
(2014) 03 DEL CK 0318
In the Delhi High Court
Case No : CS (OS) 632 of 2013

Ram Babu Gupta

APPELLANT

Vs

M/s. Aditya Birla Group and Another

RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

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

Citation : (2014) 210 DLT 25

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Rajesh Rai and Party in Person, for the Appellant; Navin Chawla, for the Respondent

Judgement

Sanjeev Sachdeva, J.—The Plaintiff has filed the present suit for recovery of Rs. 50,00,000/- as damages for illegal termination of employment, arrears of salary, etc. The suit had originally been filed only against M/s. Aditya Birla Group. The contention of the Plaintiff is that the interview for the appointment of the Plaintiff was conducted by Mr. Arun Guar and the Plaintiff was appointed by the Defendant with a subsidiary company of the Defendant M/s. Liaoning Birla Carbon Co. Ltd. at China. As per the Plaintiff, the Plaintiff was wrongfully terminated and accordingly suffered a loss. The Plaintiff thus filed the present suit.

2. The Defendant has not filed any written statement. The counsel appearing for the Defendant has taken an objection that the Defendant Aditya Birla Group is not a legal entity and as such, cannot be sued in such name and form. As per the Defendant, Aditya Birla Group contains about 50 companies and the relevant company M/s. Liaoning Birla Carbon Co. Ltd. had not been arrayed as a party.

3. By the order of 22.11.2013, M/s. Liaoning Birla Carbon Co. Ltd. was impleaded as the Defendant No. 2 and the matter was set down for hearing on the question whether the suit would be maintainable against the Defendant No. 1 i.e. Aditya Birla Group.

4. Learned counsel for the Plaintiff submitted that the Plaintiff had given an interview before an officer of the Defendant Aditya Birla Group and, accordingly, he was appointed by the Defendant Aditya Birla Group and was placed in one of its subsidiary companies.

5. He further submitted that in the Aditya Birla Group, the selection process is normally conducted by the Defendant Aditya Birla Group and after the selection of an individual, the person is placed in one of the subsidiary companies. In the present case also, the interview of the Plaintiff was conducted by an officer who claimed himself to be an officer of the Defendant Aditya Birla Group. The Plaintiff had been selected by the Defendant Aditya Birla Group and was placed with M/s. Liaoning Birla Carbon Co. Ltd. The interview was conducted in Delhi in the office of one of the subsidiary companies of M/s. Aditya Birla Group.

6. Learned counsel for the Plaintiff submitted that in view of Order XXX Rule 10 of the CPC since the Defendant Aditya Birla Group was carrying on business under the name and style of Aditya Birla Group, the Defendant Aditya Birla Group can be sued in such name.

7. Learned counsel for the Defendant No. 1 Aditya Birla Group submitted that there was no such legal entity as Aditya Birla Group and as such, the suit was not maintainable. Learned counsel for the Defendant No. 1 further submitted that the Plaintiff was well aware that he had been placed in the company M/s. Liaoning Birla Carbon Co. Ltd. and as such, being aware of the entity in which the Plaintiff had been appointed to, the suit in the name of Aditya Birla Group was not maintainable.

8. Order XXX Rule 10 of CPC lays down as under:

10. Suit against person carrying on business in name other than his own Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply accordingly.

9. Order XXX Rule 10 stipulates that if any person carries on business under the name and style other than his own name, then that person can be sued in such name or style as if it were a firm name. What is relevant to be considered in the present case is whether the Defendant Aditya Birla Group ever represented to the Plaintiff or to the public that there is an entity by the name of Aditya Birla Group. If the Defendant Aditya Birla Group was trading or carrying on business or representing to people that there was an entity by the name of Aditya Birla Group then it could be sued in such name. If there was no such representation of Aditya Birla Group then a suit would not lie in the name of Aditya Birla Group.

10. The merits of the claim of the Plaintiff is not relevant to be considered at this stage. What is relevant is whether the Defendant Aditya Birla Group had any point of time ever represented that there was an entity by the name and style of

Aditya Birla Group.

11. It is the case of the Defendant No. 1 that there are about 50 group companies. They are separate legal entities but are collectively referred to as the Aditya Birla Group. The interview for selection of employees and officers at times is also held centrally and after the selection, an individual is appointed in one of the group companies.

12. The Defendant admits that the interview of the Plaintiff was conducted by Mr. Arun Gaur and on selection, the Plaintiff was placed with M/s. Liaoning Birla Carbon Co. Ltd., one of the companies of Aditya Birla Group.

13. The Plaintiff has relied on various emails exchanged prior to the interview and the offer letter dated 24.08.2010 by which the Plaintiff was given an offer of appointment. The emails in their body refer to "Aditya Birla Group". The letter of 24.08.2010 is titled as an offer letter. The letter is on the letterhead of "Aditya Birla Group". The letter mentions that the Plaintiff was being appointed at the position of Deputy General Manager-Engineering with M/s. Liaoning Birla Carbon Co. Ltd. of the Aditya Birla Group. The letter is signed by Arun Gaur and his designation is shown as "Chief People Officer" and a "CC is marked to "Personal Dossier".

14. Learned counsel for the Plaintiff conceded that Mr. Arun Gaur was not an employee of M/s. Liaoning Birla Carbon Co. Ltd. He could not point out of which company that was part of Aditya Birla Group, was Mr. Arun Gaur an employee of. He submitted that probably Mr. Arun Gaur was a senior officer in Personnel Department of Aditya Birla Group who conducted interviews and issued appointment letters and placed people in various entities that were subsidiary or comprised in the Aditya Birla Group.

