
(1988) 08 BOM CK 0017

In the Bombay High Court

Case No : Chamber Summons No. 414 of 1988 in Suit No. 3607 of 1986

State Bank of India

APPELLANT

Vs

Podar Mills Ltd. and others

RESPONDENT

Date of Decision : 08-08-1988

Acts Referred:

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

Citation : AIR 1989 Bom 215 : (1989) 59 FLR 482

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Judgement

G.H. Guttal J.

1. This chamber summons is by the Rajasthan Trade Union Kendra which represents the interest of the workers employed by defendant No. 1. They seek an order that they be joined as defendants to the suit. They claim that they ought to be joined as defendants as their presence before the court is necessary in order to enable the court effectively and completely to adjudicate upon and settle all the questions involved in the suit (Order 1, rule 10(2)).

2. The plaintiff, a bank, has instituted this suit against defendant No. 1, inter alia, for the recovery of a sum of Rs. 14,76,08,669.18 and interest. Defendant No. 1 is a company, defendant No. 2 and defendant No. 3 are directors, defendant No. 4 and defendant No. 5 are National Textile Corporation Ltd. and National Textile Corporation (South Maharashtra) Ltd., respectively. By the order dated March 8, 1988 (see Stage Bank of India v. Podar Mills Ltd. [1989] 66 Comp Cas 895 (Bom), in the Notice of Motion No. 337 of 1987 taken out by the plaintiffs, this court appointed a receiver for the immovable property of defendant No. 1, situated at Jaipur together with the machinery, goods, stock, etc.

3. The applicants' case is based on these averments :

4. The Central Government has taken over the management of Podar Mills

(Process House) at Bombay under the Textile Undertakings (Taking Over of Management) Act, 1983. The production in the Jaipur unit came to a total halt on August 2, 1985. The workers' salaries for the months of June and July, 1985, are still unpaid. The workers hold a decree in their favour for a sum of Rs. 14,34,000. A total amount of Rs. 4,25,00,000 inclusive arrears of wages and gratuity is claimed as due and payable by defendant No. 1.

5. The applicants claim that the workers are keen to restart the mill and have approached the appropriate authorities of the State Government as well as the Central Government. The Ahmedabad Textile Industries Research Association, in an exhaustive survey, has concluded that the Jaipur unit is technically viable. The workers claim that they are confident of working the mills to its full capacity the possibilities of which are being discussed with the State Government of Rajasthan and various financial institutions. An application has been made to the State of Rajasthan and the Central Government to permit the workers to run the Jaipur unit. If, in these circumstances, the court receiver sells or disposes of the machinery or other assets which are the means of production and source of the livelihood of the workers, the entire exercise of the applicants will become infructuous.

6. Mr. Singhavi, learned counsel for the applicants, drew my attention to the Judgment of the Supreme Court in *Workmen of Rohtas Industries Ltd. v. Rohtas Industries Ltd.* [1987] 62 Comp Cas 872 and urged that in the circumstances of this case, the applicants ought to be joined as defendants to this suit. On the other hand, counsel for the plaintiffs drew my attention to the subsequent judgment of the Supreme Court in *Workers of Rohtas Industries Ltd. v. Rohtas Industries Ltd.* [1989] 65 Comp Cas 350 (SC) and urged that the Supreme Court itself has held that the earlier decision in *workmen of Rohtas Industries Ltd.* [1987] 62 Comp Cas 872 "was made under peculiar circumstances obtaining in this case and may not be taken as a precedent." Therefore, he urges that the *Workmen of Rohtas Industries Ltd.* [1987] 62 Comp Cas 872 (SC) does not assist the applicants. He, then, relied upon *Virbhadrappa Shilvant v. Shakabai Harun Sayed Ahmed Arab* AIR 1939 Bom 188: 41 BLR 249 and *Jivanlal Damodardas Wani Vs. Narayan Ukha Sali*, and urged that unless the applicants are able to show that no decree can be passed in the suit without affecting their rights, it cannot be said that the applicants are necessary parties.

7. The application is made under the provisions of Order 1, rule 10(2) of the Code of Civil Procedure. The name of a person may be added as the plaintiff or the defendant, if such person "ought to have been joined" as the plaintiff or the defendant "in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit." (Order 1, rule 10(2))

8. The necessity of the presence of the applicant before this court for the purposes set out in Order 1, rule 10(2) has to be judged having regard to the nature of the suit, the manner in which the decree may affect the applicant and the need to avoid multiplicity of suits. For example, in a suit relating to

immovable property, a person having proprietary right in any capacity either as trustee, mortgagee, or lessee, etc., may become a necessary party. Order 1, rule 10(2) covers not only such persons, but all persons who are likely to be biased by a decree that may be passed. If a person is likely to be biased or prejudiced by the decree in the suit, he has an interest in the subject-matter of the suit and his presence will enable the court to adjudicate upon and settle all the questions involved in the suit. The court's power under Order 1, rule 10(2) of the CPC has to be so exercised as to enable the court to "completely adjudicate upon and settle all questions involved in the suit." Another significant feature of Order 1, rule 10(2) is that the words "between the parties to the suit" have not been employed by the Legislature to qualify the words "completely adjudicate in the suit."

