(1982) 06 BOM CK 0024

In the Bombay High Court

Case No : Miscellaneous Petition No. 322 of 1975

Raymond Wollen Mills Ltd. APPELLANT

Vs

Monopolies and Restrictive Trade Practices Commission and Others RESPONDENT

Date of Decision : 16-06-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 4, Order 6 Rule 5, 141
Monopolies and Restrictive Trade Practices Act, 1969 — Section 10, 31, 31(3), 37(1), 37(2)
Monopolies and Restrictive Trade Practices Commission Regulations, 1974 — Regulation 74

Citation : (1983) 1 BomCR 447 : (1983) MhLj 550

Hon'ble Judges : M.L. Pendse, J;D.P. Madon, J

Bench : Division Bench

Advocate : A.H. Desai and J.D. Chinai, for the Appellant; R.L. Dalal, M.I. Sethna and L.K. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mandon, J.—This is an appeal against the judgment and order of Mr. Justice Aggarwal whereby the learned Single Judge dismissed the writ petition under Article 226 of the Constitution of India filed by the appellants on the Original Side of this High Court.

2. The controversy between the parties lies within a very narrow compass. The appellants are a public company limited by shares and inter alia were manufacturing at the relevant time and are still manufacturing engineering files. The department of the appellants manufacturing engineering files is known as "J.K. Engineer''s Files Division". These files are sold under the brand names ''sunflower'', ''Sher'' and ''Rock''. It appears from the averments made in the petition, against the order from which the present appeal has been filed, that by a letter dated February 21, 1973 the Joint Director of Investigation appointed under the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter for

the sake of brevity referred to as "the Act"), called upon the appellants to furnish certain information relating to files manufactured by them. The said letter was headed "Enquires regarding Steel Files". According to the appellants, the said joint Director thereafter made a detailed investigation which included discussions held at several meetings between the said Joint Director and the representatives of the appellants. Inspection of several documents of the appellants and detailed explanations and informations were given by the appellants to the said Joint Director.

3. On December 6, 1974 a notice under sub-clause (iv) of Clause (a) of section 10 of the Act was issued to the appellants by the Monopolies and Restrictive Trade Practices Commission, namely, the first respondent before us. On receipt of this notice the appellants filed an application dated January 16, 1975 before the Commission. In the said application the appellants inter alia asked for certain particulars to be furnished in support of the allegations made in the said notice. As no arguments have been advanced before us with respect to the prayers in the said application, it is not necessary to set out what those prayers were. By its order dated February 25, 1975 the Commission dismissed the said application, but extended the time for filing the appellants reply to the said notice. Against the said order of the Commission the appellants filed a writ petition under Article 226 of the Constitution on the Original Side of this High Court, which writ petition was dismissed by Mr. Justice Aggarwal. By his said judgement Mr. Justice Aggarwal directed the appellants to pay to respondents Nos. 1 and 2, namely, the Commission and the Director of Investigation, costs of the petition fixed at Rs. 2.000/- in view of the length of time which the hearing of the said petition had taken. The third respondent to the said petition , namely, the Registrar, Restrictive Trade Agreements, did not appear before Mr. Justice Aggarwal.

4. Before referring to the rival contentions advanced at the Bar, since the only question before us is whether the said notice dated December 6, 1974 is lacking in particulars, it will be convenient to set out at this stage the said notice in extenso. It is as follows :

"WHEREAS the Monopolies and Restrictive Trade Practices Commission has information, the Respondent abovementioned (that is, the appellants before us) who is manufacturing, selling and supplying inter alia J.K. Engineering Files with brand names of "Sunflower", ''Sheri'', "Rock" etc. is a monopolistic undertaking engaged in the manufacture, sale and supply of the steel Files; and that it is indulging in restrictive trade practices of the following nature :---

(i) Abnormally increasing the prices of the said Steel Files by manipulating prices and frequently revising the price lists in a manner unrelated to the increase, if any, in the cost of production etc., with a view inter alia to benefit the Distributors and thereby to impose unjustified costs or restrictions on the consumers;

