

(2014) 02 GUJ CK 0147

In the Gujarat High Court

Case No : Special Civil Application No. 238 of 2013

Shaileshbhai Occhavlal Kadakiya

APPELLANT

Vs

Pannalal Mithalal Darji

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Civil Procedure Code Amendment Act, 2002 — Section 16, 7
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 1, Order 6 Rule 14, Order 6 Rule 15,
Order 6 Rule 18, 99

Citation : (2014) 3 GLH 94 : (2014) 2 GLR 1161

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Pradeep Patel, Advocate for the Appellant; V.M. Dhotre and Mayur V. Dhotre, Advocate for the Respondent

Judgement

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K.M. Thaker, J.—In present petition, the petitioner has prayed, inter alia, that:

19(B) Be pleased to issue a Writ of Certiorari or any other appropriate Writ, Order, or direction quashing and setting aside the impugned Orders dated 15-2-2012 and 8-10-2012 (Annexure "A" collectively) passed by the learned Additional District Judge, Dahod, passed below Exhs. 16 and 20 respectively in Regular Civil appeal No. 2 of 2010 after holding the same as contrary to law and evidence on record and be pleased dismiss Exh. 16 application filed by the respondents in R.C.A. No. 2 of 2010.

So far as the facts are concerned, it has emerged from the record that father of present respondent Nos. 1 to 3 filed a suit being Regular Civil Suit No. 93 of 2004 against present petitioner.

1.1. In the said suit, respondent Nos. 1 to 3 - plaintiffs prayed for declaration and permanent injunction with regard to a shop (suit property) allegedly taken on rent.

1.2. The suit was opposed by the defendant (present petitioner) and written statement was filed at Exh. 6.

1.3. It appears that during the pendency of the said suit, father of present respondent Nos. 1 to 3 died and that, therefore, an application for impleading the heirs (present respondent Nos. 1 to 3) of the deceased plaintiff was filed which was granted by the learned trial Court.

1.4. Subsequently, the respondents - plaintiffs made an application (Exh. 13) seeking amendment in the plaint and in the cause title, which was granted by the learned trial Court vide order dated 7-12-2004 below Exh. 13 and the respondents-plaintiffs were permitted to carry out appropriate amendment in the plaint and in the cause title.

1.5. According to the allegations by the petitioner, the plaintiffs submitted another application (Exh. 24) requesting for permission to amend the application for interim injunction.

1.6. The said application was filed for bringing injunction application in consonance with and in tune with the amended plaint which was filed in pursuance of the order dated 7-12-2004.

1.7. After hearing the parties, the learned trial Court allowed the said application (Exh. 24) as well vide order dated 5-4-2005 and permitted the plaintiffs to amend the interim injunction application as per amended plaint.

1.8. Subsequently, the learned trial Court settled the issues on 28-6-2006 and the proceedings of the suit continued further.

1.9. After conclusion of the entire proceedings the suit culminated into judgment and decree dated 15-12-2009 whereby the learned trial Court dismissed the suit.

1.10. Being aggrieved by and dissatisfied with the judgment and decree dated 15-12-2009 passed by the learned trial Court, the respondents, i.e. original plaintiffs preferred an appeal before the learned first appellate Court which came to be registered as Civil Appeal No. 2 of 2010.

1.11. According to present petitioner, after the hearing of the appeal was concluded, the respondents-original plaintiffs and appellants submitted an application (Exh. 16) before the learned first appellate Court in the said Regular Civil Appeal No. 2 of 2010 and prayed for permission to sign the amended plaint (which was filed in light of the orders dated 7-12-2004) and also to tender an affidavit in support of the amended plaint.

1.12. The petitioner herein resisted the application by filing reply (Exh. 19).

1.13. The petitioner has alleged that the respondents - plaintiffs carried out the changes permitted by the learned trial Court, however, the said changes/ amendment were carried out after statutory period of 14 days from the date of order. The petitioner has further alleged that the amended plaint was not signed

by the respondents - plaintiffs and the amended plaint was not supported/ accompanied by requisite affidavit.

1.14. After considering rival submissions of the contesting parties, the learned first appellate Court has, vide order dated 15-2-2012 below Exh. 16, allowed the said application and permitted the respondents-original plaintiffs and the appellants to sign the amended plaint and to tender affidavit in support of amended plaint.

