

(1992) 07 KL CK 0024
In the High Court Of Kerala
Case No : C.R.P. No. 139 of 1992-B

Union Bank of India and Others

APPELLANT

Vs

Khaders International Constructions Ltd. and Others

RESPONDENT

Date of Decision : 20-07-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1

Citation : AIR 1993 Ker 31 : (1995) 83 CompCas 530

Hon'ble Judges : K.S. Paripoornan, J

Bench : Single Bench

Advocate : P. Balagangadhara Menon, for the Appellant; C.M. Devan and V.M. Kurian Advs., for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—Respondents 1 to 3 in P. O. P. No. 1 of 1990, Sub Court, Kochi are the revision-petitioners. The petitioner and respondents 4 to 8 in P. O. P. No. 1/90 are the respondents herein. The first respondent herein as plaintiff, has laid the suit praying for a decree for a sum of Rs. 303.13 crores as damages for the breach of promise from the defendants. The first respondent/plaintiff is a public limited company. It is represented by its Director and Power of Attorney Holder. The suit was laid in forma pauperis. A sum of Rs. 39,31,29,980/- is required as court fee for filing the suit. Stating that the plaintiff/petitioner (1st respondent herein) has no means to pay the required court fee, the suit was laid in forma pauperis by invoking the provisions of Order 33, Rule 1 C. P. C, The respondents in P. O. P. No. 1/90 resisted the claim of the plaintiff. Amongst others, the plea was taken that the suit is an experimental one, that the suit filed by the plaintiff (1st respondent herein) which is a company, will not lie, that the provisions of Order 33 Rule 1 CPC can be invoked only by a natural person, that the petitioner in P. O. P. No. 1/90, a company, cannot invoke the provisions of Order 33 Rule 1 C.P.C. and the petition cannot be entertained. The court below, by a detailed order dated 21-11-1991, held that it is open to the petitioner to sue

the defendants in forma pauperis and the plea to the contrary by the respondents is without force. In coming to the said conclusion, the Court below relied on the Bench decision of this Court in Mathew Vs. Kerala United Corporation Ltd., and reference was made to some other decisions also. The plea of the respondents, that the claim in the petition is exorbitant and the suit filed for an estimated profit by way of damages will not lie, was negatived by the court below, in paragraph 15 of its order. Respondents 1 to 3 in the court below have come up in revision and assail the order of the court below dated 21-11-91.

2. I heard counsel. Mr. P. Balagangadhara Menon, senior counsel who appeared for the revision-petitioners, argued that the Bench decision of this Court, reported in Mathew Vs. Kerala United Corporation Ltd., , requires reconsideration. Counsel submitted that in the above Bench decision, the court was swayed by English decisions which have only a persuasive value, as stated fry the Supreme Court in American Home Products Corporation Vs. Mac Laboratories Pvt. Ltd. and Another, It was further submitted that the decisions to the contrary in S. M. Mitra v. Corporation of the Royal Exchange Assurance AIR 1930 Rang 259; Associated Pictures Ltd, v. The National Studios Ltd. AIR 1951 P&H 447 and Bharat Abhyudoy Cotton Mills Ltd. Vs. Maharajadhiraj Sir Kameswar Singh and Another, were not properly understood and given effect to in the aforesaid Bench decision. Counsel pleaded that the above decision requires reconsideration.

3. I am unable to accept the plea of the revision-petitioners. In Mathew Vs. Kerala United Corporation Ltd., the Divison Bench held that the word "person" in O, 33 Rule 1 CPC includes juridical person also. In coming to the said conclusion, the Bench relied on the decisions of the Rangoon, Madras, Hyderabad, Nagpur High Courts, besides the English decision reported in Pharmaceutical Society v. London and Provincial Supply Association, 5 A.C. 857 at p. 861. One of the decisions relied on for interpreting the word "person" occurring in Order 33 Rule 1 CPC was the decision of the Madras High Court in Perumal Goundan v. Thirumalayapuram Jananukoola Dhana-sekhara Sanka Nidhi Ltd. AIR 1918 Mad 362. The above Madras decision was cited with approval by the Constitution Bench of the Supreme Court in The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao, at p. 663 - para 14). The subsequent decisions of the Bombay, Gujarat, Allahabad and Calcutta High Courts are also in accord with the Bench decision of this Court in Mathew's case 1961 KLT 45) -- See Gendalal Cotton Mills v. Basant Kumaribai AIR 1961 Bomb 1; Chimanlal v. Chandanben AIR 1965 Guj 207); Kundan Sugar Mills, Amroha Vs. Indian Sugar Syndicate Ltd. and Others, ; Rajendra Prasad Oil Mills, Kanpur and Another Vs. Smt. Chunni Devi and Others, and Jogesh Chandra Bera and Others Vs. Sri Iswar Braja Raj Jew Thakur,

4. In the light of the Bench decision of this Court in Mathew's case, 1961 KLT 45 and the preponderance of judicial opinion and the approval of the Madras decision in Perumal Goundan's case AIR 1918 Mad 362 by the Constitution Bench of the Supreme Court in The Nagpur Electric Light and Power Co., Ltd. and

Others Vs. K. Shreepathirao, I do not think that the earlier Bench decision of this Court in Mathew Vs. Kerala United Corporation Ltd.,) requires reconsideration. In the light of the above Bench decision, the court below was justified in holding that the word "person" occurring in Order 33, Rule 1 C.P.C. is not limited to a natural person. The order of the Court below dated 21-11-1991 does not suffer from any jurisdictional error or illegality to merit interference u/s 115 C.P.C. I hold so. The revision is without merit. It is dismissed.

5. The observations of the Court below in paragraph 15 of its Order, that the plaintiff can claim estimated profit by way of damages and the suit laid for this purpose is maintainable, did not arise for consideration at that stage and the decision on that aspect of the matter should have been postponed to be decided after evidence in the case. The observations contained in paragraph 13 of the Order of the Court below are not germane to the enquiry, at the present stage. The said observations shall not deter the parties from raising the plea at a later stage or prevent the Court from considering the matter in detail.

The revision is dismissed with the above observations.