

(1983) 04 PAT CK 0011
In the Patna High Court
Case No : Civil Revision No. 585 of 1977

Rohtas Industries Ltd.

APPELLANT

Vs

Gokulchand Jagannath Nahar and Others

RESPONDENT

Date of Decision : 18-04-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 16

Citation : AIR 1983 Patna 274 : (1983) PLJR 311

Hon'ble Judges : S. Shamsul Hasan, J

Bench : Single Bench

Advocate : B.P. Katrirar and Sudhir Kumar Katriar, for the Appellant; Sudhir Chandra Ghose and Kalyan Kumar Ghose, for the Respondent

Final Decision : Allowed

Judgement

S. Shamsul Hasan, J.—The petitioner of this application has been refused amendment during the hearing of the suit on a preliminary objection that the Courts at Sasaram have no jurisdiction to try this case, as on the plaint itself they are not vested with the same.

2. A suit was filed against the defendant-opposite party for certain amount of money claim. The defendants being a party from Delhi have challenged the jurisdiction of Sasaram Courts as aforesaid.

3. The petitioner-plaintiff seeks the following amendment in the plaint:--

"7 (a). That the goods supplied to the defendants and their nominees as mentioned in the statement of account Annexure A of the plaint at the instance of defendants were manufactured at Dalmianagar in the plaintiff's own factory and the same were despatched from Dalmianagar and their prices were payable and paid in part at Dalmianagar, p.S. Dehri and the plaintiff received the same at Dalmianagar and the account thereof was written and maintained in due course of business at Dalmianagar within the jurisdiction of this Court." By this para, the petitioner, wishes to add that the transactions and accounting, delivery and sale,

etc. all took place within the jurisdiction of Rohtas District and the suit has been filed in the right Court.

4. Learned counsel for the petitioner has relied on Ganesh Trading Co. Vs. Moji Ram, and Suraj Prakash Bhasin Vs. Smt. Raj Rani Bhasin and Others, and submitted that the Courts should not refuse amendment merely because of certain facts being left out by clerical error or by inefficient drafting. In the case of Ganesh Trading Co. it has been held by the Supreme Court (para 5):--

"It is true that, if a plaintiff seeks to alter the cause of action itself and to introduce indirectly through an amendment of his pleadings, an entirely new or inconsistent cause of action, amounting virtually to the substitution of a new plaint or a new cause of action in place of what was originally there, the Court will refuse to permit it if it amounts to depriving the party against which the suit is pending of any right which may have accrued in its favour due to lapse of time. But. mere failure to set out even an essential fact does not, by itself, constitute a new cause of action. A cause of action is constituted by the whole bundle of essential fact which the plaintiff must prove before he can succeed in his suit. It must be antecedent to the institution of the suit, if any essential fact is lacking from averments in the plaint the cause of action will be defective. In that case, an attempt to supply the omission has been and could some time be viewed as equivalent to an introduction of a new cause of action, which, cured of its short comings, has really become a good cause of action. This, however, is not the only possible interpretation to be put on every defective state of pleadings. Defective pleadings are generally curable if the cause of action sought to be brought out was not ab initio completely absent. Even very defective pleadings may be permitted to be cured, so as to constitute a cause of action where there was none, provided necessary conditions, such as payment of either any additional Court-fees, which may be payable, or of costs of the other side are complied with. It is only if lapse of time has barred the remedy on a newly constituted cause of action that the court should, ordinarily, refuse prayers for amendment of pleadings."

In the other case, cited at the bar namely, the case of Suraj Prakash Bhasin Vs. Smt. Raj Rani Bhasin and Others, , the Supreme Court has held in para. 6 as follows:--

"The liberal principles which guide the exercise of discretion in allowing amendments have been laid down in numerous decisions of this Court. Multiplicity of proceedings being avoided is one criterion. Amendments which do not totally alter the character of the action are readily granted while care is taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment of pleadings. The Court must be guided by the rule of justice expressed by the Privy Council in AIR 1922 249 (Privy Council) ."

5. Learned counsel for the opposite party on the other hand, has relied on a

Bench decision of this Court in Pandit Rudranath Mishir and Others Vs. Pandit Sheo Shankar Missir and Others, , to which I was also a party, which has held that "where there is inherent lack of iurisdiction in the court to entertain the suit itself, it cannot make any order for amendment of the plaint to bring the suit within its jurisdiction." This means that the amendment by a Court not possessing jurisdiction cannot be allowed to create iurisdiction. Further, if there is inherent lack of jurisdiction that Court has no authority in law to allow amendment, thereby conferring jurisdiction.

6. It is needless to say that the ratio of the Patna decision (supra) cannot be assailed but it has to be seen whether it can be applied to this case or not. As I understood the expression "inherent lack of jurisdiction" while deciding that case then and as I see it even now, it means that on the plaint if there is total lack of facts which confer jurisdiction, like pecuniary jurisdiction and even territorial jurisdiction, then no amendment can be allowed to bestow that jurisdiction, but if in the plaint itself certain facts are found, which may confer jurisdiction, and if amendments are sought to clarify or bring on record relevant details connected with the facts already stated, then it cannot be said that something inherently lacking is being bestowed by this very amendment.

7. The situation in the present plaint is that it has already been stated that the cause of action arose in Rohtas district. It has also been stated that the supply was from the factory of the plaintiff. Only the name of the town is missing in the factual portion of the plaint. These facts including the fact that accounting took place at, Dalmianagar are now being added. This, in my view, only clarifies the statement already made in the plaint that the cause of action arose at Dalminagar, which is within the jurisdiction of Sasaram Court. It is only an instance of improper drafting which has necessitated this amendment. Therefore the two Supreme Court cases cited above already assist the plaintiff petitioner.

8. The application is allowed and the court below is directed to allow the petitioner to make necessary amendment in the plaint before deciding the preliminary issue. There will be no order as to costs.