1.15. After the said order dated 15-2-2012 was passed, the petitioner preferred review application (Exh. 20).

1.16. The learned first appellate Court, after hearing the parties, rejected the said review application vide order dated 8-10-2012.

1.17. The petitioner feels aggrieved by the said orders.

1.18. Hence, present petition.

2. Mr. Patel, learned Advocate for the petitioner submitted that the original plaintiffs, i.e. present respondents have tried to cure the defect at appellate stage and the learned first appellate Court has erroneously allowed the original plaintiffs to cure the defect at appellate stage. Learned Advocate for the petitioner also submitted that at appellate stage, such permission ought not have been granted. Learned Advocate for the petitioner, in support of his submission, relied on the provisions under Order 6, Rules 14, 15 and 18 of Code of Civil Procedure, 1908. The learned counsel for the petitioner relied on the observations in the decision in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . Except the said submissions, any other contention is not raised.

3. Learned Advocate for the respondents has opposed the petition. He submitted that the plaintiffs had prayed for permission to amend the plaint and the injunction application. The applications viz. Exh. 13 and Exh. 24 were granted. The pleadings were accordingly amended. However, inadvertently, the amended plaint was not signed and the requisite affidavit was not submitted at the time when the amended plaint was submitted. Learned Advocate for the respondents submitted that in view of the fact that the learned Court granted permission to amend the plaint and the injunction application and also considering the fact that the plaintiffs had already submitted the amended plaint, the order was duly acted upon, and thereafter, the proceedings continued before the learned trial Court. He also submitted that actually, the issues came to be framed after taking into account the amended plaint and the proceedings have been conducted on the basis and in light of the amended plaint and evidence is also recorded accordingly. Learned Advocate for the respondents also submitted that the judgment and decree is also passed after taking into account the averments and details mentioned in the amended plaint and that at any point of time, until the application (Exh. 16) came to be filed in the appeal during the appeal

proceedings, the petitioner had never raised any objection on this count, and that therefore, at this stage, such objection may not be considered. Learned Advocate for the respondent relied on the decision in the case of Vidyawati Gupta and Others Vs. Bhakti Hari Nayak and Others, .

4. I have heard learned Advocates for the petitioner and the respondents and I have also considered the rival submissions and the material on record.

5. So far as the factual aspects, which are briefly recapitulated hereinabove, are concerned, there is no dispute between the parties.

6. The learned first appellate Court considered the application Exh. 16 and also considered the objection raised by the petitioner, and thereafter, passed the impugned order dated 15-2-2012.

6.1. In the said order dated 15-2-2012, the learned Court has observed, inter alia, that:

(1) The appellant has filed this appeal to permit them to affix their signature on Exh. 33, amended plaint. As due to some mistake the appellants-plaintiffs would not affix their signature on Exh. 33, there is no signature of heirs of deceased plaintiff. As such the said amended plaint cannot be taken into consideration therefore, the plaintiffs had prayed to allow this application and permit them to sign Exh. 33 and along with permission to file necessary affidavit. The defendant-respondent has objected this application by filing his reply at Exh. 19, wherein, defendant-respondent say that, the amendment made in Civil Procedure Code (Amendment Act), 2002, under Sec. 16 of Civil Procedure Code as well as Sec. 7 of the Code of Civil Procedure (Amendment Act), 2002, as such this application is not maintainable, therefore, the amendment is not allowed, and therefore, the application be rejected with cost.

(2) I have heard, the learned Advocate of the both side and perused the record, it appears that, father of the present appellant - Mithalal Motilal Darji has filed Regular Civil Suit against the defendant-respondent by Regular Civil Suit No. 93 of 2004 for declaration and injunction. During the pendency of the above suit the original plaintiff was died, therefore, the present appellants were joined as plaintiff in place of original plaintiff. Now, after joining as plaintiff the appellants had filed one application at Exh. 33 for amended plaint, but it seems that, there is no signature of the appellant on Exh. 33, therefore, after the trial the learned trial Judge has admitted that, there is no signature of present appellants upon amended plaint, therefore, amended plaint cannot be taken into consideration. Therefore, trial Court has answered issue No. 1 in negative. The issue No. 1 of the Civil Suit is as under:

