(1979) 05 OHC CK 0001

In the Orissa High Court

Case No : Civil Revision No''s. 519 and 576 of 1978

Rangilal and Sons and Another APPELLANT

Vs

The Industrial Development Corporation of Orissa Limited
 Laxmi Industrial Trading Corporation and Another Vs Kalinga Iron Works RESPONDENT

Date of Decision : 14-05-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 10(1), Order 1 Rule 10(2), Order 6 Rule 17
Limitation Act, 1963 — Section 21

Citation : (1979) 48 CLT 43

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : S.C. Mohapatra, S. Rath, in C.R. 519/78, S.C. Mohapatra and L.D. Rath, in C.R. 576/78, for the Appellant; S. Mohanti and P. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Das, J.—Both the revisions relate to identical question and as such they are disposed of by this common judgment. The revisions are directed against orders allowed amendment of plaints.

2. In two Money Suits, the same Plaintiff was described as "M/s. Kalinga Iron Works, a Unit of the Industrial Development Corporation of Orissa Limited. At/ P.O. Matkambeda (Barbil) District Keonjhar". These suits were for recovery of money from the Defendants. Written statements were filed by the Defendants refuting the allegations of the Plaintiff in the respective plaints and also claiming for set off. Subsequently, in M.S. No. 8/75, out of which C.R. 519/78 arises a petition was filed by the Defendants for amendment of the written statement wherein it was alleged that the suit was not maintainable, inasmuch as the same was filed by M/s. Kalinga Iron Works which is a low shaft furnace. The Plaintiff filed objection to it and before the question of amendment of the written

statement was taken up, a petition was filed by the Plaintiff for amendment of the plaint to describe the Plaintiff as "The Iudustrial Development Corporation Orissa Ltd. with its head office at Bhubaneswar and unit Kalinga Iron Work, At/ P.O. Matkhambeda, P.S. Barbil, District Keonjhar, Munsifi Champua" with consequential amendments in paras 1 and 4 of the plaint. In M.S. No. 6/77, out of which C.R. 576/78 arises, the Plaintiff also wanted to amend the plaint by substituting the description of the Plaintiff similar as in M.S. 8/75 with consequential change in para 1 of the plaint. The Defendants filed objections to the petitions for amendment of the plaints on the ground that the Plaintiff has not been properly described in the plaints and the Plaintiff, as originally described in the plaint, not being a firm or corporation, has no legal entity to institute the suits and, as such, the amendments sought for should not be allowed. It was further stated in the objections that the proposed amendments will change the basis, character and cause of action for the suits, inasmuch as the amendments sought for would convert void plaints to valid ones. This was not a case of misdescription, but a case of jurisdictional error. The amendments sought for were also challenged on the grounds of limitation.

3. The trial Court has held that the description of the Plaintiff in the original plaints is only a misdescription and the amendments sought for will not chance the nature or character of the suits, nor the cause of action will undergo any change thereby. As against this order, the civil revisions have been filed.

4. Mr. Mohapatra, the learned Counsel for the Petitioners, contends that M/s. Kalinga Iron Works being a factory, does not come under the purview of Order 1, Rule 1 of Code of Civil Procedure. It is further contended that the word "person" has not been described in the CPC and so the definition of "person" as given in the General Clauses Act is to be looked into. According to the definition of "person" in the General Clauses Act, a factory cannot be covered by this definition and so the suits have not been properly instituted. By the time the amendments of the plaints are sought the claims will be barred by time u/s 21 of the Limitation Act.

5. In the original plaints, the description of the Plaintiff in the cause-titles was as follows:

M/s. Kalinga Iron Works, Matkambeda, P.O. Matkambeda, P.S. Barbil, Dist-Keonjhar, a unit of the Industrial Development Corporation, Orissa. Ltd., Munsifi-Champua.

By amendment, the description is to be changed to:

The Industrial Development Corporation, Orissa, Ltd. with its head office at Bhubaneswar and unit Kalinga Iron works, At/PO. Matkambeda. P.S. Barbil, Dist-Keonjhar, Munsifi-Champua.

