
(1994) 02 DEL CK 0013

In the Delhi High Court

Case No : Civil Appeal No. 639 of 1993 and Civil Petition No. 189 of 1986

Y.P. Associates

APPELLANT

Vs

Pawar Textiles (Pvt) Ltd.

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Citation : (1994) 1 AD 765 : (1994) 53 DLT 653 : (1994) 28 DRJ 538

Hon'ble Judges : Sagar Chand Jain, J

Bench : Single Bench

Advocate : V.P. Chaudhary, Arun Mohan and N.K. Kantawala, for the Appellant;

Judgement

S.C. Jain, J.

(1) The facts giving rise to this application for amendment of the cause title of the winding up petition in brief are as under.

(2) M/S Y.P. Associates, through its sole proprietor, Mr. Y.P.Garg, filed a petition u/s 433 read with Section 439 of the Companies Act, 1956 for winding up the respondent company, M/s Pawar Textiles (Pvt) Ltd being Company Petition No. 189 of 1986. In the said company petition, the respondent company, M/s Pawar Textiles (Pvt) Ltd, filed an application under Order 30, Rule 10 and Section 151 CPC and Rule 9 of Company Court Rules being C.A. No. 409 of 1992 for dismissing/rejecting the winding up petition and one of the grounds taken was that Y.P. Associates, who has filed this winding up petition has been shown as a firm, as a sole proprietorship, and the petition in this form is not maintainable. Sabharwal, J, the then Company Judge, vide his Order dated 12.10.1992 dismissed that application filed by the respondent herein by observing that "Thus, practically this is a petition by the petitioner, Sh. Y.P.Garg. Furthermore, as noticed above, the objection has now been taken at this belated stage after expiry of five years and it cannot be said that the objection goes to the root of the matter."

(3) Aggrieved by the said Order, an appeal was filed before the Division Bench by

the respondent herein, and the Division Bench vide its Order dated 17.3.1993 disposed of that appeal in view of the agreement between the counsel for the parties permitting the petitioner herein to correct the description of the petitioner, may be permitted by the Company Judge keeping in view the stand taken by the appellant before them. In that order it has been recorded that the counsel for the appellant/respondent herein stated that "he has no objection if the amendment application for correcting the description of the petitioner is filed and the same is allowed by the Company Judge and he further states that he will also not raise any question of limitation and costs."

(4) In view of these facts, this application for amendment of the cause title has been filed. As far as the amendment sought for is concerned, the learned counsel for the respondent does not object to the same. He also does not press for costs. His only submission is that the amendment should take effect from the date of the application and it should not be given retrospective effect. He has relied upon a decision of this Court in *Jawahar Lal Motumalmamtani Vs. Bhag Chand Motumal Ramtani and Another*, in support of his contention that the amendment of the petition should take effect from the date of the application and not from the date of the institution of the petition.

(5) Learned counsel for the applicant-petitioner, however, rebuts the arguments of the learned counsel for the respondent and states that this amendment is of a very formal nature. The petition has been filed by the sole proprietorship firm and there was no need for filing the amendment application, but as a precaution this amendment application has been filed for amending the cause title only. According to him, there has not been any change in the cause of action nor a new case has been substituted and it is on the objection of the respondent that this application for amendment has been moved. According to him, even before the Division Bench the learned counsel for the appellant-respondent undertook that he would not raise any question of limitation.

(6) Learned counsel for the petitioner puts reliance on the decisions reported as *Jangam Pampaiah Vs. H. Hanumantha Reddi*, ; *Govinda Pillai Madhava Kurup vs. Mathevan Pillai Padmanabha Pillai and Others* Air 1990 Noc 73 in support of his contention that the amendment, if allowed, should relate back to the date of institution of the main suit/petition.

(7) As far as the amendment sought for is concerned, and not opposed by the learned counsel for the respondent the same is allowed. Now the question remains whether the amendment should relate back to the date of the institution of the main company petition or to the date when this application for amendment was filed. The record shows that this objection was taken by the learned counsel for the respondent at a very late stage, i.e. after an expiry of 5 years and it cannot be said that this objection goes to the root of the matter. Here there is no change in the cause of action nor the introduction of a new case or change in the character of the petition. The amendment in the description of the petitioner in the main petition does not change the character of the petition. It also does not

go to the root of the matter. It is only of a very formal nature. Once this is regarded as an amendment of the plaint on permission having been granted by the Court, such an amendment would date back to the filing of the petition and no question of limitation arises.

(8) The decision of this Court *Jawahar Lal Moturnal Mamtani vs. Bhagchand Motuma Mamtani and Another* [supra] relied upon by the learned counsel for the respondent does not help the respondent in the present circumstances of the case. In that case the facts were quite different and by the amendment a new case was set up and a fresh claim and relief was sought in respect of a cause of action which since the institution of the suit had become extinct and in those circumstances, it was felt by the Hon"ble Judge that the amendment should relate back to the date of the application and not from the date of the institution of the suit. Every case has to be decided on the basis of the facts involved in that very particular case.

(9) Under these circumstances, I allow the proposed amendment which shall relate back to the date of the institution of the main petition. However, the respondent is allowed to file its written statement to the amended petition to have its say only with respect to the matter introduced by the amendment and no further.

(10) List the Company Petition for further proceedings on 2.3.1994.