

(1984) 03 GUJ CK 0024

In the Gujarat High Court

Case No : Civil Revision Application No. 410 of 1984

Sizing Materials Chemicals and Electronic Ltd.

APPELLANT

Vs

Asitkumar Rameshchandra Mehta

RESPONDENT

Date of Decision : 15-03-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Limitation Act, 1963 — Section 21

Citation : AIR 1984 Guj 179

Hon'ble Judges : S.L. Talati, J

Bench : Single Bench

Advocate : J.T. Trivedi, for the Appellant;

Judgement

1. The petitioner, original defendant 2, challenges the order and decree passed by the Ahmedabad Small Cause Court No. 9 in Summary Suit No. 1280 of 1979 decided on 14-1-1983 as confirmed by the Bench of the Small Cause Court, Ahmedabad in Application No. 24 of 1983 decided on 20th Feb. 1984.

2. It appears that original plaintiff respondent herein had filed a summary suit to recover a sum of Rs. 1900/- and odd against defendant I as the air-conditioner was repaired. All correspondence etc. continued between the plaintiff and defendant 1. Ultimately when leave to defend application was filed, the plaintiff chose to add defendant 2 as a party in the year 1981 as it was revealed that the air conditioner belonged to defendant 2. The Small Cause Court, it appears, passed a decree the defendants, while the Bench of the Small Cause Court partly allowed the application and set aside the decree passed against defendant I it passed a decree against defendant 2 only for a sum of Rs 1875/-. Filing this revision application.

3. It is submitted that in view of O. 1 R. 10 of the Civil P. C. the liability of defendant 2 could only begin when the summons of the suit was served on him and under these circumstances the suit, so far as defendant 2 was concerned, was barred by law of limitation. Emphasis is laid on sub-section (5) of O. 1 R. 10

of the Civil P. C. that runs as under:

"(5) Subject to the provisions of the Limitation Act, 1877, S. 22, the proceedings as against any person added as defendant shall be deemed to have begun, only on the service of the summons."

4. To this proposition of law, there could be hardly any controversy. Two judgments are cited in support of this contention. One is the case of Indu Bhushan Chakravarty Vs. Hareram Narayan Deo and Others, where it is laid down as under:

"Addition of defendant by amendment of plaint - Limitation in relation to claim as against such defendant commences from the date of service of summons on him -Order allowing amendment not making amendment subject to limitation is immaterial."

5. The second case to which reference is made is the case of Bundu v. Smt. Hashmat, a new plaintiff or defendant is Bundu Vs. Smt. Hashmat, . There the case was a case under O. 6 R. 17 where the position would be entirely different.

6. Now the facts of this particular case are required to be appreciated properly and the Small Cause Court and the Bench of Judges of the Small Cause Court appreciated the facts. It was clear to them That defendant 1 was a Director of a Limited company which was defendant 2. It is true that a company is a separate legal entity. However, the facts reveal that in the bungalow in which defendant 1 resided, the company had its office. Now that, therefore, from the same premises the transactions were being carried on, defendant 1, who was the Director of the company-defendant 2, carried on correspondence and ultimately got the air-conditioner of defendant 2 repaired from the plaintiff. It is also true that defendant 1 gave a cheque which was signed by defendant 2 on 19-5-77. It is, therefore, urged that the plaintiff should have known that the air-conditioner belonged to defendant 2. The fact remains that all throughout residing in the same premises, defendant 1 dealt with the air-conditioner and with the plaintiff though technically the air-conditioner belonged to defendant 2. Defendant 2 is expected to carry on the transactions through its Managers or Directors and the liability would always be of defendant 2. To a person, who was a repairer, if he believed that the Director, who was dealing with the air-conditioner and bringing it from the same premises thought that the air-conditioner belonged to defendant 1 and filed a suit against defendant 1, can it be ever suggested that if he thought that the air-conditioner belonged to defendant 1 he was under a mistaken belief? If he was under a mistaken belief that the air-conditioner belonged to defendant 1, and if he filed suit against defendant 1, the immediate question which is required to be answered is, whether can he or can he not correct his mistake? S. 21 of the Limitation Act is drafted with a specific purpose to meet with such eventualities. S. 21 of the Limitation Act runs as under:

" 21. (1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been

instituted when he was so made a party.

Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date."

Now if therefore the original plaintiff committed the mistake in filing a suit against defendant I because he was throughout dealing with defendant 1 in regard to this particular air conditioner, should he or should he not be allowed by the Court to correct his mistake. The immediate question which is posed by the learned Advocate for the petitioner is that at what point of time should he be allowed to correct that mistake because, according to him, though leave to amend application was filed as back as in the year 1979, the amendment application was given in the year 1981. This is bagging the question. The real controversy and the real question is whether initially mistake was committed or not, and whether that mistake was in good faith or not. Correction of a mistake, which was committed in good faith, does not require any particular time limit, which is laid down. It is for the Judge, who allows the correction, to decide at that particular stage or at any subsequent stage when the evidence comes before him whether that particular mistake which was originally committed in good faith was required to be allowed to be corrected in view of S. 21 of the Limitation Act. If that is so done by the trial Court and confirmed by the Bench, is it necessary in such a case to interfere at this stage in a revision application where what has been done is that a repairer has been awarded a decree for the labor that he put in? The learned Advocate appearing on behalf of the petitioner drew my attention to a case of *Munshi Ram v. Narsi Ram* (1983) 20 GLT 136 (Sc). In fact that is a ruling, which goes against him. It lies down as under:

"It may be noted that the provision corresponding to S. 21 of the Act in the Limitation Act, 1963 which was repealed and replaced by the Act was S. 22 of the Limitation Act, 1908.

It is clear from the foregoing that there was no provision corresponding to the proviso to sub-section (1) of S. 21 of the Act in S. 22 of the repealed Act. Under the former Limitation Act when after the institution of a suit a new plaintiff or defendant was substituted or added, the suit as regards him was to be deemed to have been instituted when he was so made party. The severity of the above law is sought to be reduced by the introduction of the proviso to S. 21(1) of the Act which provides that where the court is satisfied that the omission to include was made in good faith it may direct that the suit as regards such plaintiff or defendant should be deemed to have been instituted on any earlier date.. This change in S. 21 of the Act appears to have been made so that an omission to include a person owing to a bona fide mistake does not deprive a plaintiff of his rights against that person if the court is satisfied in that behalf.

If such mistake is made in good faith, the proviso to "S. 21 (1) of the Act would

be attracted....."

Now that therefore when initially the day on which the suit was filed a mistake was committed in good faith, that mistake is required to be corrected, and the Court may allow that mistake to be corrected and put any date, not necessarily the date on which the amendment is allowed, not necessarily the date on which the services were made, not necessarily the date of filing of the suit, but any date the Court thinks fit in the peculiar facts and circumstances of the case. Now that therefore, even if some other date was fixed, the suit would have been within limitation, because at the earliest, the plaintiff might have come to know if his lawyer explained to him that well, this is the leave to amend application and this is what it means. If the amendment relates back even to that date if the Judge so decided the suit would have been within limitation. Now, therefore, when considering the provisions of S. 21, the Small Cause Court Judge came to the conclusion that this, was a mistake committed in good faith on appreciation of the facts as confirmed by the Bench. I think it is not open in revision to interfere in such a matter by this Court. Under the circumstances, this revision application fails and is dismissed.

7. Petition dismissed.