
(2003) 02 BOM CK 0092

In the Bombay High Court

Case No : Civil Revision Application No. 1095 of 2002

Municipal Council

APPELLANT

Vs

K. Ravindra and Company and Others

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 10, 115

Citation : (2003) 4 ALLMR 672 : (2003) 6 BomCR 287 : (2003) 2 CivCC 578 :
(2003) 2 MhLj 987 : (2003) 2 MhLj 986

Hon'ble Judges : S.G. Mahajan, J

Bench : Single Bench

Advocate : V.A. Naik, for the Appellant; Smt. Meenaxi Iyer, for the Respondent

Final Decision : Partly Allowed

Judgement

S.G. Mahajan, J.—By consent recorded on 15-1-2003, this revision is being disposed of finally at the stage of admission itself.

2. The question involved in this revision is whether the sole proprietor of a firm can sue in the name of firm?

3. Respondent No. 1 herein, which is a proprietary concern, filed Special Civil Suit No. 33 of 1995 in the Court of Civil Judge, Senior Division, Bhandara, for the recovery of the amount, against the State of Maharashtra and other defendants, one out of whom is Municipal Council, Tirora, which is the revision-petitioner in this revision. The suit was instituted by respondent No. 1 in the name "K. Ravindra and Company, through its proprietor Shri Narayan Sakharam Kantode, aged about 60 years, resident of A/2/2 N.S.K. Society, Civil Lines, Nagpur." The case was once closed for judgment. Then after the Presiding Officer of the Court was transferred, the case came up before another Judge, who posted it for arguments. At that stage, the present revision-petitioner (Municipal Council, Tirora), which is defendant No. 3 in the aforesaid suit, filed an application for the dismissal of suit, raising an objection that the suit is filed by "K. Ravindra and

Company", which is neither a partnership firm nor a limited company and its proprietor cannot file a suit in the trade name of the proprietary firm. By the order dated 21-10-2002, the learned Joint Civil Judge, Senior Division, Bhandara, rejected the above application filed by the present revision-petitioner, which order of rejection is under challenge in this revision.

4. The learned counsel for respondent No. 1 assailed the very maintainability of the present revision in view of the amendment of 1999 to Section 115, CPC whereby Clause (b) of proviso to Sub-section (1) of Section 115, CPC is deleted. The learned counsel cited *Rajabhau Rahate Vs. Dinkar Ingole*, . The learned counsel canvassed that even if it is held that the sole proprietor of the firm cannot sue in the name of the firm, the suit cannot be dismissed and in view of some authorities, the rectification can be made in the name. Hence, according to her, even if the order goes in favour of revision-petitioner, the suit would not be disposed of finally, so the revision would not be maintainable. However, it may be seen that the application moved by the revision-petitioner before the Trial Court was for the dismissal of the suit, which was rejected by the Trial Court. This rejection is impugned in the present revision. If the contention of the revision-petitioner is accepted, the suit will stand disposed of finally and thus by virtue of proviso to Section 115, Civil Procedure Code, the revision would be maintainable.

5. In support of her proposition about the non-maintainability of the suit, the learned counsel for revision-petitioner cited *R.J. Mohammed Yakub Saheb Vs. Dipa Sahu Deoki Prasad and Others*, . In this cited case, the suit was brought against the Hindu joint family trading firm in the name assumed by such firm. It was held that a Hindu joint family trading concern, though not a firm in the legal sense, may be sued in its assumed name of the business under the provisions of Order 30, Rule 10, Civil Procedure Code, but such a Hindu joint family trading concern cannot sue as a plaintiff in the firm name under the provisions of Order 30, Rule 1, Civil Procedure Code. Such a suit must be brought either by the Karta of the family or by all the members of the joint family who are coparceners. In the cited case, Hindu joint family carrying on business under its assumed name was a party. The provision of Order 30, Rule 10, CPC is also applicable to the person carrying on business in a name or style other than his own name. Hence such person can be sued in the assumed or trading name, but he cannot sue as a plaintiff in the assumed or trade name. The suit will have to be brought by the proprietor in his own name and not in the trading name.

