(1962) 11 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Civil Original No. 29 of 1961

The Bande Matram Publishers Ltd. — APPELLANT

Vs

Shri Mohan Singh Sawhney, Managing Director — RESPONDENT

Date of Decision : 09-11-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Companies Act, 1956 — Section 543
Limitation Act, 1963 — Section 22

Citation : AIR 1963 P&H 196

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : D.N. Awasthy, for the Appellant; B.R. Tuli, for the Respondent

Final Decision : Allowed

Judgement

Tek Chand, J.—This is a petition u/s 543 ot the Companies Act, I of 1956. The petition is intituled "The Sande Matram Publishers Limited (in liquidation) through Shri Parkash Chand Mahajan, Officiaf Liquidator .... Petitioner". Respondent has been described in the heading as "Shri Mchan Singh Sawhney, Managing Director of the petitioner Company ..... Respondent." At the end of the petition, the signatory is "P. C. Mahajan, Official Liquidator, the Bande Matram Publishers Limited (in liquidation)". The verification is by "P. C. Mahajan, Official Liquidator". This petition was filed on 28th August 1951 and in the written statement filed on behalf of the respondent, preliminary objection has besn taken to the effect that the petition by the company is not maintainable; and that it should have been by the Official Liquidator. Section 543 empowers the Court to assess damages against delinquent directors, etc. "on the application of the Official Liquidator or the liquidator, or of any creditor or contributory," made within the time specified in that behalf in Sub-section (2). On 24th August 1962, I framed the following issue--

Is the present petition competent?

2. After the above issue was framed, a petition has been presented to this Court under Order I, Rule 10 read with Section 151, Civil Procedure Code, praying that it was a case of ''bona fide'' mistake in the description of the name of the petitioner in the petition and in fact the petitioner was Official Liquidator of the Bande Matram Publishers Ltd. (in liquidation). It was prayed that opportunity may be given to correct misdescription and in place of the words "The Bande Matrani Publishers Ltd. (in liquidation) through Shri Parkash Chand Mahajan, Official Liquidator," the words "Shri Parkash Chand Mahajan, Official Liquidator, The Bande Matram Publishers Ltd. (in liquidation)", should be read.

It was submitted that it was a formal defect and in the ends of justice and equity it may be permitted to be removed as it has crept in through a ''bona fide'' mistake. In this petition, it was prayed that the correction in the description may be allowed. This application has been opposed by the respondent. Mr. B. R. Tuli has argued that apart from the heading of the main petition, in paras 1, 2 and 8, the company has been styled as "the petitioner company", the correct description should have been "the company" or "the company (in liquidation)" if the petitioner had teen the Official Liquidator, and not the company (in liquidation). He has also adversely commented on the description of the respondent as Managing Director of "the petitioner company". In view of the error having been repeated in the body of the petition in the several paras mentioned above, it is maintained that the error is not bona fide. He has contended that it is deliberate.

He has referred to AIR 1935 79 (Privy Council) and In Re Winterbottom, Ex Parte Winterbottom (1886) 18 QBD 446. In the last mentioned case, it was held that the form of the notice must comply strictly with the provisions of Section 95 of the Companies Act, 1852 and that its substantial compliance was not sufficient. The notice, not being in the name of the company, was consider-ed to be bad. It was held that the liquidator appointed in the voluntary winding-up of a company may serve a bankruptcy notice, under the Bankruptcy Act, 1883, upon a judgment-debtor of the company.

