

**(2004) 09 CAL CK 0046**

**In the Calcutta High Court**

**Case No :** G.A. No's. 2569 and 2621 of 2004 and C.S. No. 105 of 2004

Uma Gupta

APPELLANT

Vs

Mahesh Kumar Prahladka

RESPONDENT

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**Date of Decision :** 27-09-2004

**Acts Referred:**

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

**Citation :** AIR 2005 Cal 5 : (2005) 2 CHN 152 : (2004) 2 ILR (Cal) 331

**Hon'ble Judges :** Subhro Kamal Mukherjee, J

**Bench :** Single Bench

**Advocate :** Ajay Krishna Chatterjee, Soumbha Bhattacharya, Subhransu Ganguly, Anindya Kumar Mitra, Abhrajit Mitra, Jishnu Choudhury and Awani Kumar Ray, for the Appellant; Soumendra Nath Mukherjee, Pratap Chatterjee and Sakya Sen, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Subhro Kamal Mukherjee, J.—The plaintiff, Shrimati Uma Gupta, for self and on behalf of all the owners and occupiers of premises No. 33A Jawaharlal Nehru Road, Calcutta-1, save and except the office bearers of CIC society, instituted the present suit against Mahesh Kumar Prahladka, the General Secretary of CIC society, an unregistered association, for self and on behalf of all persons claiming to be the members of the said society, inter alia, for framing of a scheme for management and administration of the common areas and facilities available at the said premises. The plaintiff of the said suit was presented before this Court and the said plaintiff obtained leave under Order 1, Rule 8 of the Code of Civil Procedure.

2. The notices were published once in The Telegraph and once in the Bartaman. Various applications for addition of parties were made and they were allowed from time to time.

3. The present application for addition of party being G.A. No. 2569 of 2004 is filed by nine persons for their addition as party defendants in the suit and for

leave to contest the suit. The petitioners contained in the application that they are vitally interested in the subject-matter of the suit and the reliefs claimed there under as they are owners and occupiers of the said building.

4. Mr. Ajay Krishna Chatterjee, learned senior advocate, appearing for the petitioners, submits that the petitioners are the owners and occupiers of different flats of the said premises No. 33A Jawaharlal Nehru Road, Calcutta 1 and as such they are vitally interested in the subject-matter of the suit and the reliefs claimed therein. Mr. Chatterjee, further, submits that the petitioners are necessary and proper parties to the suit and they are interested to be added as parties in the suit.

5. Mr. Anindya Kumar Mitra, learned senior advocate, appearing for the plaintiff, however, opposes the prayer for such addition and submits that in a suit instituted with leave under Rule 8 of Order 1 of the CPC addition is not a matter of course, unless it is established that the person suing or defending in any such suit does not proceed with due diligence in the suit or the defence, the prayer for addition cannot be allowed. Mr. Mitra, further, submits that it is a mala fide application to delay the hearing of the application for appointment of the administrator. The applications are coming in waves without making out any ground for such addition in a suit under Order 1, Rule 8 of the Code of Civil Procedure. Mr. Mitra submits that the original defendant is representing the interest of the petitioners. Mr. Mitra draws my attention that all other members of the executive committee of the said society are already added as party defendants in the suit.

6. Mr. Saumendra Nath Mukherjee, learned senior advocate, appearing on behalf of the original defendant, however, supports the petitioners in the application for addition of parties.

7. In order to appreciate the rival contentions, it is necessary to recapitulate the provisions of Rule 8 of Order 1 of the CPC :-

"8. One person may sue or defend on behalf of all in same interest.- (1) Where there are numerous persons having the same interest in one suit-

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of all persons so interested,

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under Sub-rule (1), at the plaintiffs expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons, of any other cause, such service is not reasonably practicable, by public, advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit a suit is instituted, or defended, under Sub-rule (1), may apply to the Court to be made a party to such suit,

(4) No part of the claim in any such suit shall be abandoned under Sub-rule (1), and no such suit shall be withdrawn under Sub-rule (3), of Rule 1 of Order XXIII, and no agreement compromise or satisfaction shall be recorded in any such suit under Rule 3 of that Order, unless the Court has given, at the plaintiffs expense, notice to all persons so interested in the manner specified in Sub-rule (2),

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation - For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be."