Whether the plaintiffs prove that, after the death of their father they became tenant of the suit premises?

and looking to the reason taken by the trial Court, it seems that, the trial Court has admitted that, under the provision of the Civil Procedure Code, Order 6, Rule

14, Exh. 33 is an amended plaint, but there is no signature of the heirs of the deceased plaintiff nor any affidavit is filed in support of the amended plaint, as such it cannot be taken as evidence because under the provision of amended Civil Procedure Code, affidavit is considered to be an evidence and as such in the absence of affidavit with Exh. 33, it cannot be taken into consideration. Accordingly, the trial Judge had decided issue No. 1 in negative. Now, as per the say of the trial Court under the amended provision of Civil Procedure Code affidavit is an evidence and under the provision of new Civil Procedure Code parties can produce their evidence by filing their affidavit.

(3) Now, looking, to the Code of Civil Procedure, amended Code of Civil Procedure, 2002, the parties can produce their evidence by affidavit under the provision of Order 19. So, under the duly amended Civil Procedure Code, 2002, parties can produce their evidence by filing their affidavit, but, the appellant-plaintiff has filed Exh. 33, an amended plaint which is covered under Order 6, Rule 14 of the Civil Procedure Code. Now, looking to the provision of old Civil Procedure Code as well as amendment made in Civil Procedure Code, the said provision is not amended by the legislature. As such there is no amendment made in Civil Procedure Code, Order 6, Rule 14. Therefore, the judgment cited by the appellants, Kishanchandra Chandansingh Rao Vs. Vasumatiben Maganlal Manani, , as well as 2010 (3) GLH 327 Gopinathji Dev Mandir Trust through its trustee-Kothari v. Iswarbhai Dhirajlal Parekh - the said Judgments are applicable to the facts of the application. Now, in the both judgments cited by the appellants-plaintiffs, the Gujarat High Court has categorically held that, such defect being formal defect, can be cured by way of an amendment even at an appellate stage irrespective of bar of limitation.

Therefore, looking to the both judgments, the ratio laid down in the above judgments, if a party has not signed the amended plaint or not affix affidavit with the amended pleading, this defect is a formal defect which can be corrected even at an appellate stage and there is not irrespective of bar of limitation.

Looking to the ratio of the both Judgments, application deserved to be allowed, accordingly, I pass the following order.

ORDER:

1. This application is allowed.
2. The original plaintiff is permitted to affix signature on Exh. 33, amended plaint, they are also permit to file affidavit in support of their amended plaint.
3. No order as to cost.

Pronounced in the open Court, today, on this 15th day of February, 2012.

7. With the aforesaid observations and conclusions, the learned Court allowed the application vide order dated 15-2-2012. Subsequently, when the petitioner herein filed review application, the learned Court again considered the matter in

light of the review application filed by the petitioner herein.

8. After considering the submissions by the contesting parties, the said review application is rejected by the learned Court. In the said order dated 8-10-2012, the learned Court has observed, inter alia, that:

(2) The applicant - respondent have filed this review application to review the order passed by this Court below Exh. 16 filed by the appellant under the provision of Order 6, Rule 18 of Civil Procedure Code to permit the appellant to affix his signature on Exh. 33 in the suit. After hearing the both side and following the two judgments of the Gujarat High Court, it means, Kishanchandra Chandansingh Rao Vs. Vasumatiben Maganlal Manani, , 2010 (3) GLH 327; Gopinathji Dev Mandir Trust through its trustee Kothari v. Iswarbhai Dhirajlal Parekh, this Court was pleased to allow application below Exh. 16 and permitted to appellant to affix his signature on Exh. 33, an amended plaint along with the affidavit.

(3) Now, the respondent has filed this review application on the basis that, the said order is requires to be reviewed on the ground that, in the Salem Advocate Bar Association v. Union of India the Hon"ble Supreme Court has decided that no amendment should be allowed if the amended sought is belatedly. Now, this Court has taken into consideration judgment of Gujarat High Court in the order below Exh. 16 and following the ratio laid down in those judgments this Court pleased to allow Exh. 16 and permitted the appellant to amend his application by affixing his signature on amended plaint as well as affidavit. Looking to the record and order passed earlier the applicant present respondent did not relied upon the judgment of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , in support of his submission. Looking to the Exh. 16 at the time of hearing of that application the applicant respondent did not submit any authority on his behalf, but, if the applicant had submitted this authority of Salem Advocate Bar Association v. Union of India (supra) this Court would have taken into consideration the ratio laid down by Hon"ble Supreme Court in the said judgment, so in absence of citation of the said judgment of Salem Advocate Bar Association v. Union of India (supra) this Court was pleased to allow the application following two judgments of Hon"ble Gujarat High Court as stated earlier.

