
(1975) 03 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Revision No. 178 of

Trustees of Port and Others

APPELLANT

Vs

Khetawat Industries and Others

RESPONDENT

Date of Decision : 19-03-1975

Acts Referred:

Limitation Act, 1963 — Section 22

Citation : (1975) WLN 116

Hon'ble Judges : J.P. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.P. Jain, J.—The order dated 27-11-1973 of the Additional District Judge, Jalore, has given rise to this revision application. Facts leading to the case are these.

2. Firm Khetawat Industries Marwar Bhinmal District Jalore, a dissolved firm, through its three partners instituted a suit for recovery of Rs. 10,882/93 against Union of India and four others on account of the non-delivery of the goods in the court of Additional District Judge, Jalore. The plaintiff's case was that a consignment consisting of 175 bags of oil cakes were despatched to Bombay Port Trust G. (Grain Depot) Siding Station on 2.8.68. The consignee of the said goods was Shamji Shivji and Co., which was later on endorsed in favour of Messrs. Louis Drafts & Co., Kamani Chambers, Bombay. The consignee made an inquiry from Station Master of the destination station about the goods and he also left the railway receipt with him from 20.8.68 to 12.11.68, but the Station Master was unable to deliver the goods and he gave the railway receipt back to him on 13-11-68. It was also alleged that after some time the Railway Administration called upon the consignee to take delivery of 165 bags of oil cakes and to pay demurrage. This condition was not acceptable by the consignee. These facts gave rise to this suit for recovery of damages from the Railway Administration. Defendant No. 2 has been described as General Manager Northern Railway, Delhi. Defendant No. 3 has been named as Chief Commercial Superintendent (Claims),

Northern Railway. Jodhpur. Defendant No. 4 has been describe has General Manager Bombay Port Trust Railway, Nichol Road. Ballard Estate Bombay 1. General Manager Central Railway Bombay is the 5th defendant.

3. The suit was resisted by all the defendants On behalf of the defendant No. 4, one Joseph Anthony, Assistant Manager Claims Bombay Port Trust Railway, Bombay filed the written statement One of the contentions raised by him, was that Bombay Port Trust Railway is a body corporate, established under Bombay Port Trust Act, 1875. According to the provisions of the Act the said Railway could sue or be sued by the Trustees of the port of Bombay. On this premise it was urged that Bombay Port Trust Railway has not been properly sued, as there is none like General Manager to represent the said railway.

4. The plaintiff then submitted an amended application under Order VI Rule 17. Civil P.C. and prayed that instead of General Manager, Bombay Port Trust Railway, the trustees of the Port of Bombay, Bombay Port Trust Railway be substituted. This amendment was opposed However the trial Judge allowed the amendment by his order dated 27.11.73 and it is under challenge in this revision application.

5. There is no manner of doubt that the Bombay Port Trust. Railway was constituted under the Bombay Port Trust Act, 1879 (Bombay Act No. VI of 1879). Section 4 of the Act reads as follows:

4--The duty of carrying out the provisions of this Act shall, subject to such conditions and limitations as are hereinafter contained, be vested in a Board, to be called "the Trustees of the Port of Bombay", and such Board, hereinafter referred to as "the Board" shall be a body corporate and have perpetual succession and a common seal, and shall sue and be sued by the name first aforesaid.

6. The question that arises for my consideration is as to whether this is a case of mis-description of a party or addition of a new party. Learned Counsel appearing on behalf of the petitioner submitted that it is a case of addition of a new party and by allowing the amendment the defendants are prejudiced. He has placed reliance on the following decisions in support of his contention:

1965 RLW 384, Th. Madhosingh v. Union of India 1962 RLW 610 , Sinehi Ram Bihari Lall Vs. The Agent East Indian Railway Co., Agent, Bengal Nagpur Ry. Vs. Behari Lal Dutt, Agent Bengal Nagpur Rly. v. Behari Lal Dutt.

7. I have carefully read these decisions. In case of The Madho Singh a suit was filed against one Mr. Rawlins, General Manager, Jodhpur Railway, Jodhpur. The plaintiff's case was that five of his mares were run over by a railway train on the night of 27th and 28th July, 1943. Four of them died while the fifth was rendered more or less use less. Consequently damages were claimed An objection was taken that the suit has been filed against a wrong person. The objection succeeded. Their Lordships observed:

If the suit is filed against the manager or agent of the Railway and if it appears

that the intention was to sue the railway, and to get a relief against the railway, it may be possible in an appropriate case to hold that the name of the defendant originally put down was merely a mis-description. But where the suit was not against the Manager but was against Mr. Rawlins who was described as the Manager, Jodhpur Railway, and it was said that the suit was being brought against the defendant (i. e. Mr. Rawlins) as he was the manager of the railway by the train of which the accident had been caused, and the plaintiff was entitled to recover the amount of damages from him, it was held that the words clearly meant what they said, namely that Mr. Rawlins had been sued, at the plaintiff held him responsible for the damage as the Manager of the Railway.

