

**(1984) 07 OHC CK 0028**

**In the Orissa High Court**

**Case No : Civil Revision No. 754 of 1980**

Rama Chandra Kar and Others

APPELLANT

Vs

Bichitrananda Kar and Others

RESPONDENT

**Date of Decision : 23-07-1984**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10  
Orissa High Court Rules, 1948 — Rule 15, 5, 7

**Citation :** (1984) 58 CLT 275 : (1984) 2 OLR 714

**Hon'ble Judges :** S.C. Mohapatra, J

**Bench :** Single Bench

**Advocate :** Ashok Das and S.N. Satapathy, for the Appellant; M. Patra O.P. No. 1, B.K. Dagara and B. Misra, for the Respondent

## **Judgement**

S.C. Mohapatra, J.—"Matrubhumi" is a Daily Oriya newspaper published from Cuttack. There was a dispute between the management and the non-journalist workers. This dispute was resolved by an agreement dated 6. 1. 1978. The said agreement was executed by the petitioners and opposite party No. 1 representing the employers. In accordance with the agreement, the management and publication of the newspaper was handed over to a Committee constituted by the workers.

2. On 2nd April, 1979, opposite party No. 1 filed a suit seeking the following reliefs as has been indicated in the prayer portion of the plaint :

(a) Let a decree of mandatory injunction be passed restraining the defendants not to manage, administer, publish and circulate the daily newspaper "Matrubhumi" commanding and directing the defendants to restore its possession and management to the plaintiff.

(b) Let a decree for permanent injunction be passed restraining the defendants not to receive any amount from the department of Public Relations or any other concerns which accrues due to the newspaper "Matnibbumi" on account of

advertisement or otherwise not to operate any account in any Bank standing in the name of the paper "Matrubhumi" and not to receive M. O. and not to make any correspondence with the postal or any lawful authority for and on behalf of the news- paper "Matrubhumi" either themselves or through any of their Agents and Employees.

(c) For Costs.

(d) For any other relief or reliefs the plaintiff is entitled to.

3. The aforesaid reliefs are claimed on the allegation in the plaint that the agreement has been obtained by fraud of the authorities and that in any case the agreement has spent its life.

4. Along with the plaint, a petition for ad interim injunction restraining the defendants from withdrawing any amount from various authorities stated therein was filed. By Order No. 2, ex parte ad interim injunction was issued which was ultimately heard and disposed of on 8.5.1979, making some arrangement relating to the payment of dues. Detailed description of the arrangement made is not material for this Civil Revision. Against the said order, an appeal was preferred by the employees, In appeal, the learned District Judge modified the order. Civil Revision No. 297 of 1979 was filed challenging the appellate order. During the pendency of the Civil Revision, this Court appointed plaintiff-opposite party No. 1 receiver for management of the newspaper. The said arrangement was directed to continue until final disposal of this suit.

5. On 15.5.1980, an application was filed by the petitioners to add them and one Bibekananda Kar as parties to the suit, After taking adjournments on 4.7.1980, 21.7.1980, 6.8.1980 and 7.8.1980 plaintiff-opposite party No. 1 filed his objection to the petition.

6. In C. R. 297 of 1979, an application was filed by the three petitioners of this Civil Revision to be permitted to intervene in the Civil Revision. While disposing of the Civil Revision, this Court directed the trial Court to dispose of the application of the petitioners to be impleaded as parties promptly before disposal of this suit.

7. After hearing the application for being added as parties with the objection of the plaintiff, the prayer of the petitioners to be added as parties was rejected by the trial Court." Against the said order the present Civil Revision has been filed.

8. Mr. Dibyasingha Misra, Advocate, is the Defendant No, 2 in the suit. He is opposite party No. 3 in this Civil Revision. At the time of hearing, he was present in this Court with robes on, A question arose whether he can be permitted to make submissions as a litigant while being in robes. Mr. Misra submitted that since an Advocate is entitled to wear the robes in Court and when the question of this addressing the Court in the Civil Revision would come, he can address the Court even with robes. He submitted that the learned members of the profession should not be prohibited from making submissions with robes on, even in

litigations in which they are personally involved.

