
(1977) 11 PAT CK 0011
In the Patna High Court
Case No : A.F.A.D. No. 180 of 1972

Sarat Chandra Ghosh (Private) Ltd.

APPELLANT

Vs

Swastika Mica Co. and Others

RESPONDENT

Date of Decision : 21-11-1977

Acts Referred:

Partnership Act, 1932 — Section 69

Citation : (1978) 26 BLJR 131

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Jha, J.—This is an appeal by Sarat Chandra Ghosh (Private) Limited, which has for all practical purposes, been treated as the defendant in the suit S.C. Ghosh (Private) Limited. The only point urged in this appeal is that the defendant having been sued as S.C. Ghosh (Private Ltd., the courts below had committed an error of law in holding that S.C. Ghosh (Private) Ltd. was nothing else but the abbreviated name of Sarat Chandra Ghosh (Private) Ltd. and that the appellant would be bound by the decree passed in favour of the plaintiff respondent.

2. The plaintiff Messrs. Swastika Mica Company, a registered firm, instituted the suit against S.C. Ghosh (Private) Ltd. for recovery of Rs. 1084 30 as price mica and Rs. 483 41 as interest thereon. This money claim was based upon certain transactions between the plaintiff and the defendant in course of the business in mica resulting in the final adjustment of accounts leaving a balance of Rs. 1084.30 to be paid by the defendant to the plaintiff. In spite of demands, the same not having been paid, the plaintiff instituted the suit with a claim for interest also.

3. When summons was issued in the suit against the defendant S.C. Ghosh (Private) Ltd. the appellant Sarat Chandra Ghosh (Private) Ltd. appeared and filed a written statement through one of its Directors Sushant Kumar Ghosh. The

case made out in the written statement was that there is no company in the name of S.C. Ghosh (Private) Ltd. in existence nor was in existence at any time, the plaintiff's suit was barred under the provisions of Section 69 of the Indian Partnership Act (hereinafter to be referred to as the Act) as also by limitation and the plaintiff had no cause of action against the appellant Sarat Chandra Ghosh (Private) Ltd.

4. It ought to be mentioned that the plaintiff thereafter filed an application for amendment of the plaint by adding Sarat Chandra Ghosh (Private) Limited as a defendant also, but that application for amendment was rejected on the ground that if they were the same entity, there was no need for addition of the name of the appellant.

5. The trial court framed, inter alia, three issues after hearing both the plaintiff respondent and the appellant. They were-

(1) Is the suit barred u/s 69 of the Act ?

(2) Is the suit barred by limitation ?

(3) Is the defendant described as S.C. Ghosh (Private, Ltd. in the plaint the same firm as Sarat Chandra Ghosh (Private) Ltd. ?

The findings recorded were that the suit was not barred either u/s 69 of the Act or by limitation. Issue No. 3, vital for this appeal, was decided by the trial court in these terras-

Therefore it is apparent that the defendant in the suit described as S.C. Ghosh (Private) Ltd. had no separate or different existence and it must be the abbreviated name of the same company as Sarat Chandra Ghosh (Private) Ltd. It is also clear therefore that it could not be argued that any company other than Sarat Chandra Ghosh (Private) Ltd. carried on the transactions in suit, because admittedly no company in the name of S.C. Ghosh (Private) Ltd. ever existed. So, after a careful consideration of all the aforesaid facts, circumstances and evidence on record it is held that the defendant described as S.C. Ghosh (Private) Ltd. in the plaint is the same company as Sarat Chandra Ghosh (Private) Ltd.

Having so decided the issue, the trial court in paragraph 21 of its judgment further held that, though the decree, which will be passed in the suit, will stand against the name of S.C. Ghosh (Private) Ltd. because that is the name of the defendant given in the plaint, it would be enforceable against the real company known as Sarat Chandra Ghosh (Private) Ltd., which has contested the suit. Against the decree passed by the trial court, the appellant preferred an appeal before the District Judge who has agreed with, and affirmed, the judgment of the trial court.

6. Learned counsel for the appellant argued that in view of the provisions of Order 29 Rule 1 of the CPC (hereinafter called the Code) the decree passed by

the court below ought to be held to be illegal.