Mr. Tuli also cited a decision of the Lahore High Court reported in the Northern Bank of India, Ltd. v. Ramesh Chander AIR 1932 Lab 314, and Madhosingh v. Union of India AIR 1955 Raj 57, for the proposition that if the suit is filed against the manager or agent of the railway, and if it appears that the intention was to use the railway, it may be possible in an appropriate case to hold that the name of tha defendant originally put down was merely a misdescription. In such a case if the suit is filed within limitation but there is misdescription of the defendant''s name and the description is corrected after the limitation for the suit the suit is not barred by but the amendment relates back to the date when the suit was originally filed. But this principle has no application, when the suit was originally filed against A in his name, who was described as the manager of the particular railway, and in one of the paragraphs of the plaint it was said that the suit was being brought against the defendant i.e. A as he was the manager of the railway by the train of which the accident had been caused, and that the plaintiff was entitled to recover the amount of damages from him. It was held that this was not a case of misdescription. In such a case, the substitution of the right defendant, long time after the expiry of the limitation for the suit would not avail the plaintiff.

3. Mr. Tuli has further urged that tinder Section 543, Sub-section (2), the period of limitation for such an appli-cation is 5 years from the date of order for winding up or of the first appointment of the liquidator in the winding up. The main petition, Civil Original No. 29 of 1981 was admittedly filed within limitation but the application under Order I, Rule 10 was made on the 24th August, 1962 beyond the period of limitation. My attention was drawn to Section 22 of the Indian Limitation Act which is to the effect that 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. The suit shall, as regards him, be deemed to have been instituted ,when he was made a party.

I have been referred to AIR 1932 Lah 314. This was a case of a pronote executed by two persons and the plaintiff had impleaded as defendants one of the executants and widow of another, and on a denial by the widow that she was the legal representative of her husband, the name of the minor son of the deceased in place of the widow''s name was substituted but after the period of limitation for the suit had expired. On these facts it was held that the provisions of Section 22 were attracted and the suit was barred by limitation. In this decision the name of the minor son was brought on the record for the first time after the limitation of the suit had expired. The minor son nowhere, figured as a party previously.

4. Mr. Awasthy, learned counsel for the petitioner, points out that there has been substantial compliance with Section 543 despite the heading being defective. The Court has to be moved u/s 543 "on the application of the official liquidator". At the end of this application the applicant signed styling himself as "Official Liquidator, The Bande Matram Publishers Ltd. (in liquidation)". The grievance is that in the heading of the petition also the petitioner should have been similarly styled and in the body wherever the word ''petitioner'' before ''company'' has occurred, it ought to have been omitted as the petitioner has to be the Official Liquidator and not "the petitioner company".

The question is whether this misdescription is fatal u/s 543 or is remediable by allowing application for amendment. The ancient principle which is embodied in two Maxims commends itself to me. These Maxims are, ''Falsa demonstratio non nocet,'' which means that mere false description does not vitiate a document if there is sufficient certainty as to its contents and the other Maxim is ''Nihil fecit error nominis cum de corpore constat'' which means that an error of name is nothing when there is certainty as to the person. After perusal of this petition, the only answer to the question is that the applicant is the Official Liquidator. The heading of the petition no doubt is misleading but little room for doubt is left as to who the petitioner is. The doctrine underlying these Maxims is founded on cogent grounds and those otherwise useful principles ought not to be departed from in preference to a mere technicality. The application made under Order 1, Rule 10, is not tantamount to substitution of a new party in the sense that a person who was an outsider is being impleaded for the first time as a party.

I do not think that in view of what has been stated above, the misleading description of the petitioner is fatal. It is a misdescription which is remediable despite the fact that the application to amend the heading has been made beyond 5 years. This is not a case which falls within the mischief of Section 22 of the Indian Limitation Act as correction sought does not amount to substitution or addition of a new plaintiff or defendant. I would, therefore, allow the petition under Order 1, Rule 10 and direct the petitioner to correct the heading of C. 0. No. 29 of 1961 and also the description of the company (in liquidation) by omitting the words the petitioner wherever they have been prefixed. The result is, that the issue is decided in favour of the Official Liquidator and I hold that the present petition Civil Original No. 29 of 1961 is competent. Let the petition as amended in the light of this order be filed within a week and a copy given to the respondent''s counsel who may file the written statement by 30th November to which date this case is adjourned.