiff has not pointed out any allegation in the plaint concerning defendant No. 2. As a matter of fact there is neither any allegation nor any claim against defendant No. 2. Learned counsel for the plaintiff refers to para 28 of the plaint. This is prayer clause, where the plaintiff has prayed for a decree for Rs. 50,000.00 against defendant No. 1. She has also prayed for award of costs and any other relief which the court deems fit and proper against the defendants. As there is no allegation or claim against defendant No. 2 in the plaint it cannot be said that it has been properly joined as defendant.

(7) Learned counsel for plaintiff has referred to Razia Begum Vs. Sahebzadi Anwar Begum and Others, which was a case for declaration and a third party on his application was added. The facts of that case are not applicable and do not help the plaintiff. Reference has also been made to Dattatraya Govind Shaligram Vs. Gopal Sakharam Pandhare, Trojan and Co. Ltd. Vs. Rm. N.N. Nagappa Chettiar, and Joseph alias Kochu Vs. Makkaru Pillai, . it is not necessary to refer to these precedents as they are not relevant for the decision of the question in this revision. It is Therefore held that International Air Transport Association petitioner-defendant No. 2 has been improperly joined as defendant No. 2 to the present plaint and Therefore its name is liable to be struck out. The revision petition is accordingly accepted with costs setting aside the impugned order dated 30th July. 1982. The name of defendant No. 2 is ordered to be struck out from the plaint Counsel fee Rs. 500.00 .