9. Consider now the tests that have been applied by judicial decisions for determining whether a person may be added as a party. One of the tests is to see whether the suit or a part of the suit can be dismissed if the applicants' claim is upheld. For instance, where, in an administration suit, the original parties did not dispute one another's status as heirs, an applicant who claims to be the sole heir of the deceased can be joined as a defendant because if his claim is established, the suit will be dismissed, *Maung Tin v. Maung Po Htoo* AIR 1927 Ran 192 and *Ramaswamy Chettiar v. P. M. A. Vellayappa Chettiar* AIR 1931 Mad 357 . For the same reason, in a suit to recover debts due to the partnership firm, the legal representatives of a deceased partner were held to be necessary parties (*Shrikrishan Moolchand Vs. Deokinandan Sardharam and Others*,).

10. Another principle is that an applicant may be joined in a suit in order to avoid multiplicity of suits and such an applicant may not be compelled to file a separate suit to establish his claim, *Maung Tin v. Maung Po Htoo* AIR 1927 Ran 192.

11. The words employed in Order 1, rule 10(2) are "questions involved in the suit." The Patna High Court has held that the words "settle all the questions involved in the suit" mean all material questions arising from the subject-matter of the suit which affect not only the plaintiffs and the defendants but also third parties who may apply to be impleaded (*Bindeshwari Chaudhary Vs. Dr. Sheo Nandan Upadhyaya and Others*,).

12. The general principle that emerges is that a third party whose claim, if upheld, will result in the dismissal of the whole or a part of the suit, should be added "as a party. Such a person may be said to have interest in the subject-matter of the suit.

13. This suit by the plaintiff bank is for recovery of the debt, if necessary, by selling the property mortgaged and/or hypothecated with them. What Interest do the applicants representing the workers have in the subject-matter of the suit ? In order to answer this question, the nature of the reliefs sought may be first considered.

14. Defendant No. 1 borrowed from the plaintiffs a sum of Rs. 14,76,08,669.18

by mortgaging immovable property in which the factory is situated and by hypothecation of the movables, viz., machinery used for production of the goods. It is a prayer (c) in the plaint that is of significance to the applicants' case. By this prayer, the plaintiffs seek a decree that the immovable property, viz., the premises of the factory where the applicants work be sold and the sale proceeds applied towards the satisfaction of the plaintiffs' claim. Prayers (d) and (e) seek a decree that the movables including the machinery be sold and the sale proceeds applied to satisfy the plaintiffs' claim. Therefore, prayers (c), (d) and (e) of the plaint, if granted, would result in the sale of the premises of the factory and the machinery. The workmen earn their livelihood by working on the machines. There is, thus, a nexus between the workers, the machinery and the land on which the machinery is kept. If the machinery and the land are sold, the workers lose the source of their livelihood. This is the connection between the workers and the property which has been mortgaged and/or hypothecated to the plaintiffs.

15. In the case of *Workmen of Rohtas Industries Ltd.* [1987] 62 Comp Cas 872, the Supreme Court, while recognising that the stock of goods was pledged with the bank which had a priority of claim, emphasised that "these stocks were the products of this industry before its closure and, therefore, the workers also contributed their labour and it is the result of their hard work that these stocks could be produced." Then, they went on to observe that the workers' "subsistence and living is also perhaps of paramount importance and has to rank with highest priority." No doubt, in a subsequent judgment in *Workers of Rohtas Industries Ltd. v. Rohtas Industries Ltd.* [1989] 65 Comp Cas 350 (SC), the Supreme Court clarified that the order referred to above was made "under peculiar circumstances" and may not be taken as a precedent. In this suit, this court is not called upon to order any payment to the workers. The order of the Supreme Court was that the workers shall be paid out of the sale proceeds of the stock hypothecated with the bank. The need to clarify the earlier order arose out of the submission made by the official liquidator that there was, in respect of the goods, a liability for payment of sales tax and excise duty. It is in that context that the Supreme Court referred to the peculiar circumstances and said that the judgment should not be considered as a precedent. The observations of the Supreme Court in regard to the workers' livelihood are of importance not because the payment was ordered to be made to the workers out of the sale proceeds of the hypothecated goods, but because the observations establish the nexus between the workers' labour and the goods produced by such labour. The observations of the Supreme Court have shaken the validity of the traditional concept that in a fight between a company and its creditors, the workers' presence is irrelevant. This is the significance of the observations of the Supreme Court. It should be borne in mind that I am called upon to decide the limited question whether the workers and their representative union are necessary or proper parties to the suit where the decree in favour of the plaintiffs deprives the workers of the source of their livelihood.

16. The relevance of the workers' presence in a dispute between the company and its creditors was once again highlighted by the Supreme Court in an enterprise like defendant No. 1, the workers who supply labour are as much interested in the enterprise as are those who supply the capital. They are not mere vendors of toil. They are producers of wealth as much as capital. In the modern days when the workers' participation in the management is encouraged, it is idle to contend that the workmen have no locus in a dispute of this nature (National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others,).

