

(1983) 08 BOM CK 0056

In the Bombay High Court

Case No : First Appeal No's. 33 and 34 of 1980

Oriental Coal Co. Ltd.

APPELLANT

Vs

Mohanlal Kisanlal and Another

RESPONDENT

Date of Decision : 04-08-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 39 Rule 10, 34
Civil Procedure Code, 1988 — Section 18(2), 20, 23(2), 28, 8
Coal Mines (Nationalisation) Act, 1973 — Section 19, 20, 28, 32

Citation : AIR 1984 Bom 174

Hon'ble Judges : Paunikar, J;J. Amdar, J

Bench : Division Bench

Advocate : M. Samudra and J.G. Dandekar, for the Appellant; W.G. Deo, for the Respondent

Judgement

Jamdar, J.—Appellant M/s. Oriental Coal Company Ltd. has preferred these two appeals being aggrieved by the two decrees passed in favour of the respective respondent, but as the main question in these two appeals relates to the maintainability of the suit in view of the provisions of the Coal mines (Nationalisation) Act, 1973, the appeals were heard together and are being disposed of by this common judgment.

2. M/s. Oriental Coal Company Ltd. was the owner of Kamptee Coliery. The respondents supplied goods on credit to the appellant-Company. The respondent in First Appeal No.33 of 1980 M/s. Mohanlal KISANLA, A REGISTERED PARTNERSHIP FIRM, SUPPLIED BAMBOOS (Ballis) worth Rs. 62,294-20 under Bill NOS. e-2 e-3 AND e-4 dated 29-1-1973. The appellant paid Rs. 2,2293-40 towards Bill No E-3 and gave two cheque of Rs. 5,000/- each to M/s. Mohanlal Kisanlal on 30th Jan., 1973. Both these cheque dishonoured in view of the Coal Mines (Taking over of Management) Act, 1973, which, by virtue of S. I (2). Was deemed to have come into force on 30th Jan., 1973. The respondent M/s. Mohanlal Kisanlal, therefore, informed the appellant about dishonour of the cheques and also requested the Custodian of the Kamptt Coal field to issue new

chequest. The coal mines authorities ,however, expressed their inability to make the payment and directed the respondent to appointed the commissioner of payments appointed u/s 17 of the Coal mines (Nationalisation) Act. 1973, The respondent thereafter preferred a claim to the Commissioner of Payments in November, 1974, but as nothing was heard from the said authority, the respondent- firm addressed a notice to the appellant on 27-7-1975, calling upon the appellant to pay the amount along with interest, and as the appellant failed to comply, the respondent-firm filed Special Civil Suit No.289 of 1975 for recovering Rs. 60,000/- being the balance amount of the bills remaining unpaid along with interest at the rate of 12 per cent per annum on Rupees 60,000/- from 29-1-1973 ro 31-10-1975, amounting to Rs.19800/- Almost simultaneously, the respondent preferred a claim to the Commissioner of payments as contemplated by S. 20 of the Coal Mines (Nationalisatin) Act, 1973.

3. M/s. Shivkumar Gupta, the respondent in First Appeal No. 34 of 1980, is a proprietary concern, of which Shivkumar gupta is the proprietor. The said respondent supplied girders, plates, angles, etc., worth Rs. 76,532-05 under the bills dated 3-12-1972, 20-12-1972, 25-12-1972 and 27-1-1973 to the appellant on credit. This respondent also followed the same procedure as was followed by M/s. Mohanlal Kisanlal for the purpose of recovering the amount due to him. He also issued notice to the appellant on 27-7-1975 and before filing special Civil Suit No. 291 of 1975, preferred his claim to the Commissioner of Payments on 1-11-1975, for recovering Rs. 76, 532-05 as the amount of the bills along with Rs. 25,245/- as interest for the period from 27-1-1973 to 31-10-1975 at the rate of 12 per cent per annum.

4. In both these suits, the appellant raised various contentions and even denied that the respondents had supplied goods as claimed by them. The appellant also denied that there was an agreement to pay interest at the rate of 12 per cent if the amount of the bill was not cleared within 15 days, and contended that the Central Government and the Western Coal Field Ltd, were necessary parties to the suit. The appellant also contended that the respondents were not entitled to prefer claims before the Commissioner of Payments and simultaneously to file suits. The appellant further contended that in view of S. 28 of the Coal Mines (Nationalisation) Act, 1973, the jurisdiction of the Civil Court was ousted.