(4) Now, looking to the provision made in C.P.C. regarding exercise of review power for review of order passed by the Court, but looking to this provision this review powers should be exercised only in the exceptional cases and this Court come to the conclusion that the patent mistake on the face of record is made in order then the power of the review can be exercised. Looking to the fact that, the applicant did not cited judgment of Salem Advocate Bar Association (supra) so at this stage this Court cannot go into the merits of the order passed earlier at Exh. 16. This Court has taken into consideration the legal position as observed by Hon"ble Gujarat High Court in two judgments cited earlier, therefore, this Court cannot sit in appeal and cannot take contrary view to the decision passed

below Exh. 16. If this application is allowed then it will amount to use of appellate power which is not permitted by Civil Procedure Code, Therefore, this Court cannot go into illegality and validity of order passed by it below Exh. 16 again. Therefore, this application is required to be dismissed, accordingly, I pass the following order:

ORDER:

1. This application is dismissed.
2. No order as to cost.

Pronounced in the open Court, today, on this the day of October, 2012.

9. So as to support his submissions, learned Advocate for the petitioner herein tried to rely on observations by the Hon'ble Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . Learned Advocate for the petitioner was asked about particular observations in the decision in the case of Salem Advocate Bar Association (supra), on which he relies. Learned Advocate submitted that he relies on the same observations that after the trial commences, amendment should not be allowed. The learned Advocate for the petitioner, at the time of hearing of present petition, emphasized that after the issues are framed, amendment should not have been allowed and that, therefore, the learned first appellate Court ought not have granted the application. Learned Advocate also submitted that the petitioner had relied on the same decision and observations before the learned trial Court at the time of hearing of the review application. However, in present case, as the facts reveal, the learned trial Court had allowed the amendment before the Court framed the issues. Moreover, the order/permission to amend the plaint was even acted upon and carried out though the defect in question had occurred.

10. In order to consider the submissions by learned Advocate for the petitioner, it would be relevant to take into account the provisions relied on by the learned Advocate for the petitioners viz. the provisions under Order 6, Rules 14, 15 and 18, which read thus:

14. Pleading to be signed:- Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause; unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

15. Verification of pleadings:- (1) Save as otherwise provided by any law for the time-being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered Paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon

information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.

18. Failure to amend after order:- If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

11. It would also be necessary and appropriate to take into account certain relevant dates and details viz.

(a) the application seeking amendment in the plaint and its cause title was filed some time before December, 2004 and it was taken on record at Exh. 13;

(b) after hearing both the sides, the learned trial Court allowed the said application (Exh. 13) seeking amendment in the plaint and its cause title, vide order dated 7-12-2004;

(c) subsequently, with a view to bringing the injunction application (application for interim relief) in consonance with the amended plaint, the plaintiffs moved another application (Exh. 24) in February 2005 whereby the plaintiffs prayed for permission to amend the injunction application;

(d) the learned trial Court granted the said application vide order dated 5-4-2005;

(e) whereas the issues in the suit came to be settled by the learned trial Court on 28-6-2006, i.e. almost two years after the application to amend plaint was granted and almost one year after the application to amend the injunction application was granted.

Differently put, the said two applications were made and were granted by the learned trial Court long time before the learned trial Court settled the issues in the suit.

The petitioner's objection has to be considered in light of the above-quoted provisions and above-mentioned factual backdrop.