8. In *Vassonji Tricumji v. Esmailbhai Shivji* reported in ILR (1910) Bom 420 the learned Judge of the Bombay High Court observes "There is no doubt that under Order 1, Rule 8, Sub-rule (2), he is entitled to apply and the Court has a discretion, if it thinks fit, to add him as a party. The principles on which one of a body on whose behalf a suit has already been filed can claim with some so of justice to be added as a party are well defined. He must show that his interests will be seriously affected to his prejudice if he is not allowed to come in. He must show that conduct of the suit is not in proper hands or that the action is being taken by the parties, who purport to represent him, in some way which is prejudicial to his interest. "No doubt the applicant has stated that he is coming in at his own risk and that he is willing to bear all the costs, but that does not cover the whole ground. In the first place there must be considerable delay caused by another party coming into the suit, and there will be many items of costs which have to be incurred by the other parties, if the applicant is added as a party, which they will never be able to recover."

9. A Division Bench of this Court in the case of *T. G. Jog v. Muir Mills Limited* reported in ILR (1953) Cal 171 observes, "After the suit has been properly instituted after the necessary leave under Order 1, Rule 8, if a person wants to come in and join as a plaintiff on the ground that he has the same community of interest with the original plaintiff, it cannot be suggested that the Court is powerless in the matter and must add such an applicant as a party co-plaintiff. The object of a representative suit is to allow some of the persons similarly interested to sue on behalf of the others. It is a rule of convenience in order that

a large number of persons who have the same interest in the subject-matter may be represented by some of them. If the law were that all other persons equally interested would be entitled as of right to come in and join as co-plaintiffs, the very object underlying the rule would be frustrated. At the same time, in order that the suit may be properly carried on, the Court has the power to allow other persons to join provided it is shown that the suit is not being properly conducted and that the interests of the persons who are represented in the suit are not being properly safeguarded by the plaintiffs on record. This was the view taken by Daver, J. in the case of *Vassonji Tricumji v. Esmailbhai Shivji* ILR (1910) 34 Bom 420. "Order 1, Rule 8(2) merely declares the right of a person to come and be added as a party to the suit but it does not prescribe the conditions under which the Court is required to accede to such a prayer. As I have already indicated, the right of a person to intervene in a representative suit must depend on the question whether the suit as filed was being properly conducted or not and whether the interest of the applicant was in jeopardy by reason of the inaction or action on the part of the representative plaintiffs. In the present case, in their application for being added as parties the appellants did not suggest that the plaintiffs on record were not properly carrying on the suit or would not do so. The ground on which they made the application was entirely a different one. Their grievance was that the plaintiffs had not claimed all the reliefs to which the plaintiffs might have been entitled on the allegations made in the plaint. In my opinion, this is an irrelevant consideration. A person who seeks to be added as a co-plaintiff must accept the plaint as it is. He cannot ask the Court to add him as a party for the purpose of enlarging the scope of the suit."

10. The learned single Judge of this Court in *Batokristo Nandy v. Ranadeb Chowdhuri* ILR (1972) 2 Cal 480 observes "Under Order 1, Rule 8, Sub-rule (2) of the CPC any person on whose behalf or benefit a suit is instituted is entitled to apply to be added as a party to such a suit. When any one is added as a defendant under this rule he is entitled to file his written statement. He may support the plaintiff or he may contest the suit and the Court cannot shut out the pleas taken by him in his written statement. On the other hand, if a party is added as a plaintiff he must adopt the plaint, and if he wants to rely upon any new plea he must apply for amendment on the plaint for incorporating it provided his co-plaintiff agrees."

11. A Division Bench of Orissa High Court in *Balaram Palai and Others Vs. Collector, Puri and Others*, observes "No doubt what the learned single Judge has stated in the order of reference regarding the difference in the language between Sub-rules (3) and (5) is a fact, we are of the view that despite this, a person invoking the power under Sub-rule (3) shall have to establish to the satisfaction of the Court that the persons already on record are acting prejudicially to his interest. We have said so, because this follows from the very concept of the representative suit which aspect has been highlighted in the aforesaid Bench decision of the Calcutta High Court. Any other view would rob the representative suit of its utility and significance." "We have not felt persuaded to agree with this

