

Kulwinder Singh v. M/s. Pindi Paints and another (J. S. Sekhon, J.)

The inherent powers of relieving the suitors from the mistake of courts/tribunals may legitimately be invoked for promoting the cause of justice.

(14) The petitioners got the property for cultivation in auction for a year. They had a right to remain in possession for the auctioned period. After the expiry of the period, they were unauthorised occupants and had to surrender possession to the Gram Panchayat.

(15) The writ petition is dismissed. However, we leave the parties to bear their own costs.

(16) C.M. No. 2372 of 1987 is allowed. The other C.M. Nos. 2116, 2371 and 2906 of 1987 and 5230 of 1988 are rendered infructuous in view of our decision in the main case.

S.C.K.

Before Jai Singh Sekhon, J.

KULWINDER SINGH,—*Petitioner.*

versus

M/S PINDI PAINTS AND ANOTHER,—*Respondents.*

Civil Revision No. 1272 of 1988

August 24, 1988.

Code of Civil Procedure (V of 1908)—O. 6, Rl. 17—Firm sued through Manager—Manager also a defendant—Application to amend plaint—Amendment to incorporate the plea that Manager took loan on behalf of the firm—Leave also sought to implead partners of the firm—Application made within three years of the advancement of loan—Such amendment—Whether introduces a new cause of action.

Held, that no doubt, the plaint having been loosely drafted, it is not specifically mentioned that the loan was taken by the firm through its Manager but the plaint when read as a whole clearly reveals by implication that the loan was advanced to the firm through its Manager as in that case only the Manager of the firm would have been arraigned as defendant. Thus, both the proposed amendments regarding the arraying of the partners of the firm and depicting that the loan having been advanced through manager of the firm would not amount to introducing new cause of action or displacing the case of the defendants altogether.

(Para 4)

Held, that the application for amendment having been filed well within three years of the date of the advancing money, it cannot be said that any valuable right had accrued in favour of the defendant-firm by expiry of the period of limitation. (Para 3).

M. S. Kang, Advocate, for the Petitioner.

V. G. Dogra, Advocate, for the Respondents.

JUDGMENT

Jai Singh Sekhon, J.—

(1) The plaintiff has directed this revision petition against the order dated 9th May, 1988 of the learned Senior Subordinate Judge, Patiala, dismissing his application for amendment of the plaint in order to arraign all the partners of firm-defendant No. 1 as parties, besides depicting Jagdish Ram, defendant No. 2, as the Manager of the defendant-firm.

(2) In brief, the facts are that Kulwinder Singh, plaintiff filed a suit for recovery of Rs. 10,000 as the principal amount and Rs. 1000 as interest against M/s Pindi Paints Corporation of Patiala through its Manager Jagdish Ram, defendant No. 2, contending that the defendant had borrowed an amount of Rs. 10,000 on 18th March, 1985 on the basis of pronote undertaking to pay interest at the rate of Rs. 1.50 per cent per mensem, but the defendant failed to pay the amount despite repeated requests for its return, which resulted in filing the suit. The plaintiff sought amendment of the plaint through application dated 16th December, 1987 in order to add all the partners of the firm as defendants, besides to incorporate that the loan was taken by Jagdish Rai on behalf of the defendant-firm in the capacity of being its Manager. It was further maintained that the proposed amendment would not change the nature of the suit. This application was resisted by the defendants contending that it would change the nature of the suit and would amount to introducing a new cause of action as it has been filed at a belated stage.

(3) The learned Senior Subordinate Judge dismissed this application by holding that the amendment if allowed would amount to taking away the valuable right accrued in favour of the defendant-firm. Reliance in this regard was placed on the findings of this Court in *Smt. Ikbal Begum v. Akhtar Ali*, (1). There is considerable force

(1) 1973 Curr. L.J. 231.

