

(2002) 04 GAU CK 0003
In the Gauhati High Court
Case No : C.R.P. No. 170 of 1998

Samir Kr. Khare

APPELLANT

Vs

Mridul Bezbaruah and Another

RESPONDENT

Date of Decision : 23-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 1 Rule 3, 115

Citation : (2002) 2 GLT 146

Hon'ble Judges : S.K. Kar, J

Bench : Single Bench

Advocate : B.D. Das, H.K. Sarma and R. Ali, for the Appellant; B.K. Bhattacharjee, C.B. Gogoi and S.N. Sarma, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Kar, J.—Defendant No. 2 in Title Suit No. 51/96 Shri S.K. Khare has presented the instant revision petition being dissatisfied with the order passed on 6.5.98 by the learned Civil Judge (Senior Division), Kamrup disallowing his petition to struck off his name from the suit. The opposite party No. 1 is the original Plaintiff of the suit and the opposite party No. 2 is the Gauhati Municipal Corporation and Defendant No. 1 of the suit.

2. The facts of the case, briefly stated, is that the Plaintiff Sri Mridul Bezbaruah instituted the Title Suit No. 51/96 in the Court of the Civil Judge (Senior Division), Kamrup claiming damage of Rs. 55 lakhs against 14 Defendants including the present Petitioner and the opposite party No. 2 (Defendant No. 1 and 2 in the suit). Subsequently on the amendment of the plaint he dropped the Defendant Nos. 3 to 14 and the suit proceeded against Defendant No. 1 and 2 only claiming damages of Rs. 25 lakhs.

3. Appearing in the suit, the present Petitioner presented an application numbered as 3078/97 dated 5.12.97, for striking off his name on the ground, inter alia, that he was Commissioner of opposite party No. 1 only till 23.12.94

and the opposite party No. 1 was placed under suspension with approval of the administrator of the Corporation Shri M.G.V.K. Vanu and the order of suspension was published in the newspaper in routine manner as part of administrative action and as per law. That on 6.10.94 again on the approval of the administrator the order of reinstatement of the opposite party No. 1 (Plaintiff) was made. That the exoneration of the opposite party/Plaintiff was on 19.9.95 when the Petitioner was not the Commissioner and his making the publication of such exoneration cannot and does not arise. That the publication was in public interest and there was nothing malafide etc.

4. The application aforesaid, was objected by other parties to the suit on the ground that name of Petitioner/Defendant No. 2 cannot be struck off as at the relevant time he was acting as the Commissioner of the Gauhati Municipal Corporation. It was submitted by the revision Petitioner reiterating his contentions that the opposite party No. 1 was suspended by the revision Petitioner in a bonafide manner under the approval of the administrator of the opposite party No. 2 on the basis of sufficient materials on record and the opposite party No. 1 was exonerated from the charges only after the elected body came into power of the Guwahati Municipal Corporation for which he could not be held responsible.

5. I have gone through the relevant papers attached as annexure to the revision petition and heard the learned lawyers appearing on behalf of parties and also perused the impugned order. It is seen that the impugned order has dealt adequately on the allegations of the facts and the learned Court below has discussed why the name of the revision Petitioner could not be struck off and why he is to be treated as necessary party to the suit. In other words, it was rightly argued by Court below that at pre-trial stage it was not possible to give decision on bonafide or otherwise on part of Petitioner. The fact can be ascertained only on trial on the basis of actual evidence coming before the Court. It was strongly maintained that in his absence the Court will not be in a position to give any effective verdict in the suit. Moreover, the evidence that is likely to come against the revision Petitioner can be assailed only by him and not by the Guwahati Municipal Corporation. If the order of suspension had been related to simple case of discharge of duty in day-to-day routine, the matters would have been quite different. But it is a case of putting the opposite party in suspension and making publication of the suspension order in the local dailies. Whether it was done bonafide or under malice that is the main issue in the suit. So, the person on whom the actions were attributed is the Petitioner, arrayed as Defendant No. 2, in the main suit. The learned trial Court has discussed the debatable facts thoroughly and threadbare and I find no scope to interfere in exercise of power u/s 115 of the CPC for the reasons as hereunder.

6. The power of the revisional Court can be exercised only when there is wrong exercise of jurisdiction on abuse of process of law. I was referred to International Air Transport Association Vs. Aziz Fatima Hasnain and Another, . But, going

through the case law, I find that it was a case of different nature. Name of a person improperly pleaded was allowed to be struck off. In other words, it was held therein that if there is no allegation in the plaint against the person, his impleading was not proper and his name has to be struck off. This is definitely not the case here.

7. Although the Petitioner failed to mention the law on the strength of which he approached the Court desiring an order to struck off his name, it is likely to be as per Rule 10(2) of Order I, CPC, which is quoted hereinbelow:

(2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant, be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

In the connected objection filed by the opposite party it was contended that the Petitioner is a necessary party as per Order 1 Rule 3 and thus there cannot be a ground to strike off his name from the suit. I would thus quote Order 1 Rule 3 also as under:

3. Who may be joined as Defendants - All persons may be joined in one suit as Defendants where:

(a) Any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) If separate suits were brought against such persons, any common question of law or fact would arise.

From the excerpts of law above, on a careful analysis, one can easily come to a finding that where any right to relief in respect of, or arising out of, the same act or transaction etc. exists against a person, he can be joined as Defendant. Here, relief is definitely claimed against Petitioner also who is arrayed as Defendant No. 2 in the suit. There is nothing to argue that Petitioner has been joined "improperly" as conceived by Rule 10(2) of Order 1. The guiding lines of necessary party is - "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit." Thus, there is no escape for the Petitioner. On pleadings, Petitioner is a necessary party.

8. In concluding, I would like to emphasise upon the fact that since the Very question of propriety in passing the order of suspension is in dispute in the suit and the order of suspension in question was passed by the Petitioner himself, there is no question of going to trial in his absence.

9. Accordingly, for the reasons given as above, there is no merit in this revision petition, which is dismissed. However, I make no order as to costs.