
(1960) 10 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision Case No. 444-D of 1956

Shiv Shankar Lal Amba Parshad

APPELLANT

Vs

Behari Lal Bansi Dhar and Others

RESPONDENT

Date of Decision : 06-10-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8

Citation : AIR 1961 P&H 111

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : R.S. Narula, for the Appellant; Bishambar Dayal and Keshav Dayal, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—To appreciate the points raised in this petition for revision filed by Shiv Shankar Lal, proprietor of the firm Gulab Singh-Gopal Rai, it is necessary to give a brief narration of the events preceding the order of the learned Subordinate Judge dated 10th of November 1956, which is the subject-matter of this revision.

2. On 8-7-1950, a contract was effected between the plaintiff-firm Behari Lal Bansi Dhar and defendant No. 1, Messrs. Babu Ram Hari Chand, for the supply of goods. It was said that the firm of defendant No. 1 offered to supply the goods but the plaintiff-firm refused to accept delivery. Both parties being members of the Karyana Committee, an appeal was made to it by defendant No. 1 with the object of persuading the plaintiff to take delivery. The Karyana Committee, according to its rules, appointed two arbitrators, who are defendants Nos. 4 and 5 in the suit. On 7th of December 1950, the arbitrators gave an ex parte award for a sum of Rs. (Illegible) in favour of defendant No. 1" against the plaintiff. The plaintiff made an application to the Karyana Committee to set aside the award; Karyana Committee being the appointing authority of the arbitrators.

The Karyana Committee directed the plaintiff, in accordance with the rules, to make payment of the amount awarded against it before dealing with the complaint. The plaintiff deposited the amount and subsequently the Karyana Committee appointed another set of arbitrators to decide the matter in dispute. On 1st of June 1951, the case was retried by the arbitrators who by their award dated 11th of September 1951 again gave an award in favour of defendant No. 1 against the plaintiff. It is the case of the petitioner that the amount deposited by the plaintiff was paid to defendant No. 1. The plaintiff firm then sought its remedy in a Court of Law which by its order dated 29th of January 1953 set aside the award which had been made by the arbitrators,

3. The only remedy of the plaintiff now was to bring a suit for recovery of the amount which had been paid by it to the Karyana Committee in pursuance of the award. This suit was brought on 25th of January 1954 for recovery of Rs. 1,752-1-3, inclusive of interest. This suit, in the first instance,

was instituted against the firm, defendant No. 1, its proprietors and the Karyana Committee. The service on the Karyana Committee was effected through the present petitioner, Shiv Shankar Lal, who was its President. Shiv Shankar Lal filed a written statement on behalf of the Karyana Committee pleading inter alia, that the Karyana Committee not being a registered body no suit can be brought against it as it was not a legal entity.

It was also pleaded on merits that the amount which had been awarded had actually been paid to the firm defendant No, 1. Thereafter, the plaintiff impleaded defendants Nos. 2 to 355 as defendants, being the members of the Karyana Committee. All these defendants are partnership firms. Summonses were issued to all the defendants.

4. Subsequently, the plaintiff made an application under the provisions of Order 1. Rule 8 of the CPC to sue the defendants through the petitioner, Shiv Shankar Lal, who happened to be the President of the Karyana Committee. The Court by its order dated 6th of April 1956 acceded to the prayer made by the plaintiff and permitted the plaintiff to sue the defendants through the President of the Karyana Committee. Shiv Shankar Lal later applied to the Court that the order had been made without his consent and he was not agreeable to be sued in a representative capacity.

It is not disputed that Shiv Shankar Lal petitioner as proprietor of the firm, Gulab Singh-Gopal Rai, was already a defendant in the suit. The trial Judge rejected the application of Shiv Shankar Lal on 10th of November 1956 and he has now come in revision to this Court.

5. It has been urged by Mr. Narula, the learned counsel for the petitioner, that all the members of the Karyana Committee having been impleaded as defendants It was not competent for the Court to make an order at the instance of the plaintiff under Order 1, Rule 8 of the Code of Civil Procedure. Under Rule 8 of the Order 1.

"where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested."

Mr. Narula also contends that there was no identity of interest between the defendants. I am unable to subscribe to this proposition. It is well to remember that the defendants were impleaded as members of the Karyana Committee. It is irrelevant what each of the 355 defendants may have thought about the merits of the plaintiffs case. All that is essential to see is that their interests are not separate and distinguishable from the Karyana Committee of which they were all members.

6. Mr. Narula further argued that all the defendants having once been impleaded, it could not be said that they were "numerous" persons. In support of this argument, he cited a Division Bench authority of the Madras High Court in *Narayanan Namburi v. Narayanan Namburi* ILR 2 Mad 328. In the judgment of the Bench, it as observed thus :

"Section 30 contemplates the case of parties too numerous to be conveniently made parties to the suit. There is no limit fixed certainly to the number by Section 30; each case must depend partly upon whether the Court considers that the number interested is too great to be conveniently made parties....."

It is sought to be inferred from this observation that where the number is fixed and parties impleaded, the Case is not attracted by the provisions of Order 1, Rule 8, as the parties are not numerous. It may be that at a particular period of time, It could be determined who the members of the Karyana Committee were. It cannot, however, be overlooked that essentially the membership of the Karyana Committee is fleeting and indeterminate. Many new members may be added and some persons in a firm may have died. The order of the trial Judge, therefore, cannot be assailed on the ground that the defendants were not too numerous to be represented by a single individual.

7. It is next contended by the learned counsel that an application for bringing a representative to defend the suit could have been made only at the instance of the defendants or any one of them. In my opinion, the application was essentially one for seeking permission of the Court for the defendants to be sued in a representative capacity. It may be that the original suit may have been framed differently but no time limit is set for making an application under Order 1, Rule 8. There is authority for the proposition that permission may be accorded even at the appellate stage.

I see neither reason nor principle in support of the proposition that the plaintiff's decision to implead all the possible defendants is irretrievable and would preclude him from making a subsequent application for seeking permission of the Court to appoint a representative who could be sued for the defendants. The circumstances of this case, in my opinion, are such that the exercise of discretion

by the Court cannot be characterised to be either unreasonable or perverse. It may be that Shiv Shankar Lal is not agreeable to be sued as a representative of the members of the Karyana Committee. A suggestion was made that he is no longer the President of the Committee.

This, however is not a decisive consideration in the case. It was open to the Court to appoint any member of the Karyana Committee as a representative of all its members. Shiv Shankar Lal. at the time of his appointment, was the President and this was sufficient justification for the order made by the trial Judge on 6th of November 1956. Mr. Bishambar Dayal has invited my attention to a Division Bench judgment of Mukerji and Graham JJ. in Ismail Munshi and Another Vs. Niamat Khan and Others, where it was held that "an order for representation under Rule 8 may be made by a Court notwithstanding that it is objected to by the person who is asked by the Court to represent the public."

8. Lastly, it was urged by Mr. Narula that it was imperative for the Court to send a notice to the defendants that Shiv Shankar Lal was to be appointed as their representative. The language of Order 1, Rule 8 only enjoins the Court to send notice of the institution of the suit to all such persons and it was not obligatory on it to send notice of the fact that Shiv Shankar Lal was being chosen to represent the defendants.

9. In my view, there is no merit in this petition which must fail and is dismissed. I would, however, leave the parties to bear their own costs.