

(1993) 03 DEL CK 0033

In the Delhi High Court

Case No : Interim Application No. 8258 of 1992 and Suit No. 1116 of 1978

Patodia and Company

APPELLANT

Vs

Bombay Woollen Mills Ltd.

RESPONDENT

Date of Decision : 05-03-1993

Acts Referred:

Citation : (1993) 26 DRJ 69

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : P.K. Seth and A.K. Mata, for the Appellant;

Judgement

S.C. Jain, J.

(1) In brief the facts of the case are that a suit for recovery of Rs 2,32,249.00 was filed by Patodia & Co. against Bombay Woollen Mills Ltd on account of expenses, commission, brokerage, etc. M/S Patodia & Co, herein described itself as a partnership concern duly registered under the Indian Partnership Act. An objection was taken by the defendant that no cause of action had arisen in favor of the partnership concern. To avoid that objection, this application for amendment of the plaint has been filed mentioning therein that the plaintiff was a sole proprietary concern of which Moti Lal Patodia was the sole proprietor and subsequently the said concern became partnership concern by inducting Durga Parshad Patodia as one. Suit NO. 1116/78 of the partners and it was registered with the Registrar of Firms on 30.4.77. Cause of action had arisen in favor of Moti Lal Patodia the sole proprietor of Patodia & Company. It was on account, of bonafide mistake and inadvertence that the suit has been filed by Patodia & Company partnership concern. Amendment has been sought in the title of the suit as well as in the body of the plaint showing Mod Lal Patodia as the sole proprietor of Patodia & Co.

(2) This application has been contested by the defendant who filed written reply. It has been pleaded that the proposed amendment would entirely alter the

character of the suit. No cause of action has arisen in favor of the partnership concern who is plaintiff at present and on that account the suit is liable to be dismissed.

(3) During the course of arguments it has been argued by the counsel for the respondent that the entire claim in the plaint and replication and documents filed by the partnership firm and issues framed were to the effect as to whether the plaintiff as partnership firm was entitled to prosecute the suit against the defendant and whether the plaintiff was entitled to sue and recover the outstanding claim as alleged by the plaintiff partnership firm as being due to it from the defendant. According to the learned counsel if the proposed amendment is allowed that would change the entire nature of the suit and that it will also alter the cause of action and in such circumstances the amendment sought for cannot be allowed. He also submitted that the amendment sought to be incorporated are barred by time and cannot be permitted by the court at this stage when the evidence is being recorded.

(4) Learned counsel for the plaintiff put reliance upon various decisions reported in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, in support of his contention that it was due to inadvertence and bonafide mistake that the suit was filed on behalf of the partnership concern. It is a mere description of the plaintiff on account of bonafide mistake and in such cases application for amendment should not be refused. According to the learned counsel power to grant amendment of pleading is intended to serve the ends of justice and is not governed by narrow or technical limitations. It is settled principle of law, as has been laid down by the Hon'ble Judges of the Supreme Court in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, that rules of procedure are intended to be hand made to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of cost. However, negligent or careless may have been the first omission and however late the proposed amendment may be allowed if it can be made without injustice to the other side.

(5) In this case, admittedly Patodia & Co was functioning as sole proprietorship concern and Moti Lal Patodia was its sole proprietor, It became partnership concern by inducting Shri Durga Parshad brother of Moti Lal as one of the partners and it was registered with the Registrar of firms on 30.4.77. From the facts available on record, at the time when the agreement in dispute took place Patodia & Co was the sole proprietorship concern and when the suit was filed, it was a partnership concern and it is on account of this fact i.e. change of constitution of the firm this suit was filed by Patodia & Co. showing it as partnership firm as it was at the time of filing the suit. It is a sheer inadvertence

and bonafide mistake that the suit has been filed on behalf of Patodia & Co, Vs. Sequoia Construction (P) Ltd. & Ors. a partnership concern. By allowing this amendment no prejudice would be caused to the defendant because all the averments are already there in the plaint. No new case has been set up. Only the description of the plaintiff is to be changed and the application for amendment cannot be refused on this ground alone. The misdescription in the name of the plaintiff can be corrected by allowing the amendment. As far as the question of limitation is concerned, this point cropped up before the Supreme Court in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and their lordship after considering the entire facts and case-law came to the conclusion that in such case no question of limitation arises and the plaint should be deemed to have been instituted in the name of the real plaintiff on the day it was originally instituted. Under these circumstances I feel that it would be just and necessary to allow the plaintiff to amend the plaint in the interest of justice. I, Therefore, allow the application for amendment filed by the plaintiff on payment of Rs. 1000.00 as conditional costs which would be paid to the Legal Aid and Advice Board Chamber No.3 High Court Chambers.

(6) Amended plaint has been filed. Written statement be filed to the amended plaint. To be listed on 19 August, 1993