8. Under these circumstances their Lordships held that the suit was filed against a wrong person and it was not a case of mis-description.

9. In the case of *Naharmal* 1962 RLW 610 the plaintiff's case was that the suit Khata was executed by the defendant Ram Shwas Lal on behalf of himself and his brother Hazari Lal on 19th February, 1950 After having gone into old accounts wherein he found sum of Rs. 1497/- as balance due to the plaintiff and further that although the name of Hazari Lal appeared in the heading of the Khata it was not signed by him and he was left out of the suit. Subsequently an amendment application was made to say that Hazari Lal be allowed to be substituted in place of Rameshwar Lal as it was Hazari Lal who signed the Khata and not Rameshwar Lal. In these peculiar circumstances of the case it was held by the learned Judge that the amendment was to introduce a new person.

10. In the *Sinehi Ram Bihari Lall Vs. The Agent East Indian Railway Co.*, a suit was filed against the agent of the Company. An objection was raised that the agent could not be sued and the suit was not maintainable against the agent of the Company. An amendment was sought to bring E.I. Railway Company as defendant. *Ross J.* held that this was not a case of mere misnomer. According to the learned Judge the suit was brought against the agent of the E.I. Railway Company and the Company was not impleaded according to law. The learned Judge did not discuss as to whom the plaintiff intended to sue. To the same effect is the *Agent, Bengal Nagpur Ry. Vs. Behari Lal Dutt*, The plaintiff originally disclosed Agent as the defendant. Amendment to implead the Company was sought but it was refused. The bench held that the plaintiff intended to sue the Agent and not the railway Company and as such it was held that it was not a case of misdescription.

11. On the other hand, reliance has been placed on *The Saraspur Manufacture Co. Vs. B.B. and C.I. Railway Co.*, In this case plaintiff desired to sue the Bombay-Baroda and Central India Railway Company to recover the damages for loss of goods. The title of the defendant was entered as follows:

The Agent, B.B. and C.I. Rly. Company Ltd., but the prayer was that the defendant company should pay the amount sued for. The defendant Company filed written statements objecting that the plaintiff's suit could not lie as they

were filed against the defendant's agent.

12. Macleod J, who spoke for the court observed:

Although it may be conceded that the title of the defendant was not in accordance with the forms in Appendix A, First Schedule, to Civil Procedure Code, under heading "Title of suits" the fact that the word "Agent" preceded the name of the Railway Company in the description of the defendant amounted merely to a misdescription and the plaintiff should be allowed to amend the plaint accordingly.

The Sinehi Ram Bihari Lall Vs. The Agent East Indian Railway Co., was specifically dissented to.

13. Another case to which reference has been made by the learned Counsel for the Non-petitioner is Mura Mohideen v. V.O.A. Mahommed and Ors. (6). The relevant observations may be extracted below:

If however imperfectly and incorrectly a party is designated in a plaint the correction of the error is not the addition or substitution of a party but merely clarifies and makes apparent what previously scrouged in obscurity by reason of the error or mistake. The question in such a case is one of intention of the party and if the Court is able to discover the person or persons intended to sue or to be sued a mere mis-description of such a party can always be corrected provided the mistake was bonafide, such an amendment does not involve the addition of a party so as to attract Section 22(i). Limitation Act.

14. Theae observations made in the Madras Case (6) have been approved by their Lordships of the Supreme Court in Purshottam Umedbhai and Co. v. Manilal and Sons (7).

15. In the present case defendant No. 4 has been described as "General Manager Bombay Port Trust Railway, Nichol Road, Ballard Estate, Bombay. The name is not always the true orientation for determining the patty really sued. The nature of the allegations in the plaint and the nature of the relief sought be considered. In the present case it has been alleged that certain consignment was despaiched to a railway station falling in Bombay Port Trust Railway, and the said consignment had not reached there when it should have reached and was not delivered. That apart, the Union of India has also been made a party and a decree is sought against all the defendants, whoever may be found responsible for it. I find no hesitation to held that this is a case of misdescription. The plaintiff intended co sue Union of India and all the other Railways and not the General Manager in their personal capacity. In my view the amendment has been rightly allowed and the petitioner do not suffer any prejudice on that account in the circumstances of the case.

16. In the result, the revision application fails and it is hereby dismissed with costs.