
(1962) 02 MP CK 0023

In the Madhya Pradesh High Court

Case No : Civil Revision No. 142 of 1961

Kalu Ram Pannalal and Another

APPELLANT

Vs

V. Jagannath Kalua

RESPONDENT

Date of Decision : 15-02-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14
Limitation Act, 1908 — Section 22

Citation : AIR 1963 MP 151 : (1962) JLJ 593

Hon'ble Judges : P.R. Sharma, J

Bench : Single Bench

Advocate : K.L. Batham, for the Appellant; H.G. Mishra, for the Respondent

Final Decision : Allowed

Judgement

P.R. Sharma, J.—This revision application has been preferred by the plaintiff, whose suit for recovery of a sum of Rs. 489/9/- on the basis of a bond has been dismissed by both lower Courts.

2. It was alleged in the plaint that the respondent took a cash loan of Rs. 410/- on 15-11-1953 agreeing to repay the loan by instalments of Rs. 10/- per month with interest at 12% per annum. The defendant repaid only a sum of Rs. 50/-. The plaintiff, therefore, claimed Rs. 360/- as principal, Rs. 129/- by way of interest and annas -/9/- as notice charges.

3. The suit was originally Instituted in the name of firm "Kaluram Chhotelal". Thereafter by an amendment of the plaint the names of Kaluram and Chhotelal as proprietors of the firm "Kaluram Chhotelal" were substituted as plaintiffs in place of the firm. The plaintiffs signed the amended plaint on 30-9-1959.

4. The trial Court held that the suit was barred by Section 22 of the Limitation Act. This finding was, however, set aside on appeal by the learned District Judge, Gwalior, who held that merely because the plaintiff's names as members of a joint Hindu family firm were brought on record on 12-9-1959 it could not be said

that the plaintiffs were joined as parties to the suit on that date. Relying on the decision in *Balwantrao Ambaram v. Baldeodas Manilal and Co.* 1957 MFC 122 the appellate Court held that Section 22 of the Limitation Act could have no application to such a case. This finding has not been challenged before me and I do not see any reason to interfere with it. The appellate Court, however, dismissed the suit on the new ground that the plaint, which was originally filed on the 15th of November, 1956, was signed by one Khemchand, who claimed to be an "Aam Mukhtiyar" of the plaintiffs. The signature of the "Aam Mukhtiyar" on the plaint and its verification by him, not being in accordance with the provisions of Rules 14 and 15 of Order VI C. P. C. the lower appellate Court held that the plaint should be deemed to have been duly presented only on 30-9-1959 when it, was with the permission of the Court, signed and verified by Kaluram Chhotelal.

5. Every pleading has, according to the provisions of Order VI Rule 14 to be signed by the party and his pleader. It is only where the party pleading is by reason of absence or for some other good cause unable to sign the pleading that the law permits it to be signed by any person duly authorised by him to sign the same. Likewise the verification of pleadings has also to be made by the party concerned or by one of the parties pleading. All that appears on the record of this case is that the "Aam Mukhtiyar" signed the plaint under the instructions of the plaintiffs. It was held in *Chandramal v. Ganpatrao* 4 NLR 117 that it is only absence of such a kind as makes signature by the plaintiff impossible that would justify the applicability of the proviso to Rule 14.

6. In the present case the plaintiffs were not absent and it was not impossible for them to sign the plaint. The "Aam Mukhtiyar" could, therefore, not sign and verify the plaint. In the case of *The Prince Line Ltd. Vs. The Trustees of the Port of Bombay*, Bhagwati J. on a consideration of the various authorities on the point, held that the Court has the power where a plaint is not properly presented or is not signed and verified in accordance with the provisions of Rules 14 and 15 of Order VI C. P. C. to allow the plaintiff to remedy the defect at a later stage, even though the period of limitation for filing the suit may already have expired. But it was observed by the learned Judge that where while allowing the amendment or granting an opportunity to the plaintiff to cure the defect, the Court reserves unto the defendant the right to plead the bar of [imitation, the plaintiff would have to meet that point whenever properly raised at any subsequent stage. Chhagla C. J., however held in *Dahyabhai Girdhardas Vs. Bobaji Dahyaji Kotwal and Others*, that the Privy Council in *Mohini Mohun Das v. Buddan Saha Das* ILR Cal 580 considered the omission by one of the co-plaintiffs to sign the plaint as a merely formal error and not a serious defect which went to the root of the matter and which vitiated the whole institution of the suit to such an extent that the Court must consider that the suit was not properly instituted at all. Chhagla C. J., therefore, disagreed with the view taken earlier by Sir John Beaumont, C. J. in *Chunilal Bhagwanji Vs. Kanmal Lalchand*, and preferred to follow the view taken by Misra J. in *Nanjibhai v. Popatlal* AIR 1932 Bom 367.