(ii) Practising discrimination in the matter of supplying, charging prices, giving discounts, giving turn-over bonus and issuing credit notes between distributors and distributors and/or between distributors or various areas/territories;

(iii) Refusing to deal with and make supplies to certain distributors;

(iv) Favouring certain distributors by giving unjustifiably more supplies to them on the eve of price revision so as to enable them to earn more profit by selling subsequently such stocks at (revised) higher prices;

(v) Giving discounts and bonus calculated on the basis of turnover and issuing credit notes or giving other concessions or benefits in connection with, or by reason of, dealings.

AND WHEREAS it is appears to the Commissioner that an enquiry u/s 10(a)(iv) and section 37 of the Monopolies and Restrictive Trade Practices Act, 1969, should be made regarding the above restrictive trade practices alleged to be indulged in by the above mentioned respondent, and about respondent''s position as a monopolistic undertaking in respect of the production, sale and supply of Steel Files;

THEREFORE, in exercise of the powers conferred upon it by section 10(a)(iv) and section 37 of the said Act, the Commission has decided to hold an enquiry at its office in New Delhi into the aforesaid restrictive trade practices and whether the above mentioned respondent is a monopolistic undertaking in the production, sale and supply of Steel Files;

NOW, THEREFORE, notice under Regulation 58 of the Monopolies and Restrictive Trade Practices Commission Regulations, 1974, is hereby given to the respondent abovementioned that if it wishes to be heard in the proceedings before this Commission, it should comply with the requirements of Regulations 65 and 67 of the said regulations (a copy thereof is enclosed herewith) failing which the commission will proceed with the enquiry in the absence of the respondent failing so to comply with."

By their said application dated January 16, 1975 the appellants had inter alia asked for further and better particulars of the allegations set out in Clauses (i) to (v) of the said notice. So far as the allegations made in Clause (i) were concerned, the particulars asked for included those relating to "the abnormal increase in the prices of Steel Files, manipulation in price, frequent revision in prices, revision in prices unrelated to the increase and revision in prices with a view to benefit the distributors and revision of prices to impose unjustified costs or restrictions, including the particulars and specific instances in full details sought to be relied upon against" the appellants. So far as the allegations made in Clause (ii) of the said notice were concerned, the particulars asked for related to "the alleged discrimination in the matter of supplying and/or charging prices and/or giving discounts, giving turnover bonus and/or issuing credit notes as between distributors in one area." So far as the allegations made in Clause (iii) of the said notice were concerned, the particulars asked for were those of the alleged refusal of the appellants to make supplies to distributors including instances thereof, along, with the names an identity of such distributors. So far as allegations made in Clause (iv) of the said notice were concerned, the particulars asked for included particulars in respect of "the alleged favour to distributors or by giving unjustifiably more supplies or on the price revision so as to enable them to earn more profits or otherwise, including all the specific instances giving full details along with the identities sought to be relied upon against." the appellants. So far as the allegations made in Clause (v) of the said notice were concerned, the particulars asked for included those relating to the "giving of discounts and bonus calculated on the basis of turnover and issuing credit notes or giving other concessions or benefits alleged therein, including instances with full details sought to be relied upon against" the appellants. In the said application the appellants also asked for full and material particulars of the allegation that the appellants were "a monopolistic undertaking."