5. The learned trial Judge held that the respondents did supply goods as stated by them and that there was an agreement to pay interest at the rate of 12 per cent per annum on the outstanding balance if the bill remained uncleared for 15 days. He held that the Central Government and the Western Coal Field were not necessary parties to the suit and the suit as framed was maintainable. He further held that the respondent"s were entitled to pursue simultaneously their remedy before the Commissioner of Payments and to file the suit. He also rejected the contention that Section 28 of the Coal Mines (Nationalisation) Act, 1973 ousted the jurisdiction of the Civil Court. On the basis of these findings, the learned Judge decreed both the suits and being aggrieved by the said decrees, M/s.

Oriental Coal Company Ltd. has preferred these appeals.

6. The main contention urged by shri Samudra, the learned Advocate for the appellant, is that after coming into force of the Coal Mines (Nationalisation) Act, 1973, the only remedy the respondents had was to prefer a claim to the Commissioner of Payments as contemplated by Section 20 of the aforesaid enactment and that by virtue of the provisions contained in Chapter VI relating to settlement of claims of creditor and also in view of s. 28 the jurisdiction of the Civil Court to entertain and adjudicate upon any claim which could be the subject matter of the claim under s. 20, was ousted. It was also contended that as the Act prescribed a complete procedure for settlement of claims of the creditors of the coal mines, jurisdiction of the Civil Court was impliedly barred. It was also contended that as the respondents preferred their claims to the Commissioner of Payments, it was not open to them to file suits for the same reliefs.

7. As mentioned above, both the respondents, preferred their claims to the Commissioner of Payments on 1-11-1975. It is an admitted position that the Commissioner of Payments, vide Order dated 27-6-1978 admitted the claims of the respondents to the extent of principal amount and rejected the claim for interest. The claim for interest was rejected on the ground that the appellant could not pay the amount as it was divested of all administrative functions due to taking over of the management by the Government. Admittedly, the respondents did not prefer any appeal under s. 23(7) of the Coal Mines (Nationalisation) Act, 1973, against the rejection of the claim for interest.

8. Before the Coal Mines (Nationalisation) Act, 1973, came into force, the managements of all the coal mines were taken over by the Central Government under the Coal Mines (Taking Over of the Management) Act 1973, with effect from the appointed day, viz, 31st Jan 1973. The Coal Mines (Nationalisation) Act, 1973, which was enacted to provide for acquisition and transfer of the right, title and interest of the owners in respect of the coal mines specified in the schedule, came into force on the appointed day, viz, 1st May, 1973, and by virtue of Section 3(1) the right, title and interest of the owners in relation to the coal mines specified in the schedule stood transferred to and vested absolutely in the Central Government free from all encumbrances.

9. "Coal mine" is defined in Sec. 2(b) as meaning a mine in which there exist one or more seams of coal. As defined in S. 2(h). "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all assets movable as well immovable mentioned by in sub- clauses (I) to (xii) as amended by Act 22 of 1978, which retrospectively substituted clause (xii) in place of the old clause. Hence, by virtue of S. 3(1), all the assets movable as well as immovable mentioned in Cls. (I) to (Xii) stood transferred to and vested absolutely in the Central Government free from all encumbrances with effect from 31 st Jan. 1973. The other assets of the owner of a mine not covered by any of the clauses of S. 2(h) did not stand transferred b to and continued to belong to the owner of the national coal mine.

These assets continued to be available to the owner of the coal mine of for discharging the liabilities incurred prior for to the appointed day. I. e. 1 st May 1973.

10. Section 7 of the Coal Mines (Nationalisation) Act. 1973 lays down the position in respect of the liabilities incurred prior to the appointed day. It reads as follows :

"Central Government or Government company not to be liable for prior liabilities : -

Every liability of the owner, agent manager or managing contractor of a coal mine, in respect of any period prior to the appointment day, shall be the liability of such owner, agent, manager or managing contractor, as the case may be and shall be enforceable against him and not against the Central Government or the Government Company.

11. For the removal of doubts, it is hereby declared that -

save as otherwise provided elsewhere in this Act, no claim for wages, bonus , royalty, rate , rent, taxes, provident fund pension, gratuity or any other dues in relation to a coal mine in respect of any period prior to the appointed day, shall be enforceable against the Central Government or the Government company :

no award, decree or order of any Court , Tribunal or other authority in relation to any cola mine passed after the appointed day, but in relation to any matter, claim or dispute which arose before that day, shall be enforceable against the Central Government or the Government company."

12. (c) no liability for the contravention , before the appointed day, of any provision of law for the time being in force, shall be enforceable against the Central Government or the Government company."