12. So far as the provision under Rule 18 is concerned, it provides, inter alia, the consequence which would follow if the amendment granted by the Court, is not carried out. In present case, actually the amendment granted by the Court was duly carried out and amended plaint was also filed, however, when the plaintiffs, in compliance of the permission granted by the learned trial Court, submitted the amended plaint inadvertently it was not signed by the respondent/s and requisite

affidavit was not submitted. The said defect did occur, but until the final judgment, wherein the learned trial Court took into account the said defect, any objection at any stage was not raised. Moreover, it has emerged from the details mentioned by the petitioner and the orders passed by the learned Court and from the submissions by learned Advocate for the petitioner that actually, the respondents, according to the details mentioned by the petitioners, had filed the amended plaint on 21-12-2004 (after the order granting permission was passed on 7-12-2004) and the said amended plaint is on record at Exh. 33. Thus, the fact remains that the permission to amend the plaint was granted before 28-6-2006, i.e. before the date when the Court framed the issues and the said permission was acted upon and the amendment was carried out on 21-12-2004, i.e. long time before the Court settled the issues. In this view of the matter, the consequence contemplated under Order 6, Rule 18 would not be attracted in facts of present case. The respondents had also carried out necessary amendment in the injunction application, and that therefore, though, the defect, referred to in the judgment by the learned trial Court, occurred while filing the amended plaint, it cannot be said that the amendment was not at all carried out after the permission was granted by the learned trial Court.

13. So far as the provision under Rule 15 of Order 6 is concerned, it provides, inter alia, that the pleadings should be verified in the manner prescribed under Rule 15.

13.1. On this count also, it is relevant to mention that it is not the petitioner's case that the plaint which was originally filed by the plaintiff (i.e. the father of present respondents) was not duly verified in accordance with the provision under Rule 15. According to the petitioner's case the plaint containing the amendment permitted by the Court, i.e. the amended plaint was not duly verified.

14. So far as the provision under Rule 14 of Order 6 is concerned, it provides, inter alia, that the pleadings should be signed by the party and his Advocate, if any.

15. In this context, it would be appropriate to mention that according to Rule 1 of Order 6, the term "pleading" means plaint or written statement.

15.1. In present case, it is not the claim of the petitioner that the plaint originally filed by the plaintiff (viz. father of present respondents) was not signed.

15.2. It is relevant to recall that the suit was originally filed by father of present respondent Nos. 1, 2 and 3 and at the relevant time, the plaintiff had signed the plaint, whereas the respondents came to be impleaded in the suit proceedings upon the sad demise of their father and pursuant to the permission by the Court they filed the amended plaint.

16. When such defect is noticed by the Court or when it is brought to the notice of the Court, then the question which would arise for consideration is as to whether the pleadings would become meaningless so as to entail rejection of the

plaint or rejection of the reply only on ground of such defect and that whether the defect is substantive so as to affect the rights claimed by way of plaint or written statement.

17. In this context, it is relevant to note that the object of Rule 14 is to bind the concerned and respective parties to the statements and averments made in the pleading so as to eliminate or prevent any dispute or attempt to claim that the suit was not instituted, or the written statement was not filed by him or with his knowledge and authority or that the details, allegations and assertions in the plaint or the written statement have not been stated with his knowledge, consent and authority.

18. It is trite that procedure is handmaid and not the mistress of judicial process. Examination of the provisions under Rule 14 and Rule 15 - particularly proviso to Rule 14 also gives out that the provisions are not mandatory and if the pleadings are infected by any defect due to which the requirement of Order 6, Rule 14 or Rule 15 is not fully complied, then it would not be fatal. Such defect can be characterized as procedural irregularity. Moreover, such defect can be cured and corrected even at appellate stage and even after the expiration of period of limitation for filing the suit. The Court has the discretion to allow the party to remove the defect at later stage though the period of limitation may have expired. Of course, the discretion will have to be exercised judiciously and after examining all relevant aspects. Once the learned Court exercises the discretion and in pursuance of the order/permission granted by the learned Court the plaint or the reply, as the case may be, is amended or the fresh signature is put or verification of the plaint is made, then such amendment or the fresh signature or the verification of the plaint would relate back to the original date of the suit and the original date of the institution of the suit would not be affected.