5. In its order, against which the appellants'' writ petition was directed the Commission held that at the stage when the said application was made the appellants were only entitled to know the facts constituting the restrictive trade practices and that such facts had been set out in the said notice and, therefore, the demand made in the said application was either for restrictive trade practices or for evidence of instances of such practices to which the appellants were not entitled. The Commission further referred to its earlier decision in In the matter of M/s. Singer TVS Ltd. and another, reported in 1975 Taxation Law Reports at page 1976 in which the Commission had held that under Regulation 74 of the Monopolies and Restrictive Trade Practices Commission Regulation, 1974, further and better particulars could only be asked for after the pleadings were completed and when an application for direction was made to the commission under the said regulation. In the said decision the Commission had further held that though under Regulation 15 of the said Regulations the provisions of the Code of Civil Procedure, 1908, applied mutatis mutandis to the proceedings before the commission in respect of any matter which no provision has been made in the said regulations, as express provision had been made for delivery of further and better particulars by the said Regulation 74, the party before it was not entitled to any particulars at a prior stage of the proceedings. Mr. Justice Aggarwal in his judgement under appeal accepted and followed this line of reasoning of the commission.

6. At the hearing of this appeal Mr. Dalal, learned Counsel for the respondents, did not make any attempt to support the conclusion reached by the Commission or by the trial Court that the allegations made in the said notice contained all the facts. Mr. Dalal also did not contest that if this were a suit in a Civil Court the particulars asked for were such as must be granted. What Mr. Dalal, however, contended was that in view of the provisions of the relevant regulations the appellants were not entitled to ask for particulars of the said allegations at the stage at which they had asked for them.

7. One has only to look at the allegations contained in Clause (i) to (v) of the said notice to understand how completely vague and lacking in all particulars those allegations are. They are merely general allegations constituting heads of different classes of restrictive trade practice and communicating no information whatever to the party to whom the said notice was issued. The inquiry that was sought to be initiated against the appellant was one u/s 10(a)(iv) of the Act. Under that section the commission may inquire into any restrictive trade practices upon its own knowledge or information. If the result of the said inquiry had gone against the appellants, the commission would have been entitled u/s 37 of the Act to direct by an order that the practice which it found to be prejudicial to the public interest should be discontinued or should not be repeated by the appellants. The commission would also have the power by an order to direct that any agreement relating to such practice shall be void or should stand modified in respect of such practice in such manner as the commission might specify in its order. Further, under sub-section (4) of the said section 37, if the commission finds that a monopolistic undertaking is indulging in restrictive trade practices, it might, after passing orders provided in sub-section (1) or (2) of the said section 37, submit the case along with its finding thereon to the Central Government with regard to any monopolistic trade practice for such action as that Government might take u/s 31. Under the said section 31 the Central Government can thereafter pass such orders is it thinks fit to remedy or prevent any mischief which results or may result from such trade practice. The order to be passed by the Central Government under the said section 31 may also include orders dealing with various specific matters specified in sub-section (3) of the said section 31. A cursory look at section 31 and 37 would show that the inquiry u/s 10, if it went against the undertaking against which it was directed, would result in very serious civil consequences so far as the said undertaking was concerned. The surprising things about the said notice issued by the commission to the appellants was that without there having been any previous inquiry and without the appellants ever having had a chance to meet this allegation it was assumed that the appellants were a monopolistic undertaking. This charge of being a monopolistic undertaking was not the one which the appellants were called upon to meet by the said notice. It was in fact not a charge made in the said notice at all. It was the foundation on the basis of which the said notice was issued, and it was taken for granted that the appellants were a monopolistic undertaking, and that too without any reason set out for this assumption and without there being any fact contained in the said notice to bear out or support this allegations.

8. Since the main arguments before us have resolved round the regulations framed by the commission, it will be convenient to refer to the relevant provisions of the Act. u/s 18 of the Act the commission has the power to regulate the procedure and conduct of its business. u/s 66 the commission has the power to make regulations for the efficient performance of its functions under the Act. In exercise of its power u/s 66 the commission has framed the Monopolies and

Restrictive Trade Practices Commission Regulations, 1974. So far as the present appeal is concerned, the relevant regulations are Regulations 15, 74 and 77. Regulations 15 provides as follows :

"15. Effect of Non-compliance and Application of CPC to matters not provided :

Failure to comply with any requirement of these regulations shall not invalidate any proceedings unless the commission so directs and, in respect of any mater for which no provision has been made in these Regulations, the provisions contained in the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis apply to the proceedings before the commission in so far as such provisions are not inconsistent with any of the provisions expressly made in the Act or in these regulations".