Kulwinder Singh v. M/s. Pindi Paints and another (J. S. Sekhon, J.)

in the contention of Mr. M. S. Kang, learned counsel for the petitioner that the application for amendment having been filed well within three years of the date of the advancing money, it cannot be said that any valuable right had accrued in favour of the defendant-firm by expiry of the period of limitation, as admittedly the amount was advanced on the basis of pronote dated 18th March, 1985 and the application for amendment was filed on 16th December, 1987. There is no dispute that a partnership-firm is not a juristic person and it had to be sued by impleading all its partners. The provisions of rule 3 or Order 30 of the Code of Civil Procedure prescribe the mode of service upon a firm and I fail to understand in which context the trial Court had referred to these provisions, besides holding that with the passage of time a valuable right has accrued in favour of the defendant-firm. The findings of this Court in *Smt. Ikbal Begum's case* (supra), relied upon by the trial Court are not attracted to the facts of the case in hand as in that case through the proposed amendment of the written statement, the defendant had tried to set up altogether a different case from the original written statement where she admitted the transaction of the sale, but her position was that the plaintiff knew as he was purchasing the land, there was no deficiency in the area. In the proposed amendment she wanted to take a complete somersault by contending to plead that the entire transaction was a bogus one and no consideration passed between the parties, inasmuch as that she was duped by the plaintiff who was her *Mukhtiar-e-am*. Under these circumstances, it was held that such amendment could not be allowed, as it amount to wholly displacing the case of the plaintiff and introducing a totally different new and inconsistent case.

(4) On the other hand, in the present case, the perusal of the copy of the plaint furnished by the learned counsel for the defendants shows that the firm M/s Pindi Paints Corporation, defendant No. 1 was sued through its Manager Jagdish Rai, besides arraign his as defendant No. 2, whereas in the body of the plaint it was simply mentioned that the defendant had taken loan on the basis of the above referred pernote. No doubt, the plaint having been loosely drafted, it is not specifically mentioned that the loan was taken by the firm through its Manager, Shri Jagdish Rai, but the plaint when read as a whole clearly reveals by implication that the loan was advanced to the firm through its Manager Jagdish Rai as in that case only the Manager of the firm would have been arraigned as defendant No. 2. Thus, both the proposed amendment regarding the arraying him the partners of the firm and depicting that the loan

having been advanced through Jagdish Rai, Manager of the firm would not amount to introducing new cause of action or displacing the case of the defendants altogether.

(5) The findings of G. C. Mital J. in *Ashok Rana v. Rakesh Kumar and others* (2) are also not attracted to the facts of the case in hand, as in that case the controversy involved the amendment of the plaint in order to incorporate facts disclosing in what capacity the plaintiff would be entitled to a decree for preemption and the amendment application was filed after the expiry of the period of limitation. Under these circumstances, it was held that such amendment cannot be allowed because it will take away a valuable right which had accrued in favour of the vendees. The findings of J. V. Gupta, J. of this Court in *Dalip v. Daria*, (3) are also not attracted to the case in hand, as in that case the plaintiff in the original plaint had alleged the defendant having borrowed in cash a sum of Rs. 3,300 on 15th January, 1981 and executed an entry to this effect in the *bahi*, but subsequently affixed his thumb-impression under it, but through the amendment it was sought to be pleaded that in spite of making payment in cash on 15th January, 1981, it should be incorporated that the defendant thumb marked the entry as a balance of Rs. 3,300 which was struck on that date and no payment in cash was made to the defendant as alleged earlier. Under these circumstances, the order of the trial Court dismissing the application for amendment of the plaint was upheld by holding that it will altogether change the nature of the case and taking away a valuable right which had accrued in favour of the defendant.

(6) For the foregoing reasons, the impugned order of the trial Court being not legally sustainable, is set aside by accepting this revision petition, of course, subject to the qualification that the plaintiff shall pay Rs. 500 as costs for this lapse, to defendant No. 1 before the trial Court on or before 23rd September, 1988 and the trial Court shall allow him to amend the plaint as indicated above. There is, however, no order as to costs in this revision petition.

S.C.K.

(2) 1985(1) P.L.R. 483.

(3) 1986(1) P.L.R. 374.