15. The offer letter and the above facts clearly indicate that the Defendant is representing to people that there is an entity by the name and style of Aditya Birla Group. The interview and the selection of the Plaintiff is by an officer of Aditya Birla Group. The offer letter has been issued on the letterhead of Aditya Birla Group and the Plaintiff has been placed in one of the subsidiary companies i.e. M/s. Liaoning Birla Carbon Co. Ltd. of Aditya Birla Group. These facts show that that the Defendants are carrying on business under an assumed name i.e. Aditya Birla Group and are representing to people that there is an entity by the name and style of Aditya Birla Group. Such an entity thus can be sued in the assumed name even if the Defendant No. 1 Aditya Birla Group is not a juristic person.

16. The Full Bench of the Allahabad High Court in *Rajendra Prasad Oil Mills, Kanpur and Another Vs. Smt. Chunni Devi and Others*, All 1 has held as under:-

There is nothing in Rule 10 or elsewhere to indicate that the provisions contained in Rule 10 did not apply to cases where the identity of the real party was known to the Plaintiff. The object of framing Rule 10 may have been to protect the

unwary, but there is nothing in Rule 10 which might indicate that in case the Plaintiff knew the real person the provisions contained in Rule 10 would be inapplicable. Rule 10 can be availed of whenever a person factually carried on business under a name or style other than his (or its) own name and the provision being a beneficent one cannot be construed strictly and in a manner not warranted by the language of the statute.

In that case, R.P. Oil Mills was the assumed name under which M/s. N.K. Industries Limited a company incorporate was carrying on business and this fact was known to the Plaintiff. It was held that even though R.P. Oil Mills Kanpur was not a juristic person, yet the Defendant could be sued in their assumed name in view of the provisions of O. 30 R. 10 CPC. In Jamunadhar Poddar Firm Vs. Jamunaram Bhakat and Others, the Division Bench observed that individuals who carry on business under a firm name or assumed name cannot sue as Plaintiff in a assumed name, but he can be sued in the assumed name as a Defendant. In this connection, the Division Bench has observed as under:

There is no inconvenience or injustice, if a person carrying on business under a firm name or any other assumed name is made to sue in his real name, but different and weighty considerations would apply when he is sued by another person in the assumed name in which he carries or has carried on business. Business may be carried on by correspondence and orders may be, and are usually, placed from one part of the world to another through post and goods may be supplied on credit on such orders. A producer or merchant living in one part of the globe cannot be expected to know or to make enquiries as to who is the owner of the business that is being carried on in an assumed name, and in most cases he would only know the name of the real owner after he had brought his suit, for the Defendant must then appear in his own name. (Order 30, Rule 6). It is to be held that a decree obtained by such a producer or merchant in a suit instituted against the assumed name is void decree, it would lead to manifest hardship, would open up a wide door to fraud and would sap the credit on which commercial dealings largely rest. In our judgment Order 30 Rule 10 Civil P.C., rests on these considerations and they must be kept in view in construing that rule.

17. The Full Bench of the Allahabad High Court in Rajendra Prasad Oil Mills case (Supra) has laid down that if a person carries on business under a firm name or any other assumed name then he can be sued in the assumed name. The Allahabad High Court relied on the judgment of the Division Bench of the Calcutta High Court in Jamunadhar Poddar Firm Vs. Jamunaram Bhakat and Others, wherein the Division Bench had noticed that people carry on business through correspondences and orders and are placed from one part of the world to another through post and in certain cases it may not be possible for a person to know the actual nature of the entity with whom the business was being carried on and, in such a situation, to relegate the Plaintiff to make an inquiry prior to

the institution of the suit would lead to manifest hardships. The Allahabad High Court went on to hold that Order XXX Rule 10 was applicable even in cases where the identity of the real party was known to the Plaintiff and Order XXX Rule 10 could be availed of whenever a person factually carrying on business under the name and style other than his (or its) own name and the provision being a beneficent one could not be construed strictly.

18. The Judgment of the Allahabad High Court has been followed by our own High Court in Wockhardt Limited Vs. Chemetac Pharmaceuticals, The single Judge of our High Court has laid down that in cases where the Defendant puts in appearance and it is brought to the notice of the Court that the Defendant is not a juristic person and some other legal entity is carrying on business under the assumed name of the Defendant, the Court may ask the Plaintiff to incorporate such facts in the plaint although it is not necessary in view of the provisions of Order XXX Rule 10 CPC and further to insist that the plaintiff must carry out necessary investigations right at the initial stage and incorporate facts disclosing the identity, legal character and status of the defendant even before issuance of process is clearly un-called for.

19. The admitted position is that the interview was conducted by an officer of Aditya Birla Group. The Defendants, by the letter of 24.08.2010 issued on the letterhead of Aditya Birla Group, have shown and represented that there is an entity by the name of Aditya Birla Group and they are trading in an assumed name. The presumption thus arises is that the companies collectively carry on business and represent to the public that there is an entity called "Aditya Birla Group". In the present case, the Defendant has not yet filed a written statement nor is it indicated as to which is the company which conducted the interview and appointed the Plaintiff in the Defendant No. 2 company. Since the Defendants carry on business under the assumed name and represent to public that there is an entity by the name of Aditya Birla Group they can be sued in the said name also. I find no merit in the objection raised by the Defendants. The question of law raised is accordingly decided in favour of the Plaintiff and the suit is held to be maintainable against the Defendant No. 1 Aditya Birla Group. Nothing stated herein shall amount to an expression of opinion on the merits of the case.