13. It is, therefore, crystal clear that the owner, agent manager or managing contractor of the cola mine continued to be responsible for all liabilities in respect of the period prior to the appointed day and those liabilities continued to be enforceable as before against them.

14. the transaction in both these matters admittedly took place before the appointed day and also before the management of the coal mine was taken over by the Central Government under the provisions of the Coal Mines (Taking over of the Management) Act, 1973 with effect from 31 st Jan, 1973. The liabilities therefore, continued to be enforceable against the appellant and the assets of the coal mine not covered by clauses (I) to (xii) of s,. 2 (h) of the Coal Mines (Nationalisation) Act, 1973, which continued to vest in the appellant continued to be available to the appellant to discharge these liabilities.

15. Section 8 of the coal Mines (Nationalisation) Act, 1973, lays down that the owner of every coal mine or group of cola mines specified in the second column of the Schedule . shall be given by the Central Government, in cash and in the

manner specified in Chapter, VI for the vesting in it, u/s 3 of the right, title and interest of the owner in relation to such coal mine or group of coal mines, an amount equal to the amount specified against it in the corresponding entry in the fifth column of the Schedule. Sub-section (1) of S. 9 contemplates payment of further amount to the owner on account of giving retrospective operation to the provisions of Ss. 3, 4 and 5, while sub-section (2) of s. 9 provides for payment of simple interest at the rate of 4 per cent annum on the amount specified in the 5th column of the Schedule.

16. Chapter VI of the Act, which prescribes the manner for payment of compensation to the coal mine owner, contemplates appointment of a Commissioner of Payments for the purpose of disbursing the amount payable to the owner of each coal mine or group of coal mine. Section 18 enjoins a duty on the Central Government to pay in cash to the commissioner within 30 days from the specified date the amount payable to the owner of a coal mine as specified in the Schedule along with such sums as may be due to the owner under s. 9. Sub-section (2) of s. 18 contemplates payment in cash to the commissioner of such amount as became due to the owner of a coal mine in relation to the period during which the management of the coal mine remained vested in the Central Government. Section 19 enjoins a duty on the Central Government or the Government company to close and balance the books in relation to each coal mine, the management of which vested in it under the Coal Mines (Taking over of Management) Act, 1973 as on the date immediately before the appointed day and to cause a statement of accounts as, on that day, to be prepared, within such time, in such form and in such manner as may be prescribed in relation to such mine in respect of the transactions effected by it during the period for which the management of such coal mine remained vested in it. By virtue of sub-section (2) of 19, all amounts received by the Central Government or the Government Company after the closure of such accounts shall, where such accounts relate to transactions effected on or after the appointed day, be included in the said statement of accounts in respect of the coal mine to which the said receipt relates. Sub-section (3) further provides that the Central Government or the Government Company in which the right, the title and interest of coal mine stand vested shall be entitled to receive, up to the specified date, to the exclusion of all other persons, any money, due to the coal mine, realised after the appointed day notwithstanding that the realisation pertains to the period prior to the appointed day. Sub-section (4) of s. 19 enables the Central Government or the Government Company to discharge up to the specified date such liabilities of the coal mine which could not be discharged by the appointed day, and to include such payment in the statement of accounts as on the date immediately before the appointed day. The proviso to sub-section (4) emphasises, the fact that the liabilities in relation to the period prior to the appointment day which have not been discharged on or before the specified date, shall be the liabilities of the owner of the coal mine.

17. Sub-section (1) of Section 20, on which great stress is laid by Shri Samudra,

lays down that every person having a claim against the owner of the coal mine shall prefer such claim before the Commissioner within 30 days from the specified date. Section 21 gives priority in the disbursement of arrears of provident fund, pension fund, gratuity fund or any other fund established for the welfare of the persons employed by the owner of a coal mine, which remained due after meeting deductions contemplated by sub-section (4) of S. 7 of the Coal Mines (Takingover of Management) Act, 1973. In relation to other claims, sub-section (1) of s. 22 gives priority to the secured debts over all other debts. Amongst unsecured debts, priority is given by sub-section (2) of S. 22 to all sums due to the State Government including royalty and rent, all amount due in or liability for under the Workmen's compensation Act in respect of death or disablement of an employee of the coal mine, and all sums conducted from the salary or wages of the employee for credit to any other fund established for the credit to any welfare of the employees of the coal mine but not credited to the said fund. Section 25, however, provides that if the income derived from the after the commencement of the coal Mine (Takingover of Management) Act, 1973 is insufficient to meet in full the total amount of the advance made by the Central Government or the Custodian for the management of the coal mine, the Central Government may make a claim to the commissioner for the deficiency and thereupon the claim of such deficiency shall have priority over all other unsecured creditors of the coal mine including those referred to in sub-section (2) of s. 22.

