
(1937) 06 CAL CK 0013
In the Calcutta High Court

National Insurance Co. Ltd.

APPELLANT

Vs

Dhirendra Nath Banerjee and Another

RESPONDENT

Date of Decision : 02-06-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 1, 88

Citation : AIR 1938 Cal 287

Hon'ble Judges : McNair, J

Bench : Division Bench

Judgement

McNair, J.—This is an application by the plaintiffs in an interpleader suit. The plaintiff company is an Insurance Company who on 14th October 1931 lent to D. N. Banerjee a sum of Rs. 10,000 and Banerjee deposited with them in Calcutta certain documents of title relating to a property at Ballyganj. It has been alleged that Banerjee was a partner in S.G. Mukherjee & Co. This he denies, and he states that he was in the employ of Probodh Lal Mukherjee who was the sole proprietor of the firm of S.C. Mukherjee & Co., and that he obtained the loan on behalf of his employer. The loan was admittedly repaid by the firm and Mukherjee alleges that he stood surety for its repayment and is now entitled to be subrogated to the rights of the creditor. The loan was repaid in July 1935, and in August 1935 Banerjee and Mukherjee both claimed the title deeds. In the correspondence they have set out their claims and the grounds on which those claims are based. On 23rd August 1935 the attorneys for the plaintiff company wrote to the defendants that the loan had been paid off and the mortgage redeemed by Mukherjee & Co., that both Banerjee and Mukherjee claimed the title deeds and that the company was willing to make them over to either party if he could establish Ms title. The letter concludes:

The matter is one which ought to be settled between you and unless some agreement is arrived at our clients will bare no other alternative than to file an interpleader suit and deposit the title deeds in Court for delivery to the claimant who will be declared rightfully entitled thereto.

2. The suit was eventually filed on 18th February 1937. This application is opposed by both the defendants. The procedure which should be followed in interpleader suits is laid down in Section 88, Civil P.C. and Order 35 of Schedule 1. Section 88 is as follows:

Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immovable, from another person who claims no interest therein other than for charges or costs and who is ready to pay or deliver it to the rightful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself.

3. Order 35, Rule 1 provides that in every interpleader suit the plaintiff shall state that the plaintiff claims no interest in the subject-matter in dispute other than for charges or costs; the claims made by the defendants severally; and that there is no collusion between the plaintiffs and any of the defendants. Those pleas have all been taken in the plaint. In his affidavit on this application the defendant Banerjee makes a bare allegation, without any supporting facts, that the plaintiffs are very friendly with the other defendants and that they have in collusion and in conspiracy with each other been trying to harass him. It is noteworthy that although there was a definite statement in the plaint that there was no collusion, that statement has not been denied or even pleaded to by Banerjee in his written statement, and no issue as to collusion could be raised on the pleadings. The plea of collusion has however been pressed by learned Counsel on behalf of Banerjee in this application, in order to support his claim that the plaintiff company should not be dismissed from the suit and should pay the costs of this application. It is alleged that the application is misconceived and that allegation is based on two grounds. It is contended (1) that it is unnecessary, and that it will have the effect of increasing the costs. Reference is made to the case in *Crawford v. Fisher* (1842) 1 Hare 436 in support of the contention that the plaintiff in an interpleader suit must bear the costs of any proceedings which he may take in the suit that are productive of needless expense. For the plaintiff company, it has been pointed out that not only is this application not productive of extra costs but that it will in all probability save costs, for if matters were allowed to proceed to a hearing, briefs would have to be delivered and hearing fees incurred, and there would be costs of the various interlocutory proceedings preliminary to the hearing of a defended suit. They contend that it is in the interest of all parties, and in my opinion that contention is correct, that they should be removed from the proceedings at the earliest possible opportunity. It is next urged that this is not the proper time within the limits laid down by the order for a matter of this sort to be decided and considerable material has been placed before the Court as to the meaning of the words "first hearing" which are to be found in Order 35, Rule 4, viz:

At the first hearing the Court may declare that the plaintiff is discharged from all

liability to the defendant in respect of the thing claimed, awarding him his costs, and dismissing him from the suit.

4. The contention on behalf of the defendant, as I understand it, is that the Court is only empowered to act as provided at the "first hearing" and that the words "at the first hearing" do not mean at the time when an application of this nature is made. Reference has been made to Order 15 which is headed "Disposal of the suit at first hearing" and reliance has been placed on a judgment of Greaves J. in Taran Mandal and Others Vs. Raj Chandra Mandal, . In that case the learned Judge was dealing with the words "first hearing" in Order 13, Rule 1, which relates to the documentary evidence to be produced at the first hearing. The learned Judge held that the words "first hearing of the suit" under that Order meant the date when for the first time the case is "called on for hearing and really gone into," and not the date when the case was fixed for hearing but was not gone into at all. Now the report is not very clear, and it is obvious that the learned Judge did not take time to express his judgment in carefully chosen words, but in any event he was dealing with the meaning of the words "first hearing of the suit" in Order 13, Rule 1, and in the circumstances of that case, with the greatest respect, I do not see how he could have come to any other decision. The words "first hearing" are used frequently in various Orders, notably in Order 8, Rule 1 which provides that the defendant may at or before the "first hearing" present a written statement of his defence, and in the note to Messrs. Chitale and Annaji Rao's Code of Civil Procedure, at p. 1388, I find the following comment:

The "first hearing" of a suit does not mean the day on which the witnesses are examined or the trial taken up. It means the day on which the Court goes into the pleadings in order to understand the contentions of the parties. In suits in which issues have to be framed, the day on which issues are framed is the "first hearing" of the suit, inasmuch as on that day the Court looks into the pleadings with a view to understand the contentions of the parties.