19. This position is recognized by the Court since 1964. In this context, it is relevant to take into account the observations in the decision in case between Kalyanbhai Manibhai v. Leelaben Mangaldas, 1964 GLT 66, this Court observed, inter alia, that:

Order 6, Rule 14 of the Civil Procedure Code says that every pleading shall be signed by the parties and his pleader, if any, but where a party pleading is by reason of absence or signed by any person duly authorised by him to sign the same. According to provision of law, a pleading can be signed either by the party himself or by his duly constituted attorney. But the signing of the pleadings is merely a matter of procedure, and therefore, it has been held in several cases that if the plaint is not signed by the plaintiff himself or by a person duly authorised him then in that event the Court may allow the plaintiff to amend the plaint by signing same and this can be done even by the appellate Court. Decisions show that a defect of this type can be set right even after the expiration of the period of limitation for filing the suit. The reason behind the rule is contained in Sec. 99 of the Civil Procedure Code which says that no decree shall be reversed or substantially varied, nor shall any case be remanded in

appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

(Emphasis supplied)

20. Therefore, non-compliance of the requirements under the provision would not, necessarily, result into depriving the concerned party from curing the defect and equity would tilt the balance in favour of allowing the concerned party to the proceeding to cure the defect and then to prosecute the case on merits. Such procedural provisions and requirements do not deserve to be raised to the level of substantive requirement which would render its non-compliance as violation of substantive right of the other side or which would render the pleadings so meaningless which would incur liability of rejection of plaint or written statement only because of such defect.

21. At this stage, it would be appropriate to refer to observations by the Court in certain other decisions. In the decision in case between *The Prince Line Ltd. Vs. The Trustees of the Port of Bombay*, , the Bombay High Court observed, *inter alia*, that:

The position therefore which emerges on these authorities is that the Court has always got the discretion if a plaint is not properly presented or is not signed and verified in accordance with the provisions of Order 6, Rule 14 and Order 6, Rule 15, Civil P.C., to allow the plaintiff to remedy the defect at a later stage even though the period of limitation may already have expired. But that is a matter of the discretion of the Court which the Court exercises after due consideration of all the facts, and circumstances of the case before it. If after a due deliberation of all these facts, the Court comes to the conclusion that it is just that, in the exercise of its discretion, it should allow the defect to be cured it can do so irrespective of the fact that the defendant has vested in him by that time a right to plead the bar of limitation.

22. In the decision in case between *Dahyabhai Girdhardas Vs. Bobaji Dahyaji Kotwal and Others*, , while considering a decision in previous case, wherein the munim of the plaintiff had signed the plaint, and subsequently application to amend the plaint was moved at later stage and after considering a decision in one more case the High Court allowed the application and while allowing the application irrespective of law of limitation the Hon"ble Court observed, *inter alia*, that:

Now, there are two decisions of this Court to which my attention has been drawn bearing on the question as to whether failure to sign the plaint properly is such a material defect that the Court would be entitled to say that in the absence of a plaint being properly signed there is no suit before the Court at all, or whether the failure to sign the plaint properly is merely a formal defect which can be cured at any stage on a proper application being made to that effect. The former view has been taken by Sir John Beaumont in *Chunilal Bhagwanji Vs. Kanmal*

Lalchand, . In that case a person acting under a power-of-attorney executed by a next friend of a minor presented a plaint and signed it, and the learned Chief Justice held that he had no authority to do so and that the plaint was not a valid plaint. The learned Chief Justice further held that the suit was never properly instituted, and that a defect of that sort could not be cured by amendment, and the natural course open to the plaintiff was to file a fresh plaint. With respect, the learned Chief Justice did not consider an earlier decision of this Court in Nanjibhai Jethabhai Vs. Popatlal Shriraj, . As a matter of fact, no authorities whatever were cited before the learned Chief Justice.

Turning to the other judgment of this Court in Najibhai v. Popatlal (supra), Mirza, J., there held that a plaint filed within time can, if not properly signed, be allowed to be signed by the plaintiff at a later stage irrespective of the bar of limitation. There the munim of the plaintiff had signed the plaint without having a general power-of-attorney and the plaint was not therefore properly signed, and the learned Judge allowed the plaint to be amended. There is a judgment of the Privy Council which also perhaps throws some light on this matter, and that is (1889) ILR 17 580 (Privy Council). In that case the suit was by three co-plaintiffs, and one of the points urged before the Privy Council was that the plaint was signed and verified by one plaintiff alone, and the answer given in the judgment of the Privy Council was that was immaterial as there was no rule providing that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint. The rule requiring a plaint to be signed applies to all the plaintiffs, and if the Privy Council thought that the failure of one of the co-plaintiffs to sign the plaint was immaterial, it clearly shows that the Privy Council considered this a merely formal error and not a serious defect which went to the root of the matter and which vitiated the whole institution of the suit to such an extent that the Court must consider that the suit was not properly instituted at all if Sir John Beaumont was right in the view that he took, then the suit before the Privy Council was never instituted as far as the co-plaintiffs were concerned. Therefore, with very great respect, in my opinion the learned Chief Justice was in error in the view that he took. Ordinarily I would have been bound by his judgment as a judgment of co-ordinate authority, but there is the judgment of Mirza, J., and also the judgment of the Privy Council to which I have referred. With respect I prefer the judgment of Mirza, J., in Nanjibhai v. Popatlal (supra).

