

(2019) 05 OHC CK 0002

Orrisa High Court

Case No: C.M.P.No.784 Of 2018

Corporation Bank, Represented
through Chief Manager,
Bhubaneswar Main Branch,
Kharvelnagar, Khurda

APPELLANT

Vs

Smt.Sailabala Pradhan And
Others

RESPONDENT

Date of Decision: May 1, 2019

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code Of Civil Procedure, 1908 - Order 1 Rule 10, Order 6 Rule 17, Order 7 Rule 11(d)
- Securitization And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 - Section 13(2), 14, 34

Hon'ble Judges: Dr. A. K. Rath, J

Bench: Single Bench

Advocate: S.D.Das, S.S.Das, R.K.Sahoo, K.C.Mohapatra,

Final Decision: Allowed

Judgement

Dr.A.K.Rath, J

1. By this petition under Article 227 of the Constitution of India, challenge is made to the order dated 31.3.2018 passed by the learned Civil Judge

(Sr.Division), Angul in C.S.No.358 of 2014, whereby and whereunder, learned trial court has rejected the application of defendant no.11-petitioner for

amendment of the cause title of the petitions under Order 1 Rule 10 CPC and Order 7 Rule 11(d) CPC.

2. Plaintiff-opposite party no.1 instituted the suit for partition and permanent injunction impleading the defendants-opposite party nos.2 to 11. By order

dated 8.1.2015, learned trial court directed the parties to maintain status quo over the suit property. Pursuant to issuance of summons, the defendants appeared. On the basis of a joint memo filed by the parties, learned trial court directed the parties to maintain status quo over the suit property till disposal of the suit.

3. Thereafter, the petitioner-bank filed an application under Order 1 Rule 10 CPC for impleadment stating inter alia that defendant nos.1, 6 and 10 had availed a loan from the bank and created equitable mortgage in respect of a part of the suit schedule property in favour of the petitioner-bank. The loan account became NPA. The bank issued notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (â€˜SARFAESI Actâ€™). The bank obtained an order under Section 14 of the SARFAESI Act to take possession of the secured assets. Before taking delivery of possession of the equitable mortgage of land and building, it received a letter from the District Officer, Angul that a civil suit is sub-judice, wherein the order of status quo has been passed. By order dated 18.7.2016, learned trial court allowed the application for impleadment. The petitioner has been impleaded as defendant no.11. The plaintiff filed C.M.P.No.1156 of 2016 before this Court, which was eventually dismissed. While matter stood thus, the petitioner filed an application under Order 7 Rule 11 (d) CPC to reject the plaint on the ground that the suit is not maintainable in view of embargo contained in Section 34 of the SARFAESI Act. The opposite party no.1 filed objection to the same.

4. Thereafter the petitioner filed a petition for amendment of the cause title of the petitions under Order 1 Rule 10 CPC as well as Order 7 Rule 11 CPC stating that due to inadvertence, application under Order 1 Rule 10 CPC was filed to implead the Chief Manager, Corporation Bank, Bhubaneswar Main Branch, Kharvel Nagar, Bhubaneswar as defendant no.11 instead of Corporation Bank represented through Chief Manager, Bhubaneswar Main Branch, Kharvel Nagar, Bhubaneswar.

5. Taking a cue from the decision of this Court in the case of Brahmananda Sahu v. Laxman Kumar Saha and another, 2017 (Supp-I) OLR 1073,

learned trial court held that application under Order 6 Rule 17 CPC is not maintainable for amending an application under Sec.47 CPC. There is no such defendant no.11, Corporation Bank represented through Chief Manager, Bhubaneswar Main Branch, Kharvel Nagar as a party in the suit. Held so, it rejected the petition.

6. Heard Mr.S.D.Das, learned Senior Advocate for the petitioner and Mr.S.S.Das, Mr.R.K.Sahoo and Mr.K.C.Mohapatra, learned Advocates for opposite party no.1.

7. Mr.S.D.Das, learned Senior Advocate for the petitioner submitted that the petitioner has been impleaded as defendant no.11. Inadvertently in the cause title, the petitioner has been described as Chief Manager, Corporation Bank, Bhubaneswar Main Branch instead of Corporation Bank represented through the Chief Manager, Bhubaneswar Main Branch, Kharvel Nagar. The proposed amendment is formal in nature. The same will not change the nature and character of the suit. To buttress the submission, he placed reliance on a decision of the apex Court in the case of Varun Pahwa v. Mrs.Renu Chaudhary, 2019(3) Supreme 93.