9. In view of the submissions of Mr. Misra, the controversy is required to be settled.

10. Under Rule 2 of Chapter XXXV of the Orissa High Court Rules, dress of the Advocates had been prescribed. It reads as follows :

"2. All Advocates of the High Court of Orissa shall appear in Court in one uniform robe, viz., a black gown of stuff or alpaca or hand-spun silk cut after the pattern of the gown formerly prescribed for Vakils worn over a black coat and a waist coat or chapkan and white collar and bands and it shall not be optional with any Advocate after his enrolment as an Advocate of the Orissa High Court to appear in Court in any other robe; provided always that Barristers and Members of the Faculty of Advocates may wear their prescribed robes."

11. After the Advocates Act, 1961 came into force, Orissa High Court in exercise of the powers u/s 34(1) of the Advocates Act, made another set of rules in the year 1969, substituting Chapter XXXV. Rule 15 of the substituted Chapter prescribing the dress of the Advocates reads as follows :

"15. Advocates appearing before the Court shall wear the following dress :--

(1) Advocates other than lady Advocates --

(a) Black buttoned up coat ( Chapkan achakan or sharwani ), Barrister's gown and bands, or

(b) Black open collar coat, white shirt, white collar, stiff or soft, with Barrister's gown and bands.

Lady Advocates--

Regional dress of subdued colour or colours with Barrister's gown and bands."

12. Rules 5 and 7 in Chapter II of the Rules Governing Advocates made u/s 49(1) (c) of the Act read with the proviso thereto read as follows :

(5) "An Advocate shall appear in Court at all times only in the prescribed dress, and his appearance shall always be presentable.

X X X (7) An Advocate shall not wear bands or gown in public places other than in Courts except on such ceremonial occasions, and at such places as the Bar Council of India or the Court may prescribe."

The effect of Rule 15, in Chapter XXXV of the Orissa High Court rules read with Rules 5 and 7 made by the Bar Council of India is that a member of the learned profession while representing a party in a Court, is to be in robes. A member of the learned profession, who represents his own cause does not act as an Advocate. Therefore, he cannot be permitted to take the privilege of wearing the robes. While expressing the aforesaid view, I requested Mr. Misra to find out

precedents in the matter. With all fairness, Mr. Misra has brought to my notice the decision reported in AIR 1973 Mys 127 T. Venkanna v. The Honourable High Court of Mysore by its Registrar and Anr. ( D. B.), which has considered the matter at length. The relevant portion is in para 8 at page 128 of the reported decision. It reads as follows :

"...When an Advocate, whose name is entered in the common roll, appears before the Court as a litigant in person he is not exercising any right u/s 30 of the Act. In the instant case, no question of the right of the petitioner under the Act arose; no right conferred under the Act has been denied to him. The word "practise" means "the exercise of a profession". Where an Advocate is a litigant in person he does not practise his profession and therefore he cannot be permitted to argue with his robes on from the Advocates' table. He can address the Court from the same place and in the same way as any ordinary member of the public. ...."

I am in complete agreement with the principle decided in the aforesaid Mysore case. However, this question lost its importance in this case as Mr. Misra did not advance any argument in the revision though he remained present in Court and watched the proceeding.

13. In the impugned order, the learned Subordinate Judge has found that :

"....On the basis of the agreement there is no scope for determination in the suit to which employer the management would revert. If it is at all to revert, then it is necessarily to the person ( i. e., the plaintiff ) from, whom the management had been transferred to the defendants. Hence the petitioners have no interest in the decision of the suit and in any case the decision shall not be binding against them...."

14. Mr. Ashok Das, learned counsel for the petitioners assailed the aforesaid finding of the learned Subordinate Judge on the following grounds:

(a) In view of the assertion in the plaint that late Bala Krishna Kar is the founder and proprietor of the newspaper, it is necessary to prove that the property is not the proprietary concern but it belongs to Kar Brothers.