23. Similarly, in the decision in case between All India Reporter Ltd., Bombay with Branch Office at Nagpur v. Ramchandra Dhondo Data, AIR 1961 Bom. 292, the Bombay High Court observed, inter alia, that:

The provisions contained in Order 6, Rules 14 and 15 Civil P.C. With regard to signing and verification of plaint are mere matters of procedure and if a plaint is not properly signed or verified but is admitted and entered in the register of suits it does not cease to be a plaint and the suit cannot be said not to have been instituted merely because of the existence of some defects or irregularities in the matter of signing and verification of the plaint.

If defects in regard to the signature, verification or presentation of the plaint are cured on a day subsequent to the date of filing the suit, the date of institution of the plaint is not changed to the subsequent date. The date of institution of the suit or the date from which an amendment takes effect does not depend on the discretion of the Court of course, the Court has a discretion to allow or not to allow an amendment of the pleadings or the resigning or re-verification of the plaint. Once, the discretion is exercised the amendment of the plaint or the fresh signature or verification of the plaint relates back to the original date of the suit. In other words, the original date of institution of the suit is not affected by the amendments of the plaint or the fresh signature or verification of the plaint. It is also open to a Court to say that it provisionally allows an amendment of the plaint and that the question whether or not to allow the amendment of the plaint or its re-signing or revivification would be finally decided later. In such a case it is only the final order of the Court that has to be considered and not the provisional order. But once the amendment of the plaint is allowed, the question of limitation cannot be reserved.

In order to comply with the rules regarding verification contained in Order 6, Rule 15, it is not sufficient that the plaint is verified by someone authorised by the plaintiff. It must be verified by the plaintiff, or one of the plaintiffs, or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. But the omission to verify a pleading is a mere irregularity and a pleading which is not verified as required by Order 6, Rule 15 may be verified at any later stage of the suit, even after the expiry of the period of limitation. Case law referred.

24. From the above-discussion, it comes out that the objection raised by the petitioner in light of Order 6, Rule 14 and Rule 15 is without merits and is unsustainable and that such defect is procedural irregularity and it cannot be raised to the level of violation of substantive right and the procedural requirement cannot be characterized as substantive requirement that its non-compliance would render the pleadings, i.e. the plaint or the written statement meaningless so as to entail rejection of plaint/suit or the reply.

25. When the impugned order is examined in light of the said observation, it is noticed that the learned first appellate Court has, upon being satisfied with the explanation urged by the respondent in exercise of jurisdiction and discretion, allowed the plaintiff - present respondent to sign the plaint and to tender the affidavit, i.e. to cure the defect. In this view of the matter, this Court would not interfere with such decision and exercise of jurisdiction and discretion, more particularly in view of the fact that when the plaint was originally presented, it was duly signed by the original plaintiff.

26. It also appears that the defect which remained in submitting the amended plaint (i.e. memo was not duly signed and was not accompanied by affidavit), came to the notice of the plaintiffs after the plaintiffs received the judgment and decree, wherein the said aspect was emphasized by the learned trial Court. It

appears that it was in view of the observations by the learned trial Court in the judgment and decree that the plaintiffs/appellants submitted application Exh. 16 before the learned first appellate Court.

27. When the impugned order passed below Exh. 16 is examined in light of the facts and circumstances of the case, it emerges that the reasons and conclusions by the learned trial Court in the said order cannot be faulted and cannot be said to unreasonable or unjust and it cannot be said that the learned Court has exercised the jurisdiction and the discretion illegally or arbitrarily or with material irregularity. In this view of the matter, the petition fails and does not deserve to be entertained but deserves to be rejected and is accordingly hereby rejected. Notice is discharged.