8. Per contra, Mr.S.S.Das, learned Advocate for opposite party no.1 submitted that the petitioner filed an application to implead the Chief Manager, Corporation Bank, Bhubaneswar Main Branch, Kharvel Nagar, Khurda. The same was allowed. The petitioner has been impleaded as defendant no.11. The Corporation Bank has not been impleaded as defendant no.11. Furthermore, petition under Order 1 Rule 10 CPC was verified by K.N.Narasimha, the Chief Manager, Corporation Bank, Main Branch, Kharvel Nagar, Bhubaneswar, Khurda. He was the power of attorney holder of the bank. In the present petition, the affidavit has been filed by Tapan Kumar Sahoo, Chief Manager, Corporation Bank, Bhubaneswar Branch, Kharvel Nagar, Bhubaneswar, Khurda said to be the power of attorney holder of the bank. The proposed amendment will change the nature and character of the suit.

9. In Varun Pahwa, the appellant as Director of Siddharth Garments Pvt. Ltd. filed a suit for recovery of money. It was averred that the plaintiff had given power of attorney to Sri Navneet Gupta. The defendant raised preliminary objections in the written statement that the suit had not been filed by

the plaintiff and even the alleged authorized representative has not filed any document showing that he had been authorized by the plaintiff. The

Special Power of Attorney is neither valid nor admissible. Navneet Gupta appeared as power of attorney of the plaintiff and examined as P.W.1. It

was at that stage, an order was passed by the learned trial court to furnish address of the plaintiff and why the plaintiff should be examined through an

attorney when the plaintiff is a resident of Delhi. Thereafter the plaintiff filed an application for amendment of the plaint on the ground that the counsel

had inadvertently made the title of the suit wrongly as the loan was advanced through the company, therefore, the suit was to be in the name of the

company. Therefore, the plaintiff sought to substitute para 1 and para 2 of the plaint that the plaintiff is a Private Limited Company having its

registered office at Delhi. The plaint was filed through the authorized representative of the plaintiff namely, Navneet Gupta, who had been authorized

by board resolution dated 12.5.2016 to sign, verify and execute all the documents, papers, complaints, applications, plaint, written statement, counter

claim, affidavits, replies revisions, etc and to institute, pursue and depose all legal proceedings and court cases on behalf of Siddharth Garments Pvt.

Ltd. against the respondent-defendant. Learned trial court declined the amendment on the ground that the application is an attempt to convert the suit

filed by a private individual into a suit filed by a Private Limited Company, which is not permissible as it completely changes the nature of the suit. The

high court declined to interfere with the order. The matter travelled to the apex Court.

9.1 The apex Court held that the plaint has not been properly drafted inasmuch as in the memo of the parties, the plaintiff has been described as

Varun Pahwa through Director of Siddharth Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun

Pahwa. Thus, it is a mistake of counsel, may be on account of lack of understanding as to how a private limited company is to sue in a suit for

recovery of the amount advanced. The memo of the parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such

inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The rules of procedure are

handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely

because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amendment the

pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not

governed any such narrow or technical limitations. The apex Court further held that it was an inadvertent mistake in the plaint. The learned trial court

should have allowed to be corrected so as to permit the private limited company to sue as plaintiff as the original plaintiff has filed suit as Director of

the said Private Limited Company. Therefore, the ratio in the said case proprio vigore applies to the facts of this case as well.

10. The ratio in Varun Pahwa proprio vigore applies to the facts of this case

11. The submissions of Mr.S.S.Das, learned Advocate for opposite party no.1 that the application for amendment was verified by one person and the

application for amendment has been made by another person and as such the amendment petition is liable to be rejected has no legs to stand. The

Corporation Bank is a Government of India undertaking. When the suit was filed, K.N.Narasimha was the Chief Manager of the bank and verified the

petition. Thereafter his successor, Tapan Kumar Sahoo, Chief Manager of the bank filed an application for amendment.

12. The petitioner has committed an inadvertent mistake in filing the petition for amendment in a disposed of petition instead of filing an application for

amendment of the cause title of the plaint. In order to give quietus to the issue, the same shall be treated as the application for amendment of the

cause title of the plaint.

13. In view of the foregoing discussions, the impugned order dated 31.3.2018 is quashed. The petition for amendment is allowed subject to payment of

cost of Rs.10,000/-(Ten thousand) to Mr.S.S.Das, learned Advocate for opposite party no.1. Learned trial court shall incorporate necessary

amendment in the plaint. The petition is allowed.

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