6. The next case cited by the counsel for revision-petitioner is *Bhagvan Manaji Marwadi Vs. Hiraji Premaji Marwadi*, . This case lays down that one man cannot constitute a firm, and a person trading himself as a firm or in an assumed or trading name may be sued in his trading name under Order 30, Rule 10, but he cannot sue in that name.

7. The counsel for respondent No. 1 cited *M/s. J.D. Singh and others Vs. Calcutta Port Trust*, . It was held in this cited case that though a plaint in the name of an unregistered firm is legally non est for all purposes, yet, a plaint or a proceeding

instituted in the trade or business name of a sole owner is not similarly deemed to be void for all future purposes. In cases of bona fide error where the mistake has been made not for any ulterior purpose that Court permits a rectification of the name so that the person suing is permitted even at a late stage to show himself as the claimant on record. Thus the case cited by the learned counsel for respondent No. 1 also accepts the proposition that the sole owner cannot file a suit in the trade name. However, the authority enables the rectification of the bona fide mistake.

8. The counsel for revision-petitioner cited *Neogi Ghose and Co. Vs. Sardar Nehal Singh and Another*, . This case approves the proposition of permissibility of rectification. In this regard, the relevant facts were that on the objection being raised about the non-maintainability of suit as it was brought in the name of firm, the plaintiff, who was the sole proprietor of the firm, moved an application for amendment of plaint by inserting certain words before the name of firm, so as to indicate that the person carrying on business under the name and style of firm was the plaintiff. The learned Judge opined that the application should not be dismissed but having regard to the arguments, he expressed his preparedness to make the order directing that the amendment should be allowed upon the terms of payment of costs and holding that the plaintiff would be entitled to claim such relief if the suit had gone on from the time of his being joined as plaintiff. In short, the learned Judge was prepared to allow the amendment subject to costs and limitation. However, since the learned counsel for applicant canvassed that if the above view would be taken by the Court, the suit would be barred by limitation. So he asked to dismiss the application outright. The application was, therefore, dismissed.

9. The learned counsel for revision-petitioner, in addition to her aforesaid stand about the non-maintainability of suit, alternatively submitted that the respondent can be permitted to apply for rectification and the Trial Court can be directed to decide that application on its own merits. Thus, she impliedly submitted that the issue of limitation may be left open for being dealt with by the Trial Court. However, in my opinion, this is not a case in which the factor of limitation would come in the way of rectification. In the case of *M/s. J.D. Singh and others Vs. Calcutta Port Trust*, , the suit was brought in the name of "M/s J. D. Singh & Co.". It was held that it was an erroneous description through bona fide mistake. The award was allowed to be corrected showing the name of claimant to read as "J. D. Singh". The present case is still on a better footing. Here the suit is brought in the name "K. Ravindra & Company, through its proprietor Shri Narayan Sakharam Kantode". In the case AIR 1940 443 (Oudh) , cited by the counsel for respondent No. 1, similar was the description of the plaintiff. It was held that there would no doubt have been a substantial defect in the plaint if it had been brought simply in the name of the Lucknow Automobiles, but the addition of the actual plaintiff (showing as through Mt. Munia) as propritress of the Lucknow Automobiles removes the defect as it makes quite clear who the plaintiff is.

10. In the instant case also, there is an addition of the name of actual plaintiff showing the Trading concern through its Proprietor Shri Narayan Sakharam Kantode. However, instead of taking that the defect is automatically removed, I hold that it is a case of misdescription through bona fide mistake. In view of the ratio of the case of M/s. J.D. Singh and others, I think it appropriate to allow the plaintiff/respondent No. 1 to do the rectification in the name as "Shri Narayan Sakharam Kantode, Proprietor of K. Ravindra & Co.". Since the learned counsel for respondent No. 1 has placed reliance on the above authority, it can be taken that it is her request to grant permission to rectify.

11. In the result, the revision is partly allowed. The finding of the Trial Court in the impugned order that the suit filed in the assumed name by its proprietor is tenable, is set aside. It is held that the rectification in the name of the plaintiff is needed. The Trial Court is directed to allow the plaintiff/respondent No. 1 to make the correction in his name in the plaint as described in the preceding para. On such correction being made, the Trial Court shall proceed with the case further, according to law. No order as to costs.