Under Regulations 74 in an inquiry u/s 10(a)(iv) of the Act when the pleadings are closed or deemed to be closed, the Director of Investigation is, within 7 days thereof to make an application to the Commissioner for directions with regard to the preparations for the final hearing. The notice of application for directions is to be served upon all parties to the proceedings who have entered appearance not less than 15 days before the application for directions is due to be heard. On the hearing of the application for direction, the commission is to give such directions as it considers necessary, and without prejudice to the generality of that power may give directions as it may think fit as to the matters set out in sub-clauses (a) to (i) of Clause (3) of the said Regulation 74. Sub-clause (b) of the said Clause (3) provides for giving directions with respect of "the delivery of further and better particulars". Regulations 77 provides as follow :

"77. Application of the Code of Civil Procedure.

Subject to the provisions of sub-section (1) of section 12 of the Act, the provisions of Orders XI, XII, XIII, XVI, XVII, XVIII, XIX and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis apply as if they are herein expressly included by reference except insofar as they are inconsistent with the express provisions of these Regulations".

9. The arguments on behalf of the respondents proceeded upon the basis that it was only when a summons for directions was taken out after the pleadings were closed or deemed to be closed, that further and better particulars of the allegations made in the said notice could be directed to be given to the appellants and that there being an express provision as to the stage at which the commission could direct delivery of further and better particulars provided for in the said Regulations 74, the provisions of the Code of Civil Procedure, 1908, with respect thereto in Order VI, Rule 5 did not apply. It will be convenient at this stage to reproduce the provisions of Rule 4 and 5 of Order VI of the Code of Civil Procedure. These two rules read as follows :

"4. Particulars to be given where necessary.

In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence and in all other cases in which particulars may be necessary beyond such as the exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.

"5. Further and better statement or particulars.

A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just".

10. The said notice contains allegations of acts which constitute restrictive trade practices within the meaning of that terms as defined in the Act, which allegations, if true, would expose the appellants to serious civil consequences as mentioned above. What is, therefore, alleged against the appellants is improper conduct in the context of the status with reference to which such conduct was charged against them. In The Union of India (UOI) Vs. Pandurang Kashinath More, the Supreme Court, after referring with approval to the observations of Lord Selborne in John Wallingford v. The Director of the Mutual Society and the Official Liquidator thereof 1880(5) A.C. 685 , and of the judicial committee of the Privy Council in The Bharat Bharma Syndicate Limited v. Harish Chandra 1937(64) Ind. App. 143 observed : "It is well known that when an improper conduct is alleged, it must be set out with all particulars". It is elementary that when a person is called upon to meet a charge made against him he must not only know what that charge is but the facts on the basis of which this charge is made. Generic terms and general allegations cannot take the place of specific charge. In this context the following observations of Lord Selborne in John Wallingford''s case referred to earlier, and which were quoted with approval by the Supreme Court in Pandurang Kashinath More''s case are pertinent :

"With regard to fraud, if there by any principle which is perfectly well settled, it is that general allegations however, strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice".

The Judicial Committee of the Privy Council in The Bharat Bharma Syndicate Limited v. Harish Chandra, observed as follows :

"Their Lordships desire to call attention to the great difficulty which is occasioned both to persons charged with fraud or other improper conduct and to the tribunals which are called upon to decide such issues, if the litigant who prefers the charges is not compelled to place on record precise and specific details of those charges".

In the present case the matter ought not to have been allowed to the proceeded with unless full particulars of the allegations made in the said notice were furnished to the appellants.