5. This is made clear by the provisions of Order 10, Rule 1 under which the Court shall at the first hearing of the suit ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party.

6. Reference has already been made to the words "first hearing" in Order 13, B. 1. An Appellate Bench of this Court in Talewar Singh v. Bhagwan Das 12 CWN 312 held that certain documents had been wrongly excluded by the trial Court on the ground that they had not been filed in time within the provisions of 8s. 138 and 139, Civil P.C., 1882, which correspond with the provisions of Order 13, B. 1 and Order 13, Rule 2 of the present Code. In the course of their judgment the learned Judges say:

At the first hearing therefore, when the issues were framed it was not obligatory on the plaintiffs to produce their documents unless they were called upon to do

so.

7. It is argued that this is a decision that) the words "first hearing" must always refer to the time when issues are framed. Such a construction would place far too wide an interpretation on the words used which must be read with their context and in reference to the particular provisions of the Code under consideration. This decision in 1907 does not appear to have been brought to the notice of Greaves J. when he gave his decision in 1919. The meaning of these words in Order 13, Rule 1 was also considered in Madras in the case in Chidambaram Chettiar Vs. Parvathi Achi, which purported to follow the decision of this Court in Tale war Singh v. Bhagwan Das 12 CWN 312 and it was held that the "first hearing" in Order 13, Rule 1 means the date on which issues are framed. The Court referred to the decision of Greaves J. and the learned Judge pointed out that it is very difficult to say from the nature of the expression used, whether it refers to the framing of the issues or to the examination of witnesses. The words "first hearing" are also used in Order 14, B. 1 (5) which provides that at the "first hearing" the Court shall after reading the plaint and the written statement, proceed to frame the issues, and Sub-rule (6) provides that nothing in this Rule requires the Court to frame and record issues where the defendant at the "first hearing" makes no defence.

8. The matter is dealt with very clearly and at some length by Jwala Prasad Ag. C. J. and Das J., in Sheikh Abdul Rahman Vs. Shib Lal Sahu and Others, where the learned Ag C. J. says:

Much has been argued at the Bar as to the real meaning and scope of the word "hearing" used in the different provisions of the Civil Procedure Code, but a careful examination of the rules on the subject will leave no manner of doubt that this is purely a question of academic interest. The word "hearing" has not been defined in the Code but it is obvious that it is used in the different rules with a view to state the different purposes for which a date for hearing of the suit is fixed.

9. The learned Judge then deals with the particular rules which were relevant at the enquiry before him and continues:

Various steps have to be taken by the parties in a suit in order that it may be read; for final hearing : which means the examination of witnesses, the tendering of documents, and the hearing of arguments. At the intermediate stage, in order to enable or compel the parties to take necessary steps in the prosecution of the case, the Court may fix dates for some particular action to be taken. These dates are dates for the hearing of that particular matter which is specified in the order of the Court.

10. I have no doubt after looking carefully into the various Orders and Rules to which I have been referred, that the expression "first hearing" may have a different meaning in one Order to what it does in another. The learned authors of Chitale and Annaji Rao's CPC in the paragraph to which I have already referred,

appear to me to sum up in a few words the substance of the decisions. "The "first hearing" means the date on which the Court goes into the pleadings in order to understand the contentions of the parties." If that be the true meaning of the words "first hearing" in Order 35, Rule 4, have no doubt that the Court has power on this occasion and on an application of this nature to give the petitioner the relief which he claims, It is obviously undesirable that a person, who claims no right in the property at stake but which is the subject-matter of conflicting claims by two defendants should be retained on the record and forced to join in the various interlocutory proceedings which may be necessary pending the final disposal of the rights of the parties. Orders of this kind have been made in the past by myself and by other Judges of this Court on similar applications, but the power of the Court to make such orders has never, so far as I am aware, been seriously challenged before. I hold that this application is in order and that a plaintiff in an interpleader suit is entitled to apply to the Court, so soon as the pleadings have been completed, for an order that those persons who have adverse claims to the property in dispute should continue their contest without having the plaintiff retained on the record. It appears to me that it will save costs not only for the plaintiff but also for the defendants themselves. I am satisfied further that in the interests of justice of the parties concerned that such an order can be made under the inherent powers of the Court. The plaintiff Company has brought itself within the provisions of Section 88 and Order 35, Civil P.C., and it claims no interest in the subject-matter of this suit. It has stated that there is no collusion and that statement is not denied in the written statements. In the circumstances, there will be an order in terms of paras. 1 to 6 of the petition.