

(1982) 02 BOM CK 0040

In the Bombay High Court

Case No : Civil Revision Application No. 778 of 1981

Kaira District Co-op. Milk Producers Union Ltd. and Another	APPELLANT
Vs	
Kishore Shantilal Shah	RESPONDENT

Date of Decision : 01-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8(1)

Citation : AIR 1983 Bom 66 : (1982) 1 BomCR 509

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Advocate : K.S. Cooper, instructed by Dephtary Ferreira and Diwan, for the Appellant; K.A. Mehta, for Dikshit and Co., for the Respondent

Judgement

1. This is an application filed by the original defendants against the order passed by the City Civil Court, Bombay in S. Constitution. Suit No. 2004 of 1981, on 7th of August 1981, granting permission to the plaintiff to sue in a representative capacity under Order 1 Rule 8 of the Code of Civil Procedure.

2. The plaintiff who claims to be a Jain and strict vegetarian, filed a suit against the defendants praying for a declaration that Amul Cheese is not a purely vegetarian product and that they should not sell or market it as vegetarian product. In paras 6 and 7 of the plaint, it is contended by the plaintiff that the defts. were advertising the cheese as Amul Cheese Tops vegetables" meaning thereby to be best amongst the vegetarian products. According to the plaintiff by the said advertisement issued by the defts. they have directly or indirectly represented and are continuing to represent to the general public and the Jain community in particular including the plaintiff, that Amul Cheese is a purely vegetarian product. Then in para 10 it is alleged that because of this representation Jains who are strictly vegetarians are misled and, therefore, he filed the present suit seeking the necessary declaration in that behalf. Plaintiff then contended that the cause of action complained of not only affects the plaintiff but the entire community of Jain of which the plaintiff is a member.

Therefore he sought the permission to sue under Order I Rule 8 of the Civil Procedure Code. The plaintiff also reduced letters from Bombay Jain Swayamsevak Mandal and Jain Jagriti Centre, in support of this claim.

3. The request made in that behalf was opposed by the defendants by their say. After hearing both sides the learned Judge of the trial court by his order dated 7th of August 1981 came to the conclusion that this is a fit case wherein such a permission should be granted to the plaintiff. As already observed it is this order which is challenged in this revision.

4. Shri Cooper the learned counsel appearing for the appellants contended before me that the leave under Order I Rule 8 of the CPC could not have been granted unless it is established that the plaintiff himself had a cause of action. If the plaintiff himself had no right to sue then he is not entitled to file a suit under Order I Rule 8 of the Code of Civil Procedure. According to Shri Cooper it is not the claim of the plaintiff that at any time he was deceived because of the advertisement issued. On the other hand from the averments made in the plaint, it is quite clear that the plaintiff very well knew as to how Amul Cheese was produced and manufactured. He has also not claimed any damages so far as he is concerned. There is neither personal cause of action nor any other cause of action on which such a suit could have been filed. Therefore according to the learned counsel such a suit itself is not maintainable.

5. On the other hand Shri Mehta the learned counsel appearing for the opponent plaintiff, contended before me that the plaintiff has made necessary averments in the plaint to indicate that he too was deceived because of the misrepresentation made in the advertisement. In paragraphs 7, 10 and 15 of the plaint he has disclosed the community interest in the litigation and therefore the learned Judge of the trial court was right in granting him permission to sue under Order I Rule 8 of the Code of Civil Procedure. According to Shri Mehta in any case this is not a fit case wherein any interference is called for in the revisional jurisdiction of this court under S. 115 of the Code of Civil Procedure.

6. With the assistance of the learned counsel appearing for both sides I have gone through the pleadings of the parties. In the plaint the plaintiff has made various allegations to indicate that through the advertisement it is being misrepresented by the defendants that Amul Cheese is a purely vegetarian product. In paragraph 7 of the plaint, it is contended by the plaintiff that because of this advertisement the general public and Jain community including himself were believing that the Amul Cheese could not be termed as a purely vegetarian product. According to the plaintiff the action complained of which the plaintiff is a member. Thus in substance the plaintiff has indicated as to how the other members of the Jain community are also interested in the litigation. O. I. R. 8 as amended in the year 1976 incorporates a rule of convenience based upon reason and public policy and saves the trouble and expenses which would otherwise have to be incurred if each and every individual is asked to file a separate suit. This provision is made for the benefit and protection of persons who have same

interest as that of the plaintiff who has filed the suit. For granting permission under O. I. R. 8 of the Code of Civil Procedure, community interest is an essential condition. From the explanation to O. I. R. 8 it is clear that for the purpose of determining whether the persons who sue or are sued, or defend, have the same interest; it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be. Therefore it is quite obvious that the said provision applies also to the cases where the interest is similar or to the cases where several persons on whose behalf the suit, sought to be filed have the same interest. The object of the provision is to avoid unnecessary troubles and expenses of litigation and to give finality to the decision which might be ultimately passed. Obviously this is also in the interest of the defendants. The litigation contemplated by Order I Rule 8 of the CPC could very well be termed as common interest litigation. As to whether the litigation involves common interest or not will have to be decided on the facts and circumstances of each case and prima facie on the basis of the averments made in the plaint.

7. While deciding this question it is not relevant to find out at this stage as to whether the suit itself is maintainable or not. This is unwarranted at this stage. Therefore I do not propose to enter into the controversy as to whether the plaintiff is entitled to get a declaration as claimed for in the suit, or a suit with such allegations is at all maintainable or not. So far as the present revision petition is concerned, the order which is challenged in this revision petition is restricted to the permission granted by the trial court under Order I Rule 8 of the CPC and nothing more. The plaintiff has contended that he too was deceived because of the misrepresentation made by the defendants together with other persons of the Jain community. Therefore if there is a cause of action for filing the present suit, then his interest in the litigation is common with other members of the community and hence it could safely be said that in the present case the controversy involved is of common interest for the persons to whom the plaintiff seeks to represent. This is also clear from the letters produced by the plaintiff. In this view of the matter it cannot be said that the jurisdiction vested in the trial court to grant permission under Order I Rule 8 of the CPC was either exercised illegally or with material irregularity which has resulted in the miscarriage of justice, so as to call for an interference in a revisional jurisdiction of this court u/s 115 of the Code of Civil Procedure.

In the result, therefore, the revision petition fails and is dismissed. As a necessary consequence of this the interim stay granted by this court stands vacated. However, in the circumstances of the case there will be no orders as to costs.

8. Revision dismissed.