7. In the case before Chhagla C. J., the plaint was signed by the plaintiff's son who was described, as his "kul mukhtiyar". The plaintiff thereafter applied for an amendment of the plaint by striking off the signature of his son and himself being permitted to sign the plaint. The case was, therefore, of a suit filed by a single individual who did not sign the plaint, but permitted it to be signed by his "kul mukhtiyar". Still it was held by Chhagla C. J. that failure on the part of the plaintiff to sign the plaint could not vitiate the institution of the suit to such an extent that the Court must consider that the suit was not properly instituted at all. The view taken by Chhagla C. J. is in accord with the decision of a Division Bench of this Court in *Sarjuprasad v. Badriprasad* AIR 1939 Nag 242 according to which the provisions of Order VI Rule 14 are merely a matter of procedure. It, as was held by Chhagla, C. J., in *Dahyabhai's* case AIR 1959 Bom 28 (*supra*), failure by the plaintiff to sign the plaint cannot result in the suit being deemed not to have been instituted at all till the defect was remedied, for one fails to see how any reservation by the Court in favour of the defendant that he could plead the bar of limitation could be of any avail to him.

8. In *Subbiah Pillai alias S.S.M. Subramania Pillai Vs. Sankarapandiam Pillai and Others*, the plaintiff had not signed the plaint, which was filed with his knowledge and consent, and the omission was not noticed till the case came up for hearing before the appellate Court. It was held, relying on a Full Bench decision of the Allahabad High Court in *Basdeo v. John Smidt* ILR All 55 and of the Privy Council in ILR Cal 580 (*supra*) that the Court ought not to dismiss a suit or interfere with the decision of the lower Court merely because the plaint had not been properly signed, and that the defect could be removed even at the appellate stage. A Division Bench of the Calcutta High Court of which Justice Sir Asutosh Mukherjee was a member held in *Syed Mohiuddin and Others Vs. Pirthichand Lal Choudhury*, that an appellate Court should not dismiss a suit on the ground only that the plaint was not duly signed and verified and that such a defect does not affect the merits of the case or the jurisdiction of the Court. In the case of *Harprasad v. Bhikaram* 1961 Jab LJ 31 the plaint was signed by an "Aam Mukhtiyar". It was held by my learned brother Shivdayal J. that the defect was curable, the signature of the plaintiff could be obtained at a later stage and the suit could not be dismissed on this ground alone.

9. The case before Bhagwati J. is distinguishable even on facts from the one before me. In that case the plaint was signed by a person who did not hold a general power of attorney. The trial Judge, therefore, adjourned the suit in order to enable the plaintiffs to grant a general power of attorney to their constituted attorneys and to enable the latter to properly sign and verify the plaint. It was, in these circumstances that the trial Judge had in that case made a reservation in favour of the defendant that the amendment shall be subject to the plea of limitation being open to the defendant. In the case before Chhagla C. J., as well as in the one before me, the plaint was signed by a person holding a general power of attorney. Though the signature on a pleading by an "Aam Mukhtiyar" is not in accordance with law, such a pleading is not signed and presented by an

utter stranger or a person who had not at all been authorised by the plaintiff to sign it, so as to result in the suit being deemed not to have been instituted at all. Be it as it may, the weight of authority is in favour of the view taken by Chhagla C. J. and consistently by this Court. I would, therefore, hold that the defect in the plaint in the present case was purely formal in nature and that on the plaint being signed by the plaintiffs, the amendment would date back to the date of the institution of the suit. A formal defect in the plaint of this character would fail within the ambit of the rule laid down by their Lordships of the Supreme Court in *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*, according to which the Court has a discretion to allow an amendment even where the right to plead the bar of limitation has in the meantime become vested in the opposite party. It is needless to say that simply by reason of the fact that the trial Court makes a reservation in favour of the defendant that he could raise the plea of limitation, the discretion of the appellate Court in the matter cannot be (seemingly) taken away. It is open to the appellate Court in a proper case to set aside that reservation and to order that the amendment shall take effect from the date of the presentation of the plaint. I would, therefore, reverse the finding of the lower appellate Court on this point and hold that the plaintiff's suit cannot be held to be time-barred on the ground that the plaint was not properly signed at the time of its presentation (After discussing the evidence His Lordship proceeded). In this view of the matter it must be held that the findings given by the learned District Judge in paragraph 11 of his judgment are wholly unjustifiable on the materials on record.

10. For the reasons stated above, I would allow this revision application and decree the plaintiff's claim for Rs. 360/- as principal and Rs. 96/12/- as interest at the rate of 9% per annum. In view of the extremely negligent conduct of the plaintiffs, I shall order that they shall not be entitled to any costs or any future interest.