11. To turn to the notice before us, as already pointed out by us earlier the

allegations contained in Clause (i) to (v) were mere general allegations and contained no facts whatever. This position has not been disputed by Mr. Dalal. By way of illustration we may refer to the allegations made in Clause (ii), namely, of practising discrimination in the matter of supplying, charging prices, giving discounts, giving turn over bonus and issuing credit notes. Now, unless and until the appellants were told who the persons were in whose favour discrimination was alleged to have been practised and the manner in which this was done, it would be impossible for them to meet this charge or to meet it satisfactorily. Again Clause (iii) charges the appellants with refusing to deal with and make supplies to certain distributors. Now unless and until the appellants know who these distributors are with whom they have alleged to have dealt or to whom they are alleged to have refused to make supplies, they cannot plead to this charge, and assuming there were certain distributors with whom they refused to deal or to whom they refused to supply goods, to enable the appellants to point out how and in what manner they were justified in doing so. What we have said with respect to these two clauses applies equally to the allegations made in the remaining three clauses also. Similarly, unless the appellants are told why it is assumed that they are a monopolistic undertaking, it would not be possible for them to be able to show that they are not a monopolistic undertaking. It is in order that a party against whom such serious charges are made should not be put to prejudice in meeting them that Rules 4 and 5 of Order VI of the Code of Civil Procedure, 1908, were enacted. Rules 4 of Order VI casts a duty upon the party relying on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, or any other matter with respect to which particulars may be necessary, to give full particulars with dates and items if necessary, in his pleadings, and if he fails to do so, Rule 5 of Order VI, entitles the other party to apply to the Court to ask for further better particulars of such matter. We are unable to agree with the constructions placed by the commission upon Regulation 74. The Summons for directions referred to in that regulations is to be taken out after the pleadings are closed or deemed to be closed. At that stage a party may apply for further and better particulars. The question is whether by reason of this provision a party is precluded from asking for further and better particulars at an earlier stage. On first principle itself the answer would be in the negative. A party called upon to meet a charge must know with sufficient particularity what that charge is. In our opinion, Regulation 74 only applies where the pleadings are closed and further and better particulars are required with respect to the last piece of pleadings filed before the commission. Under the regulations after a complaint is filed or a notice issued suo motu by the commission u/s 10(a)(iv) of the Act, the undertaking concerned is to file a reply. Where a reply is delivered, there is right of filing a rejoinder with the registrar of Restrictive Trade Agreement or the Director of investigation, as the case may be. It is when such rejoinder is filed or the time for filing such rejoinder has expired that the pleadings are closed or deemed to be closed. Just as a complaint or a notice may contain vague allegations, a reply may also contain vague allegations, and similarly so can a rejoinder. If a rejoinder contains vague allegations, since that is the last piece of pleadings, the proper time for asking for further and better particulars would be at the time when a summons for directions is taken out. In the case of vague allegations made in a complaint or a notice u/s 10(a)(iv) toe Act of the proper remedy would be before filing the reply thereto, and in the case of vague allegations made in a reply the proper time for asking for further and better particulars would be before filing the rejoinder thereto. In our opinion, there is nothing inconsistent with or contrary to the provisions of Rules 4 and 5 of Order VI of the Code of Civil Procedure, 1908, in the said Regulations 74. Regulations 15 has expressly made the provisions of the Code applicable to the proceedings before the commission insofar as such provisions are not inconsistent with any of the provisions expressly made in the Act or in the regulations. We have already pointed out that Regulations 74 is not inconsistent with the provisions of Rules 4 and 5 of Order VI, and we do not find anything in any of the other regulations or in any of the sections of the Act which is inconsistent therewith.

12. Mr. Dalal learned Counsel for the respondents, however, relied upon Regulations 77 and urged that except for the particular orders of the Code expressly set out in the said regulation, the other orders did not apply. We are unable to accept this argument, for the result of accepting it would be to nullify the express provisions of Regulations 15. Merely because some orders are specifically mentioned in Regulation 77, it does not follow that the generality of Regulation 15 is cut down and is confined only to those orders mentioned in Regulation 77.