7. To judge the validity of the contention put forward on behalf of the appellant, it is necessary to recapitulate some facts relevant to the point, which have been taken notice of by the courts below. The summons of the suit had been served by affixing the same to the office of S.C. Ghosh (Private Ltd. on the refusal of its Manager to accept the same. Nonetheless on 17-5-68 a written statement was filed on behalf of the appellant Sarat Chandra Ghosh (Private) Ltd. by one of its Directors, Shri Sushant Kumar Ghosh. It is difficult to appreciate as to why, if S.C. Ghosh (Private) Ltd. was not the abbreviated name of Sarat Chandra Ghosh (Private) Ltd. the latter should choose to appear through one of its directors. The courts below have, in any view rightly, held that, if the appellant Sarat Chandra Ghosh (Private) Ltd., was a different and distinct identity from S.C. Ghosh (Private) Ltd. there was no occasion for the appellant to put in appearance and contest the suit. The appellant could have very well ignored the summons issued to S.C. Ghosh (Private) Ltd. In the various hazris and petitions filed on behalf of the appellant and in some of the pairvis filed in the suit Sushant Kumar Ghosh has been described as the defendant. The learned District Judge has given in detail a list of such occasions when hazris, petitions and pairvis filed in the suit on behalf of the appellant have been shown as being on behalf of the defendant. As has already been mentioned above, the plaintiff at one stage had filed an application for bringing on record the appellant as one of the defendants but that application was rejected by the trial court and the plaintiff did not choose to challenge that order of rejection. Nonetheless when another application for amendment of the plaint was filed relation to the merits of the case and the same was rejected, the plaintiff respondent moved this Court in civil revision No. 30 of 1966. While allowing that application for amendment, Untwalia, J., as he then was, observed as follows:

The third reason given by the learned Munsif is that earlier by an order dated 27-1-64 the plaintiff's petition for amendment of the plaint to describe S.C. Ghosh (Private) Ltd. as Sarat Chandra Ghosh (Private) Ltd. was rejected. Of course, the order dated 27-1-64 is not before me under revision. But, on going through the written statement filed by Sarat Chandra Ghosh (Private) Ltd. it is clear that according to it, there is no company in the names of S.C. Ghosh (Private) Ltd. It is manifest that S.C. Ghosh is the abbreviated name of Sarat Chandra Ghosh.

Having considered the pleadings as also the evidence in detail, the courts below recorded their finding that the defendant S.C. Ghosh (Private) Ltd., was the same juristic person or legal entity as Sarat Chandra Ghosh (Private) Ltd. the company incorporated under the Indian Companies Act.

8. In this background the provision of Order 29 Rule 1 of the Code can be of no avail to the appellant. A distinct issue was framed with regard to the question as to whether S.C. Ghosh (Private) Ltd. and Sarat Chandra Ghosh (Private) Ltd. were the same legal entity or not. It has been found that they are so. There is

thus no question of one corporation being sued and another corporation being saddled with the obligation arising out of the decree. The mistake that the trial court may have committed, as was contended by learned Counsel for the respondent, in rejecting the petition for amendment to bring the appellant as a defendant on record was more than rectified by the framing of a distinct issue in presence of the appellant and recording of the finding as stated above. On the findings, the suit against S.C. Ghosh (Private) Ltd. is substantially a suit against Sarat Chandra Ghosh (Private) Ltd., and the error, if any, is one of mis-description which has been clarified by the finding on this issue. The provisions of Order 29 Rule 1 are permissive and all that they require is that a suit against a registered company must be instituted in the name of the company. Where the finding is that the company i.e. Sarat Chandra Ghosh (Private) Ltd. of which the abbreviated form is S.C. Ghosh (Private) Ltd it cannot be said to be a case of one company being sued for the obligation of another company. The description in the plaint, in view of finding based on evidence that the appellant and the defendant were the same legal entity, cannot be said to be hit by the provision of Order 29 Rule 1. The 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 refer to Gujarat Electricity Board Vs. Girdharlal Motilal and Another, , Learned Counsel for the appellant placed reliance on a Bench decision of the Calcutta High Court in the case of Modi Vanaspati Manufacturing Company and Another Vs. Katihar Jute Mills (Private) Limited, . The facts of that case were entirely distinct and its ratio decidendi cannot be pressed into service on the facts as found in the instant case. The appellant having filed a written statement through one of its directors, having filed hazris petitions and pairvis in the suit as the defendant, having joined issue with the plaintiff with regard to the identity of the appellant as the defendant and then having got an adverse decision cannot now be permitted to turn round and say that the decree against the defendant, S.C. Ghosh (Private) Ltd., an abbreviated form of appellant ought not to be held binding on it. There may be cases of some mis-description or vagueness in the name of a party but if it is more than clarified by the party's joining issue in this regard, to bring evidence on record to clear the confusion, there is no provision in Order 29 Rule 1 of the Code which can hit such a decision.

9. In the result, therefore, I do not find any merit in this appeal. It is accordingly dismissed with costs.