(b) The agreement having been entered into jointly by the petitioners and opposite party No. 1 and the purpose of the agreement, being liquidation of liabilities through management by the employees and maintenance of goodwill of the paper (a) an injunction prohibiting the employees to carry on management of the concern directly affects the pecuniary rights and right to the goodwill of the proprietor which is a property. (c) Even if the applicants are not necessary parties they are at- least proper parties in whose absence the cause cannot be effectively decided.

15. Mr. Bidyadhar Misra, the learned counsel for opposite party No. 1 has supported the impugned order on the following grounds :

(a) Addition of the applicants as parties is likely to enlarge the scope of litigation by introducing new-cause of action.

(b) The preconditions for exercise of the power under Order 1, Rule 10 (2), C. P. C, are not satisfied.

(c) When the plaintiff is opposed to such addition, he cannot be compelled to fight against a person against whom he does not wish to fight and against whom he does not claim any relief.

16. The prayer of the three petitioners being to add not only them but also Bibekananda Kar who is not an applicant, the matter is to be carefully examined.

17. The scope and ambit of Order 1, Rule 10 (2), CPC has been clearly enunciated in a recent Division Bench decision of this Court reported in 57 (1984) C. L. T. 31., *Indrajit Dandasena v. Mangal Charan Dandasena*. Relying on the decision reported in *Razia Begum Vs. Sahebzadi Anwar Begum and Others*, the Division Bench has held that the question of addition of parties Order 1, Rule 10 of the Code is generally not one of initial jurisdiction of the Court, but a judicial discretion which has to be exercised in the facts and circumstances of a particular case.

18. The dispute in the suit centres round the agreement dated 6. 1.1978. This agreement has been signed by the three petitioners and opposite party No. 1 on behalf of the management. Opposite party No. 1 disputes the validity of the agreement as well as the continuance of the same. The three petitioners, who are the other signatories jointly with opposite party No. 1 on behalf of the management claimed the agreement to be valid and continuing to be in force.

19. Trial Court has held - "If they like to support the defendants they can come as witnesses." It has not taken into consideration the claim of the petitioners that the management was agreed to be transferred to the employees to discharge the liabilities of the newspaper and to maintain and preserve the goodwill. Non-consideration of material allegations in support of the claim to be added as parties is not a sound exercise of judicial discretion and results in exercise of jurisdiction with material irregularity.

20. Mr. Bidyadhar Misra, the learned counsel for the opposite party No. 1 submitted that by addition of the petitioners as parties the scope of the suit would be enlarged. Mr. Misra has relied upon paragraph 15 of the decision reported in AIR 1960 J & K 67 Mt. *Bindru v. Sada Ram and Ors.* It reads as follows ;

"Another somewhat useful test for deciding whether it will be proper to add a new party will be to see whether after his joinder the main evidence in the suit and the main enquiry will remain the same as before his coming in."

In the Jammu and Kashmir decision referred to above a passage from a decision of the House of Lords reported in (1889) 22 QBD 657 *Byrne v. Brown* has been

reproduced. Lord Esher in the said decision has stated thus :

"It is not necessary that the evidence on the issues raised by the new parties being brought in it should be exactly the same, it is sufficient if the main evidence and main enquiry will be the same."

Even keeping this test in view, it will be seen that evidence relating to the main question relating to the validity of the agreement and the remaining in force of the same is not changed.

21. Mr. Misra, the learned counsel for the opposite party No, 1 has relied on the decision reported in 34 (1968) CLT 1410 Kartik Chandra Mohanty and Anr. v. State of Orissa and Ors. to impress upon me that plaintiff has not claimed any relief against the applicants and the presence of the applicants is not absolutely necessary to enable the Court to effectually adjudicate upon and settle real question in dispute in the suit.

In paragraph 10 of the Division Bench decision in Indrajit Dandasena's case, the ratio of the aforesaid decision was not accepted. Besides, the main question being in respect of the agreement to which the three petitioners are signatories jointly with the plaintiff on behalf of the management, even the narrow test in 34 (1968) CLT 1410 is also satisfied.