13. Mr. Dalal next relied upon the decision of a learned Single Judge of this High Court in a testamentary matter, namely, Husein Abdul Karim Panju Vs. Mariambai Abdul Rahim, . In that case after a petition for probate was filed a caveat was entered and an affidavit in support thereof filed and the proceedings were thereupon numbered as a suit in accordance with the provisions of Rule 710 of the Bombay High Court Rules (original side), 1957. One of the witnesses was examined by the plaintiff. Thereafter the plaintiff took out a chamber summons for further and better particulars of several of the averments contained in the affidavit in support of the caveat. Dismissing the said chamber summons. Vimadalal, J., held that the procedure by way of an application under Order VI, Rule 5 of the Code of Civil Procedure, 1908, for further and better particulars did not apply to an affidavit filed in support of a caveat of the testamentary side of the High Court. The learned Judge took the view that an affidavit in support of the caveat was not a pleading and that, therefore, Order VI did not apply. He further held that he was bound by what was held by a Division Bench of this High Court in the case of Indrajitsinghji Vijaysinghji Vs. Rajendrasinghji Vijaysinghji, namely, that a petition was not a plaint in preference to the view expressed by Mody, J., sitting singly, in the case of Consolidated Foods Corporation Vs. Brandon and Co. Private Ltd, The learned Judge further held that section 141 of the Code of Civil Procedure, 1908, did not apply to the case before him because it was applicable to all proceedings in any Court of civil jurisdiction only so far as

it can be made applicable, and from the nature of testamentary proceedings it was not applicable to them. With respect, we are unable to agree with the conclusion reached by the learned Judge as also with the line of reasoning adopted by him. In the case of Maharaj Indrajitsinghji Vijaysinghji v. H.H. Maharaja Rajendrasinghji Vijaysinghji the appellants filed a petition for letters of administration with the will annexed to the estate of Sir Vijaysinghji, the Maharaja of Rajpipla, whose third son he was. On citations being served, eldest son filed a caveat together with an affidavit in support thereof. At the trial of the said testamentary suit a contention was raised by the defendant that the suit was not maintainable in the absence of the consent of the Central Government granted u/s 87-B read with section 86(1) of the Code of Civil Procedure, 1908. u/s 87-B the provisions of section 85 and sub-sections (1) and (3) of section 86 of the Code applied in relation to the ruler of any former Indian State as they applied in relation to the ruler of a foreign State. u/s 86(1) the ruler of a foreign State cannot be sued in any Indian Court without the consent in writing of the Central Government. The trial Court upheld this contention of the defendant and dismissed the suit. An appeal filed against the said order was allowed by a Division Bench of this Court consisting of Chagla, C.J., and Tendolkar, J. The Appeal Court held that u/s 141 of the Code it was only the procedure provided in the Code in regard to suit which had been made applicable to miscellaneous proceedings in Civil Courts, but if in the Code there were provisions which dealt with substantive rights, those provisions were not made applicable by the said section 141. The appeal Court further held that section 86 of the Code dealt with substantive rights and, therefore, it could not be made applicable to testamentary proceedings by reasons of the said section 141. Independently of section 141, it was argued before the Appeal Court that as on the filing of a caveat probate proceedings were numbered as a suit, they must be deemed to be a suit in all respects and, therefore, section 87-B must be held to apply and the appellant non suited. It was while negativing this contention that the Appeal Court said (at p. 973) :

"it is ought to be argued that whatever the nature of the proceedings may be when they were first instituted, at a certain stage they become a suit and section 86, applies and, if there is no consent taken of the Central Government, the suit cannot be maintained against the defendant if he is a ruler of a former Indian State. It is very difficult to accept the view that these proceedings are a suit as contemplated by section 86. If we are right in the view that we take that a suit can only be instituted as required by section 26 by the presentation of a plaint, then obviously a petition for letters of administration with the will annexed is not a plaint and at no stage becomes a plaint as understood in section 26 of the Civil Procedure Code. What section 86 requires is a suit instituted in the manner laid down in the Civil Procedure Code, not a proceeding which is treated as a suit by reason of the provisions of some other law".

