

W. Johnston and Others Vs Rameshwar Singh Bahadur

Court: Patna High Court

Date of Decision: June 14, 1927

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 54, 99

Citation: AIR 1928 Patna 51

Hon'ble Judges: Jwala Prasad, J

Bench: Division Bench

Judgement

Jwala Prasad, J.

This is an application by the defendants in suit No. 68 of 1927 pending in the Court of the Subordinate Judge of Darbhanga. The prayer is that the plaint be struck off inasmuch as it does not bear the signature of the plaintiff.

2. Defendant No. 1 is W. Johnston, Esq., I.C.S., Commissioner of Income Tax, defendant 2 is Hari Das Chatterji, Assistant Commissioner of

Income Tax, and defendant 3 is Mohan Proshad Chaudhry, Income Tax Officer of Darbhanga. These officers are alleged to have assessed the

plaintiff illegally and dishonestly acting in Collusion with each other. There is a direct allegation against defendant 2 of his having attempted to obtain

illegal gratification or bribe in order to exempt the plaintiff from paying any Income Tax in the years in question to show favour to him in the matter

of assessment. There is also a prayer for an injunction restraining the defendants from proceeding to take steps to enforce the illegal demand by

them.

3. The plaint was filed on the 2nd April 1927. It was signed by one Muneshwari Prosad and verified by him. On that very day (the 2nd of April

1927), the plaint was registered under Order 4, Rule 2. The injunction question was taken up on the 23rd April. Counsel on both sides were heard

on that date and a consent order issuing temporary injunction was passed. On that date the defendants' counsel objected to the signature on the

verification of the plaint and on 27th April the plaintiff filed a petition asking the Court to allow Muneshwari Prosad who had already verified the

plaint, to re-verify it giving particulars of information and belief as to the matters contained in the plaint. Another application was made asking that

Babu Jyotish Chandra Bose, Raj Mokhtar, who held a power of-attorney, may be authorised to sign the plaint on behalf of the plaintiff. These

applications were disposed of on 9th of May. The Court allowed the amendment of the verification and we are not, in this case, concerned with it,

The Court below refused permission to Babu Jyotish Chandra Bose to sign the plaint upon the ground stated that

inasmuch as the plaintiff is now residing within the jurisdiction of the Court and the mere fact that the plaintiff is a person who is exempted from

personal appearance in Court cannot be held to be good cause for excusing him from signing the plaint.

4. The Court below observed as follows:

No doubt there are numerous suits filed by the plaintiff but that cannot also be a ground for excusing him from signing the plaint in this suit which is

of an exceptional nature, namely, a suit in which serious matters are involved against responsible Government officers. So there is no good cause

shown which can entitle the plaintiff to avail of the proviso contained in Rule 14, Order 6, Civil P.C., and which can give jurisdiction to the Court to

allow Babu Jyotish Chandra Bose even if he be held to be duly authorized by the plaintiff to sign the plaint of the present suit.

5. As regards the arguments of the learned Government advocate on behalf of the defendants that the plaint was not properly signed and legally

presented and, therefore, it was not maintainable, the learned Subordinate Judge held as follows:

I think it is premature to decide this point at this stage specially when no written statement has been filed. Moreover, so far as I am aware, even if

there be any defect regarding the signature in the plaint it might be remedied at any time before judgment and the defect might be considered to be

an irregularity. So the question whether the suit is maintainable or not on the basis of the plaint filed in the suit is left for determination at a later

stage of this suit. The petition of the plaintiff is, therefore, rejected.

6. On a further petition filed on behalf of the defendants reiterating their objection as to the maintainability of the suit on the ground of the plaint not

having been properly signed, the Court below observed as follows:

I may add that under the law the Court can hold so far that the persons who have signed the plaint or wanted to sign the plaint if they are not the

plaintiffs are not proper persons who can sign the plaint under the law on behalf of the plaintiff. But the Court has no power to direct the plaintiff or

any other person to sign the plaint. Under the law the plaint is required to be signed by the plaintiff or might be signed by the said other person. If it

was not signed according to law the penalty under law should await the plaintiff in the suit.

7. Aggrieved by this order the defendants, moved this Court and obtained a rule on the 1st June 1927. In the meantime the plaintiff filed in the

Court below on the 30th May a registered power of attorney dated the 27th May 1927. By this document the plaintiff has appointed the said

Muneshwari Proshad, under whose signature the plaint was filed, as his lawful attorney and authorised agent for the suit in question, authorising him

among other things to sign for him, to quote the words,

plaints, petitions and other papers wherever and whenever necessary and to do all acts necessary in respect of the said suit and consequential

proceedings both in the first and appellate Courts in the same manner

as the plaintiff personally could do. The document further declares and ratifies all acts done by the said attorney Muneshwari Proshad whether

under the document or before the execution of the same in respect of the said suit and in particular the signature of the plaintiff on the plaint. After

hearing the parties the Court on the 10th June directed the power-of-attorney and the petition to be placed on the record. The plaintiff has filed a

copy of the said document with an affidavit in this Court sworn to by a clerk of his.