submission, as, if in pursuance of the public advertisement a very large number of persons come forward to get themselves impleaded, say as defendants, and their prayers shall have to be allowed just because the same had been made, it would cause great hindrance to the progress of the suit. That applies to impleading as co-defendant has to apply to join as co-plaintiff." "The object of representative suit was stated in *The Chairman, Tamil Nadu Housing Board, Madras Vs. T.N. Ganapathy*, , as avoidance of multiplicity litigation, which subserves public interest. A provision like Rule 8 had to be incorporated in the Code to facilitate the decision of questions in which a large number of persons are interested without recourse to the ordinary procedure. The provision must, therefore, receive an interpretation which will subserve the object of its enactment. Now, if a person praying for impleading himself in a representative suit has to be allowed to be before the Court almost as a matter of right the object of the provision would be adversely affected because the special procedure would then lose its significance and the ordinary procedure would start operating."..... "As the power under Sub-rule (3) is discretionary, we would however like to observe that the circumstance under which the discretionary power can be exercised cannot be put in a strait-jacket, and so, if in a given case the Court were to be satisfied that even without proving that the person on record is acting prejudicially to the applicant his prayer to be impleaded deserves to be (sic) the Court shall have to be satisfied that a reason akin to prejudicial acting by the person on record exists. To put it differently, the prayer would not be allowed merely on asking. We further state that merely because the application is not mala fide or does not tend to abuse the process of law, the same would not be required to be allowed unless the aforesaid requirement exists."

12. When a suit is instituted with leave under Rule 8 of Order 1 of the Code of Civil Procedure, under Sub-rule (2) it is incumbent, in every case, at the plaintiffs expense. give notice of the institution of the suit to all persons so interested, either by personal service or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement as the Court in each case may direct.

13. My reading of the provisions of Order 1, Rule 8 is that when such notice under Sub-rule (2) is issued, if a person wants to come in and join as a plaintiff on the ground that he has the same community of interest with the original plaintiff, on or before the date fixed in the said notice, the Court should add such person as a co-plaintiff. However, the person, who seeks to add himself as a co-plaintiff, must accept the plaint as it is, his grievance that the plaintiff had not claimed all the reliefs to which the plaintiffs might have been entitled on the allegations made in the plaint is an irrelevant consideration. Two parallel plaints cannot be conceived of.

14. When however, a person wants to come in to defend such suit in answer to the notice issued under Sub-rule (2) on or before the date fixed in the notice, the

Court should allow such application and such person is entitled to file his written statement. He may support the plaintiff he may contest the suit and the Court cannot shut out the pleas taken by him in his written statement.

15. If, however, any person applies, after the date is fixed in the notice, but assigns good cause for his non-appearance in time, he may, upon such terms as the Court directs, be heard in answer to the suit as if he had appeared on the date fixed for his appearance. The prayer for addition in such case is never a matter of course. The prayer for addition in such a case cannot be considered by adopting a strait-jacket formula to deal with such prayer. The prayer for addition in such case is to be dealt with care and circumspection, it is never a matter of course. If such person assigns good cause and if it is felt that the interest of such person is not protected in the hands of the existing defendant or defendants, as the case may be or that such person has a special defence, such prayer of addition is to be granted. It cannot be held that a person can come at his own choice of time for permission to intervene. Otherwise, the object of incorporation of the provision of Order 1, Rule 8 of the CPC will not be sub-served and object of enactment of such special provision will lose its significance.

16. However, at any stage of the suit if any person suing or defending any such suit does not proceed with due diligence in the suit or defence, the Court may substitute instead and in his place any other person having the same interest in the suit.

17. In the present application for addition of party there is no reason assigned as to why the applicants could not come within the time indicated in the notice. The only allegation is that the applicants are the owners and the occupiers of the building and as such they are vitally interested in the subject-matter of the suit and the reliefs claimed therein. They have not stated that the conduct of the suit is not in proper hands that their interests are prejudicially affected. It is suggested, in course of hearing of this application, that near relations of some of the applicants are already on record as parties to the suit. The CIC society and all its office bearers are already added as parties in the suit.

18. I am, therefore, not inclined to allow this application and to add the petitioners as party defendants in the suit. The application is, therefore, rejected. I, however, make it clear that this order of rejection will not prevent the petitioners to apply for their addition in further if they can show good grounds that their interests are being injured in any way.

19. In view of the rejection of the application for addition of parties the application filed u/s 8 of the Arbitration and Conciliation Act, 1998 for referring the parties to arbitration being G.A. No. 2621 of 2004 is, also, rejected.

20. I make no order as to costs.

21. All parties are to act on a signed copy of this dictated order on their usual undertakings.