With respect, the error into which Vimadalal, J., fell was to rely on the observations of the Appeal Court occurring in the above passage that a petition for letters of administration with the will annexed is not a plaint, without noticing the context in which it was made, namely, that particular part of the judgment dealt with a contention wholly different from the one founded upon section 141. So far as section 141 was concerned, the Appeal Court had observed in the earlier part of its judgment (at p. 970) :

"Now, the Privy Council in construing section 141 has held that the expression proceedings used in this section means independent proceedings in the nature of probate of guardianship proceedings. Apart from those two proceedings mentioned by the Privy Council there may be proceedings under the Companies Act, there may be proceedings under the Charitable Trust Act and various other proceedings which may be instituted in a Civil Court. All these proceedings although they may claim rights, would not be ''suits'' as under stood by the CPC because they are not instituted by the filing of a plaint. It is precisely because of these that section 141 was enacted so that the procedure provided in the code with regard to suits should also be followed with regard to these proceedings."

(The emphasis has been supplied by us).

It was unfortunate that the above passage, particularly the sentence emphasized by us, and the ratio of the judgment of the Appeal Court, namely, that it is the procedural provisions of the Code which section 141 makes applicable to miscellaneous proceedings in civil courts and not the provisions dealing with substantive rights, were not brought to the notice of Vimadalal, J., for had they been he would not have held that Rule 5 of Order VI of the Code does not apply to an affidavit in support of a caveat because Rule 5 of Order VI relates to procedure and does not deal with substantive rights. In the case of Consolidated Foods Corporation v. Brandon & Co. Private Ltd., the question which arose before the Court was whether an affidavit in support of a petition had been properly verified. Mody, J., held that in proceedings where an application is to be made by a petition under the rules framed by the High Court applicable on its original side, the petition must be deemed to be a pleadings as defined by Order VI, Rule 1 of the Code and must comply with the requirements about the contents, signing and verification of a pleading as contained in the said order. As we have mentioned earlier, Order VI deals with procedural matters as opposed to substantive rights, and the judgment of Mody, J., cannot be said to be contrary to what was held by the Division Bench in Maharaj Indrajitsinghji Vijaysinghji''s case. In fact, in arriving at the conclusion which he did, Mody, J., relied upon certain observations of a Division Bench of the Calcutta High Court in Padmabati Dasi v. Rasik Lal Dhar ILR1909 Cal. 259 and the decision of the Supreme Court in The State of Bombay Vs. Purushottam Jog Naik, , where the very same observations of the Calcutta High Court were referred to with approval. In that case the Supreme Court held that the verification of an affidavit should invariably be modelled on the lines of Rule 3 of Order XIX of the Code, whether the Code applies in terms or not.

14. For these reasons, in our opinion, the case of Husein Abdul Karim Panju v.

Mrs. Mariambai Abdul Rahim, was not correctly decided, and we hereby overrule that decision.

15. The prayers in the writ petition filed by the appellants are in substance for setting aside the said order of the commission and for quashing the said notice dated December 6, 1974 issued by the commission against the appellants on the ground that these general allegations did not constitute any charge at all and the notice, therefore, should not be left outstanding. However, the prayers with respect to the quashing of the notice were not passed by Mr. Desai before us.

16. In the result, we allow the appeal, set aside the order passed by Aggarwal, J., and make the rule absolute by setting aside the order of the first respondent commission dated February 25, 1975, so far as it relates to the relief claimed in prayer (c) of the said application dated January 16, 1975, and we make the said application filed by the appellants in Restrictive Trade Practices Application No. 27 of 1974 before the first respondent commission absolute in terms of prayer (c) thereof.

17. The respondents will pay to the appellants the costs of the petition fixed at Rs. 1,800/- as also the cost of the appeal fixed at Rs. 500/-.