17. The Supreme Court went on to amplify the nature of the workers' interest in the enterprise and the continued existence of the industry. "It is plain that the future of the workers is at stake and their right to work is in jeopardy as a result of the presentation of the winding up petition. Unlike the shareholders to most of whom the shares they hold represent mere investments and to some of whom the means to control the affairs of the company, to the workers, the life of the company is their own and its welfare is theirs. They are so intimately tied up that their interest in the survival and the well-being of the company is much more than the interest of any shareholder (National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others,)." If, therefore, the very existence of the workers is under a threat of extinction, it cannot be said that the workers should not be heard. A similar view was taken in Fertilizer Corporation Kamgar Union v. Union of India AIR 1981 SC 344.

18. It is, no doubt, true that the cases before the Supreme Court arose out of winding up petitions under the Companies Act. This fact is not of much significance, for, the Supreme Court was considering the workers' right generally. The Supreme Court took into account factors like "the future of the workers", "their right to work", "their interest in the survival and well being of the company" and so on. It is these factors which have changed the context of the relationship of the worker to a suit or legal proceeding affecting his survival.

19. Consider how this relationship is intimately connected with the reliefs sought in this suit. If the machinery is sold, the workers' right to work, to earn wages and to participate in the management come to an end. Therefore, they are interested in preserving not only the machinery which provides their livelihood but also the land and buildings in which such machinery is housed. It is this interest of the workers that makes them necessary parties to a suit of this nature.

20. Three judgments relied upon by counsel for the plaintiffs need to be considered. In Virbhadrapa Shilvant v. Shekabai Harun Sayed Ahmed Arab AIR 1939 Bom 188: 41 BLR 249 , Jivanlal Damodardas Wani Vs. Narayan Ukha Sali, and Razia Begum Vs. Sahebzadi Anwar Begum and Others, , it was held that a person may be added as a party provided he has "direct interest in the subject-matter of the litigation." That is undoubtedly true.

21. The question whether a person has interest in the subject-matter of a suit

cannot be considered in vacuum. The nature of the reliefs, their impact on the person seeking to be added as a party, the context in which the claim to be joined arises, are factors of fundamental importance. For instance, at a given point of time, the person - the worker - may have no interest in the subject-matter of the proceedings. But times change - so does jurisprudence. This is demonstrated by changes in the law. The industrial undertaking belongs to the employer; yet his freedom to close it down is now restricted by law. He has to seek the permission of the Government. The Government cannot grant it without hearing the workmen. (Section 250, Industrial Disputes Act)

22. In the past, law has been adapted to changing conditions. When Black burn J. formulated the rule in *Rylands v. Fletcher* [1868] LR 3 HL 330, he was adapting the principles of tort liability to the era of expanding industrial enterprise in a once predominantly agricultural society. Studies in the Law of Torts Essay on *Rylands v. Fletcher* [1926] Prof. Bohlen, What was once upon a time regarded as tort of conspiracy is now juridically recognised as a legitimate weapon of collective bargaining by workers, *Crofter Hand Woven Harris Tweed Co. Ltd. v. Veitch* [1942] 1 All ER 142The Supreme, Court's observations manifest the conceptual change in regard to the employees" locus in matters involving the property owned by their employer.

23. Mr. Thakkar relied upon the order of this court in chamber summons No. 493 of 1983 taken out by a trade union - Bharatiya Kamgar Sena - for impleading them as parties to the suit. The court distinguished the judgment of the Supreme Court on the ground that the suit was not for the purpose of closing down the enterprise of the defendants. The court permitted the trade union to make such application as it thinks proper in the event the defendant company chose to close down the factory. The chamber summons was dismissed. I do not see how this order assists the plaintiffs, especially in view of the Supreme Court's observations which establish a nexus between the claim of the workers and the subject-matter of the suit. The reliance placed on the order is misconceived.

24. In the light of the considerations formulated and emphasised by the Supreme Court in relation to the workers" right, the nexus between the claim of the workers and the reliefs in the suit is established. Suppose the workers succeed in their efforts to revive and rebuild the industry, they will be able to produce the goods and increase the wealth of defendant No. 1. In that event, the plaintiffs will be able to realise the debts without selling the security. Consequently, the claim in regard to the sale of the mortgaged and hypothecated property may be rejected. This suit was filed in 1986. It is possible for the workers to revive and revitalise the mills and make it a profitable enterprise. All this can happen before the suit is heard and disposed of in the ordinary course.

25. Having regard to the decisions of the Supreme Court and in view of what I have said in the foregoing paragraphs, I have no doubt that the applicants have "a direct interest in the subject-matter" of this suit, limited though it is to the sale of the mortgaged and hypothecated property. The applicants are necessary

parties to the suit.

26. For all these reasons, the applicants' chamber summons No. 414 of 1988 is made absolute in terms of prayers (a) and (b). The plaintiffs shall carry out the amendments to the plaint consequent upon this order within two weeks from today. Prayer (c) does not survive in view of the disposal of this chamber summons. There will be no order as to costs. This order shall not come into operation for four weeks from today.