8. Now Order 6, Rule 14 lays down:

Every pleading shall be signed by the party and his pleader (if any): provided that where a party pleading is by reason of absence or for other good

cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

9. The plaint was admittedly not Signed by the plaintiff and the Court below has held that it was not shown that the plaintiff was unable to sign the

plaint by reason of his absence or for other good cause. Furthermore Muneshwari Proshad, who signed the document, described himself in the

verification as a servant of the plaintiff; he did not state that he was ""duly authorised"" by the plaintiff ""to sign"" the plaint in question or ""to sue on his

behalf."" In fact he had no power-of-attorney in his favour at that time. The power-of-attorney executed in his favour on the 27th May and filed on

the 30th came into existence much later than when the plaint was signed and filed. Rule 2(a), Order 3 has, therefore, no application. The Court

below is, therefore, right in holding that the plaint when filed was not properly signed and that it was an irregular plaint and that the irregularity can

be remedied at any stage. It refused to direct the plaintiff to remedy the defect leaving the plaintiff to bear the consequences of his plaint being not

properly signed. He also reserved the determination of the question as to the maintainability of the suit to a later stage of the case.

10. Now there has been some difference in the procedure prescribed by the present Code in the mode of dealing with such a plaint from that laid

down in the old Code. Under the old Civil P.C. (Act 14 of 1882) a plaint not signed by the plaintiff could be returned before the settlement of

issues for amendment within a time to be fixed by the Court and if not amended within the time fixed the Court was bound to reject it u/s 54 of the

Code, but no such express power has been given by the present Code which has extended the time within which an amendment can be allowed by

empowering the Court to allow a party to amend the pleadings at any Stage of the proceedings under Order 6, Rule 17.

11. Rule 14, Order 6 requires that every pleadings should be signed by the party and his pleader in the manner laid down therein. But unlike the

old Code the present Code does not provide for the course to be adopted by the Court in case the plaint is not properly signed. Even under the

old Code the signing of the plaint was held to be merely a matter of procedure and any defect therein was remediable at any stage of the litigation

even in the appellate Court, the reason being that the omission to sign or verify a plaint was not such a defect as could affect the merits of the case

and can be remedied u/s 99 of the Code vide *Basdeo v. John Smidt* [1899] 22 All. 55 *Mohini Mohun Das v. Bungsi Buddan Saha Das* [1890] 17

Cal. 580, *Ma Ngwe Kin v. Ma Hme* AIR 1923 Ran 206 and *Bisheshar Nath v. Emperor* [1918] 40 All. 147.

12. The question in those cases arose at a very late stage of the case when the litigation had proceeded for a considerable length of time without

any objection and the plaintiff named was round to be a real person litigating. In the present case the defect has been discovered at a very early

stage of the suit. The Court could refuse to register the plaint under Order 4 and to take action thereon on account of the plaint not having

complied with Rule 14, Order 6, the condition precedent to the institution of the suit and taking action thereon. The Court no doubt under a

misapprehension as to the plaint not having been properly signed, registered the plaint and issued notice to the defendants. The mistake having

been discovered, the Court can insist upon the plaint being properly signed before proceeding further in the action: vide the case of *Gauri Shankar*

v. Manki Kunwar AIR 1924 All. 17. That was a case for specific performance of a contract for sale. The trial Judge ordered further particulars of

the claim to be given directing the party to pay a specific sum of costs in the event of making default. The order was disobeyed and it was held that

the plaintiff being in default the action should be stayed, and similarly if the defendant be in default his defence should be struck out.

13. The Court should not have kept the party in suspense as to the result of the defect in signing the plaint. Since the question was raised by the

defendants and the defendants showed their serious attitude in fighting this point out, it seems that the plaintiff has been taking steps to regularise the

plaint. He executed a registered power-of-attorney as observed above, on 27th May in which he gave to Muneshwari Prosad authority to take all

steps in connexion with the suit, to represent the plaintiff and to do all acts and particularly to sign the plaint. He has ratified the signature already

made by Muneshwari Proshad Therefore, it seems that the plaintiff did not want to take the chance of it being held in this Court that the plaint was

not entertainable on account of its not having been properly signed. The question then is whether the power-of-attorney and the affidavit of his

servant filed in this Court are sufficient to remove the defect. The plaint when filed was not properly signed and it was not, therefore, a proper

plaint, but the defect was capable of being removed. The plaintiff gives Muneshwari Proshad power to sign the plaint and ratifies the signature

already made by him. The plaintiff is exempted from personal attendance in Court, so he cannot come to Court to sign the plaint, and the plaint

which is now in Court cannot be sent to the plaintiff for obtaining his signature thereon. Muneshwari Proshad's signature ratified as it is by the

plaintiff may, in the circumstances, be accepted as sufficient verification under Order 6, Rule 14.

14. On behalf of the defendants it is urged that in view of the serious allegations, against responsible Government officers the defendants want to be

satisfied that the allegations made in the plaint were fully within the knowledge of the plaintiff and the power-of-attorney filed in Court does not

clearly show this.

15. In the circumstances I think that a statement filed on behalf of the plaintiff to the effect that a true copy of the plaint was read by or to him and

that he is fully cognizant of the allegations contained therein will be sufficient. Such a statement with a copy of the plaint will be attested and filed in

Court by his pleader who would state that the plaint was read by or to the plaintiff in his presence.