22. The next contention of Mr. Misra, the learned counsel for the opposite-party No. 1 is that the concept of "Dominus litis" should be attracted and plaintiff should not be compelled to fight against persons he does not like when no relief has been claimed against them. This submission has directly been negated by the Division Bench in Indrajit Dandasena's case. It has been held in paragraph 11 at page 44 of the reported decision:

"We are, therefore, unable to subscribe to the view that the Court would have no jurisdiction to direct addition of a party to the suit against the wishes of the plaintiff."

Mr. Misra has relied upon the decision reported in Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal and Others, and the decision reported in Sreedhar Pani and Others Vs. State of Orissa and Others, where P.K. Mohanti, J., had relied upon the aforesaid Punjab and Haryana decision. Both the cases have been discussed by the Division Bench in Indrajit Dandasena's case and the Supremacy of the rule of dominus litis to the exercise of discretion of the Court has been disapproved. The Single Judge decision reported in AIR 1969 Ori 55. Sreedhar Pani and Ors. v. State of Orissa in respect of applicability of the rule of dominus litis is deemed to have been over ruled by the Division Bench. Principle enunciated in Banarsi Dass Durga Prashad Vs. Panna Lal Ram Richhpal Oswal and Others, has no more any persuasive effect in view of the Division Bench decision in Indrajit Dandasena's case.

23. Undisputably, opposite party No. 1 and the petitioners jointly signed the agreement on behalf of the management of the "Matrubhumi" They take

diametrically opposite position so far as the validity of the agreement. I am of the view that in order to enable the Court to effectually and completely adjudicate upon and settle the question of validity of the agreement involved in the suit, the three petitioners should be impleaded as parties.

24. Confronted with the fact that Bibekananda Kar is neither a signatory to the agreement nor is an applicant to be added as a party, Mr. Das the learned counsel for the petitioners submitted that the Court should exercise the suo motu power to add him as a party.

25. It is no doubt true that the Court is authorised by Order 1, Rule 10, Civil Procedure Code, to direct addition of further parties to the suit, even suo motu. Whether Court would direct to add a party in exercise of the suo motu power would depend on the facts and circumstances of each case. It is only in exceptional cases that the suo motu power is to be exercised.

26. I find that a petition dated 6. 8. 1980 was filed on behalf of the three petitioners in this Civil Revision praying for immediate disposal of the application to be added as parties. The relevant portions of the petition read as follows :

1. "That the petitioners filed a petition under Order 1, Rule 10, C. P. C, on 14.5.80 to implead them as parties in this suit.

2. That the plaintiff has filed this suit affecting the interest of the petitioners without impleading them as parties deliberately.

3. That though the defendants have taken a specific plea of non-joinder of parties as these petitioners are not impleaded, the plaintiff deliberately did not implead them as parties even though these petitioners are necessary parties and an issue has been framed to that effect.

4. That both the parties have approached the Hon"ble Court in Civil Revision No. 297/79 and 299/79 arising out of this suit which are pending before the Hon"ble Court where the petitioners are not parties and is fixed to 8. 8. 80 for further hearing.

5. That as the interest of the petitioners are affected, the petitioners filed applications in the said Civil Revision to be impleaded as parties. The plaintiff is opposing the application on the ground that the present petitioners are not parties in the suit.

6. That the plaintiff is obtaining order in the Hon"ble High Court affecting the interest of the petitioners and the petitioners are not able to do anything in the Hon"ble Court in the matter.

7. That the plaintiff is deliberately getting the matters adjourned causing irreparable injury to the petitioners."

(Emphasis is mine)

Contents of the aforesaid petition make it clear that the petitioners confine their

application for making them as parties and not Bibekananda. Court may exercise its suo motu power under Order 1, Rule 10, Civil Procedure Code, when a third party to the litigation would be prejudiced by the decree that would ultimately be passed. Two opposite stands are taken by the signatories to the agreement on behalf of the management. Bibekananda is not coming forward either to avoid the agreement or to support the same. In such circumstances, without a definite stand of Bibekananda, the Court ought not to exercise the suo motu power to add him as a party.

27. In the result, the Civil Revision is allowed in part. Parties are to bear their own costs of this Civil Revision. Revision partly allowed.