18. Sections 23 and 24 prescribe the procedure which the commissioner of Payments is expected to follow in respect of admission or rejection of claims and disbursement of money to the claimants. Sub-section (1) of s. 23 lays down that the Commissioner shall fix a certain date that the on or before which every claimant shall file the proof of his claim or be excluded from the benefit of the disbursement made by the commissioner. As provided by sub-section (2), 14 days notice of the date is expected to be given and every such notice shall call upon the claimant to such the file the proof of his claim with the Commissioner within the time specified in the advertisement. Sub-section (3) lays down the effect of the failure of the claimant to file the proof of his claim within the specified time. It lays down that every claimant who fails to file his claim within the time specified by the commissioner shall be excluded from disbursement made by the Commissioner. Sub-section (4) lays down that the Commissioner shall, after such investigation as may, in his opinion, be necessary and after giving the owner of the coal mine an opportunity of being heard, in writing, admit or reject the claim in whole or in part. Sub-section (7) provides for an appeal against this decision to the Principal Civil Court of original jurisdiction within the local limits of whose jurisdiction the coal mine is situated. Section 26 contemplates that if out of the money paid to him in relation to a coal mine or group of coal mine specified in the second column of the Schedule, there is a balance left after meeting the liabilities of all the secured and unsecured creditors, the Commissioner shall direct such balance to the

owner of such coal mine or group of coal mines. Sub-section (2) expects the Commissioner to satisfy himself about the right of such owner to receive the whole or any part of such amount. By virtue of s. 27, all undisbursed in the general revenue account of the Central Government.

19. Analyzing these provisions, it is clear to us that even though Sec. 20 requires any person having a claim against the owner of the coal mine to prefer such claim before the Commissioner within 30 days from the specified date and even though Sec. 23 requires every claimant to file proof of his claim with the commissioner within the time specified in the advertisement contemplated by subsection (2) of S. 23, failure to do so does not result in total extinguishment of the debt as against the owner of the coal mine. The only result that follows is that the claims would be excluded from disbursement made by the commissioner out of the amount paid to the commissioner by the Central Government for payment to the owner under Ss. 8, 9 and 18(2) of the Coal Mines (Nationalisation) Act, 1973. It is open to a creditor of a coal mine to ignore the disbursement proceeding and to pursue the ordinary remedy by way of a suit against the owner of the coal mine in respect of the claim which arose before the appointed day. Not only that but the claimant, whose claim is admitted by the Commissioner but which is not fully satisfied out of the amount available to the Commissioner and to file a suit to recover the amount due to him. Of course, he would not be entitled to recover the amount paid to him by the Commissioner, the claim in the suit would stand reduced to that extent. It is true that an appeal is provided against the order of the Commissioner and the claimant whose claim is rejected by the commissioner can prefer an appeal under Sec. 23(7), but that does not mean that if no appeal is preferred or the appeal is decided against the claimant chooses to file for recovering his claim, because the whole purpose of the scheme envisaged by Chapter VI relates only to the disbursement of the amount paid to the disbursement of the amount paid of the Commissioner for payment to the owner under the above referred provisions of the coal Mines (Nationalisation) Act, 1973. To that extent, the scheme is certainly a complete Code in itself. BUT, as mentioned above, the claimant can ignore disbursement proceedings remedy and recover the amount from the property which continues to vest in the owner of the coal mine. There is absolutely nothing in any of the provisions of Chapter VI, which impliedly oust the jurisdiction of the civil Court to entertain and adjudication upon a claim against the owner of the coal mine in respect of the liability incurred before the appointed day. The right to recover the amount that became due from the owner of the coal mine before the appointed day is not a right which is created by the statute. The common law remedy of filing a suit for recovering the amount that became due before the appointed day is not taken away by the provisions of Chapter VI of the coal Mines (Nationalisation) Act, 1973. As mentioned above, the purpose of the scheme envisaged by Chapter VI is a limited purpose restricted only to the disbursement of compensation payable to the owner as a result of nationalisation of the coal mine.