There is no prayer for change of the cause of action and the original cause of action still subsists. From the above description of the Plaintiff, It is evident that the description of Industrial Development Corporation was there and the Kalinga Iron Works was described as a unit of the said corporation and the suits were instituted by Kalinga Iron Works as a unit of the Industrial Development Corporation. By way of amendment, the Industrial Development Corporation is to institute the suits through Kalinga Iron Works. Substantially, there is no change in the description. On the other hand, by both the descriptions it is meant that the Industrial Development Corporation is instituting the suits through its unit Kalinga Iron Works. There is no dispute about the fact that Kalinga Iron Works is a unit of the Industrial Development Corporation. From the recitals of the plaints it also appears that substantially the Industrial Development Corporation is filing the suits.

6. In the original written statement filed by the Defendants, the Defendants had taken the stand that Kalinga Iron Works as a unit of the Industrial Development Corporation instituted the suits. The tone of the written statements was all along to this effect. It is only at the time of hearing of the suits, a technical objection has been raised and this objection has been put forward by way of amendment of the written statements. This amendment of the written statements has been allowed by the trial Court. When such a stand was taken by the Defendants, the Plaintiff came to know of the technical defect and filed petitions for amendment on the ground that it was a misdescription of the Plaintiff and this description crept in due to mistake and oversight. It would thus appear that both the Plaintiff and the Defendants were under the impression that Plaintiff had been correctly described until the technical objection was taken by the Defendants. When such a stand was taken by the Defendants, it necessitated amendment of the plaints so that no technical objection could be raised at any stage in future.

7. It is well settled that multiplicity of suits should be avoided and the controversy should be settled at rest in the very suit already Instituted. In Purushottam Umedbhai and Co. Vs. Manilal and Sons, , it has been held that a civil Court can permit under Order 6 Rule 17, CPC an amendment of the plaint to enable a proper description of the Plaintiff to appear in it in order to assist the Court in determining the real question or issue between the parties. Strictly speaking, Order 1 Rule 10(1) has no application to a case of this kind because the suit has not been instituted in the name of a wrong person, nor is it a case of there being a doubt whether it has been instituted in the name of the right Plaintiff. The provisions of Order 1 Rule 10(2) also do not apply because it is not a case of any party having been improperly joined whose name has to be struck out or a case of adding a person or a party who ought to have been jointed or whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit.

In the instant case, there is no prayer to add any person who was not a party to the suit, nor to strike out the name of any party who was a party to the suit. The controversy is to recover money in respect of some business transactions and in order to effectually adjudicate upon the disputes between the parties, the Industrial Development Corporation and its unit M/s. Kalinga Iron Works were already on record described as Plaintiff and so when both the concerns were already on record and the dispute with the Defendants has to be settled, the dictum of the Supreme Court, referred to above, squarely applied to the present case.

A similar question came up for consideration in A.K. Gupta and Sons Vs. Damodar Valley Corporation, . It was held in that case that in the matter of allowing amendment of Pleading the general rule is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new cause of action is barred. Where, however, the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts merely to a different or additional approach to the same facts the amendment is to be allowed even after expiry of the statutory period of limitation. The principal reasons that have led to the rule are that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes. This principle is based on the decision Cropper v. Smith (1884) 26 Ch.D. 700 (710-711), and a party is strictly not entitled to reply on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others, . Also relying on Cooke v. Gill (1873) 8 C.P. 107 (116), the Supreme Court has held that the expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the Plaintiff to succeed", In a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. For such a purpose, the expression "cause of action" only means a new claim made on a new basis constituted by new facts. This view is based on Robinson v. Unicos Property Corporation Ltd. 1962-2 All E.R. 24. The Supreme Court has held that in view of the aforesaid decision, the only possible view as stated above, can be deduced and any other view would make the rule futile. Also relying on Dornan v. J. Ellis & Company Ltd. 1962-1 All E.R. 303, the Supreme Court held that the words "new case" have been understood to mean "new set of Ideas" and this would be the reasonable view.

In Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, , it has been held that there is no rule that unless in an application for amendment of the plaint it is expressly averred that the error omission or misdescription is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. Rules of procedure are intended to be a handmaid 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 costs. However, negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if It can be made without injustice to the other side. In that case it was also held that if the suit was instituted misdescribing the Plaintiff amendment of the plaint is sought by substituting real Plaintiff, no question of limitation arises and the plaint must be deemed on such amendment to have been instituted in the name of the real Plaintiff, on the date on which it was originally instituted.

So also in Ganesh Trading Co. Vs. Moji Ram, , it has been held that provisions for amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting for amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconveniences or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

From the aforesaid decisions of the Supreme Court it is dear that the Supreme Court has repeatedly laid down that the power of amendment of plaint contained in Order 6 Rule 17, CPC can be exercised in the interest of justice, even though a fresh suit on the amended claim would be barred by limitation on the date of the applications for amendment. The tact that a fresh suit on the amendment claim is barred by limitation is only a factor to be taken into consideration in exercise of the discretion whether amendment should be ordered or not. But that does not affect the power of the Court to order it, If in the opinion of the Court that is required in the interests of justice. The mere fact that a fresh suit on the amended claim is barred by limitation, It would not affect the powers of the Court to allow the amendment of the plaint if that is considered to be necessary in the interest of justice.

8. In the original plaints, the description of the Plaintiff as "The Industrial Development Corporation" was there. There is no allegation of any mala fides on the part of the Plaintiff for amendment sought. The nature and character of claim relating to recovery of money from the Defendants arising out of the transactions with the Defendants is not changed by the amendment. The cause of action also remains the same. It is only the description of the Plaintiff is to be changed on the ground of misdescription. But I have already held that both the Industrial Development Corporation and the Kalinga Iron Works as its unit are already there in the original plaints and the sale stand of the Plaintiff is that the Industrial Development Corporation through its unit Kalinga Iron Works seeks to recover the money from the Defendants arising out of the transactions with the Industrial Development Corporation through Kalinga Iron Works. Therefore, the nature and character of the claim remain the same, it is the duty at the Court to

see if the amendment is to be allowed, for the ends of justice. The substance of the claim has to be looked into, but not the form. The Court is always competent to correct the error of description and mere correction or error does not amount to addition or substitution of parties, and, as such, Section 21 of the Limitation Act is not attracted See The Andhra Pradesh State Electricity Board and Others Vs. Patel and Patel and Others, .

9. On the aforesaid analysis, I hold that when it was brought to the notice of the Court by the Defendants that Kalinga Iron Works is only a factory, the Plaintiff could realise the mistake in the description and prayed for amendment of the plaints by correcting the description on the ground that there was misdescription of the name of the Plaintiff. The written statement was sought to be amended on this ground and the Court also allowed amendment of the written statement. Consequently, the Court has allowed the prayer for amendment of the plaints on the ground that it was only misdescription. From the discussions made above, no prejudice is caused to the Defendants and the question of limitation also does not arise, Section 21 of the Limitation Act clearly provides that if there is a misdescription due to a bona fide mistake correction of such misdescription does not attract the limitation as provided under that section of the Act. The Supreme Court, as already referred to above, also has observed that unless there is deliberate intention on the part of the Plaintiff, the amendment of description by way of correction should be allowed and the question of limitation does not arise in that case.

In view of my finding that the Industrial Development Corporation, In fact, instituted the suits through its unit Kalinga Iron Works and the description being a misdescription only, the question of definition of "person" under the General Clauses Act, as submitted on behalf of the Petitioner, has no force.

For the aforesaid reasons, the points raised on behalf of the Petitioners fall.

10. In the result, both the Civil Revisions are dismissed. In the circumstances of the case, there will be no order as to costs.