20. Shri Samudra, the learned advocate for the appellant, tried to place great emphasis on Sec. 28 in support of his proposition that the provisions of the Coal Mines (Nationalisation) Act, 1973, in respect of adjudication of claims against the nationalisation coal mine oust the jurisdiction of the Civil Court. Section 28 says that the provisions of the Coal Mines (Nationalisation) Act, 1973, shall have effect notwithstanding anything contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act, or any other decree or order of any court, Tribunal or other authorising effect to the provisions of the Act, but as mentioned above, there is nothing in the Act which is not preferred to the commissioner is extinguished or that no other remedy, except the one provided to the by Sec. 20, is available to the claimant. As mentioned above, the only effect of the failure of the claimant to make or prove his claim is that he is not entitled to share the amount priced at the disposal of the Commissioner for disbursement amongst the creditors. The remedy of a creditors to proceed against the property which is not vested in the Central Government by virtue of the provisions of the Act and which continues in the hands of the owner of the coal mine is not taken away. Not only that but Sec. 7 and proviso to sub-section (4) of s. 19 make is liabilities to relation to the period prior to the appointed day, which have not been discharged on or before the shall be the liabilities of the coal mine . The provisions of only make another limited to the claimant and nothing

21. The next grievance of the appellant is in respect of past interest awarded by the trial Judge. The trial Judge has awarded interest at the rate claimed by the respondents. They claimed interest at the rate of 12 per cent annum on the basis of an agreement, which they pleaded in their respective plaints. In both the suits the persons who disposed in behalf of the plaintiffs asserted on oath at that there was an agreement to pay annum if the amount of the bill remained unpaid for 15 days. Apart from the fact that there was no serious cross-examination on this evidence , because none on behalf of the appellant stepped into the witness-box to state there was no such agreement. it is also significant to note that in both these matters, the respective respondent had served the appellant to pay the amount due to them along with interest at 12 per cent. The notice in First Appeal No. 34 of 1980 is at Ext. 33 and in other appeal it is at Ext. 41. The respondents did not refute the averment in the notice that interest was payable at 12 per cent. They disowned their liability in general terms on the ground that the Coal Mine was nationalised. The learned trial Judge , therefore, was perfectly justified in accepting the word to the respective plaintiff and in coming to the conclusion that there was an agreement to pay interest at 12 per cent.

22. The decree, out of which First Appeal No. 34 of 1980 arises, was challenged also on the ground that the suit was not properly filed.. It was contended that the suit was filed in the trade name of a proprietary concern, which is not permitted in view of Order XXX , Rule 10 read with O, XXX, R. 1 of Civil P. C. In support of this proposition Shri Samudra placed reliance on the decisions of this Court in Samrathrai Khetsidas Vs. Kasturbhai Jagabhai, and bhagwan AIR 19932

Bom not bring a suit in the name of the firm but must sue in the name of the proprietor. The objection in that case was in respect in the title of the counter-claim. In the title of the counter claim, the defendants were described as "Messrs Samarthrai Kheteydas, a firm carrying on business at Shaikh Memon Street without the fort of Bombay". It was held that no separate title was necessary for a counter-claim and the title of the written statement and counter claim of were allowed to be amended. In Bhagwan Manaji Marwadi's case,. it was held 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 he in his trade O. 30., R. 10 but he cannot sue in tha name,. In that case, the question about maintainability of the suit a was raised in the execution proceeding which was commendams by the heir of the deceased proprietor of the plaintiff-firm. It is pertinent to note that the learned Judges did not hold that the decree was invalid because the suit was filed by the sole proprietor in the trade name. They only held that the heir of the deceased proprietor , who sought to execute the decree, could not do so without production of the succession certificate u/s 214(b) of the Succession Act. MOreover, filing of a suit of by the sole proprietor in the trade name is not fatal. It would only mean that the suit is instituted in the name of a wrong person within the meaning of). 1 . R. 10 and that such a mistake can be allowed to be amended at any state of the proceeding. Where a man carrying on business in the name of allowed to sue by inserting this own name as plaintiff, subject to question of costs up to the date of amendment. In the present case, objections was never raised in the trail Court and it was raised for the first time in this appeal.

23. On facts, also it is difficult to accept the contention of the appellant that the suit was filed in trade name of the sole proprietor Sri Shivkumar Gupta. The suit was filed by the proprietor shivkumar Gupta on the of proprietary concern. The title of the plaint is as follows :

"M/s Shivkumar Gupta,

General Merchant and Equipment Suppliers to Industrial concerns, bagadanj, Nagpur - 8 through Proprietor shivkumar Gupta."

24. There is therefore no substance in the appeal . No other points were urged for challenging the decrees, in question.

25. In the result, both these appeals fail and are dismissed with costs.

26. Appeal dismissed.