(2009) 11 CAL CK 0008

Calcutta High Court

Case No: C.O. No. 2044 of 2009, R.V.W. No. 45 of 2009 and C.A.N. No''s. 6258-59 of 2009
(Arising out of C.O. No. 4106 of 2008)

Satya Sandhi		APPELLANT
	Vs	
Satya Sandhi and Others Satya Sandhi and Others Vs The Cricket Association of Bengal and Another		RESPONDENT

Date of Decision: Nov. 3, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 18 Rule 4, Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 14(3), Order 8 Rule 1
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: Buddhadeb Ghoshal, Malay Kumar Singh and Probal Mukherjee, in C.O. 2044 of 2009, Sandip Kumar Bhattacharya and Suman Basu, in R.V.W. No. 45 of 2009, for the Appellant; Buddhadeb Ghoshal, Malay Kumar Singh and Probal Mukherjee for Opposite Party No. 2 in R.V.W. No. 45 of 2009, Sandip Kumar Bhattacharya and Suman Basu for Opposite party Nos. 1 and 2 in C.O. No. 2044 of 2009, S. Mukherjee, Amitesh Banerjee and Anirban Guin, in C.O. No. 2044 of 2009 Opposite Party No. 1 in R.V.W. 45 of 2009, for the Respondent

Judgement

Dipankar Datta, J.
By order dated 16.9.2009, the Hon''ble the Chief Justice assigned C.O. No. 2044 of 2009 to me. By a subsequent order dated 23.10.2009, it was directed that R.V.W. No. 45 of 2009 and CAN Nos. 6258 and 6259 of 2009 may be heard along with C.O. 2044 of 2009.

2. All the applications arise out of the same proceeding, i.e. Title Suit No. 1762 of 2007 pending in the Court of the learned Civil Judge (Junior Division), 2nd Court at

Alipore, and having been heard together, shall stand disposed of by this common judgment and order.

3. The said suit was instituted by the two plaintiffs, viz. Satya Sandhi, a club registered under the Societies Registration Act and affiliated to the Cricket Association of Bengal (hereafter the CAB), having its registered office at 16A, Balu Hakkak Lane, Police Station - Karaya, Kolkata 700017 (represented by its President, Sri Paresh Chandra Ghosh) and its Vice-President (hereafter the plaintiffs) against the sole defendant i.e. the CAB for mandatory and permanent injunction. It has been prayed that the CAB be directed to record the registered office address of the first plaintiff and to send letters and correspondence to such address. It has also been prayed that the CAB be restrained from sending letters and/or correspondence in respect of the first plaintiff to any address other than the one mentioned in the cause title of the plaint.

4. On an application filed by the plaintiffs under Order 39 Rules 1 and 2, CPC (hereafter the Code) read with Section 151 thereof, the Trial Court passed an ad interim order of injunction on 17.11.2007 restraining the CAB from sending documents to any other address except that of the first plaintiff.

5. Immediately thereafter, one Saraj Kumar Ghosh claiming himself to be the Organizing Secretary of the club, viz. Satya Sandhi having registered office at 181/5A, A.P.C. Road, Kolkata 700004 applied for impleadment of the said club as the second defendant in the said suit. The prayer was allowed. Upon its impleadment, it filed an appeal before the learned District Judge, 24 Parganas (South) at Alipore challenging the order dated 17.11.2007. The impugned ad interim order was stayed. Questioning the order passed in the appeal, the plaintiffs approached this Court by filing a petition under Article 227 of the Constitution. While disposing of the application by directing maintenance of status quo in respect of management and affairs of the club as prevailing on the date of institution of the said suit, the Court further directed that the Trial Court should itself dispose of the suit as expeditiously as possible, without granting unnecessary adjournments, preferably within six months and not later than eight months from date of communication of the order. The Trial Court was also directed to dispose of the injunction application within three months from date.

6. The Trial Court allowed the injunction application by an order dated 11.7.2008 whereby the order dated 17.11.2007 was made absolute and a date for ex parte hearing of the said suit was fixed.

7. A further appeal was preferred by the added defendant challenging the said order dated 11.7.2008. The Appellate Court allowed the appeal on 1.11.2008 by setting aside the order impugned. Parties were directed to maintain status quo as directed by this Court earlier while disposing of the application under Article 227 filed by the plaintiffs with a further direction on the Trial Court to comply with this

Court''s order directing disposal of the suit within the time frame mentioned therein.

8. The plaintiffs filed another application under Article 227 of the Constitution of India, being C.O. No. 4106 of 2008, questioning the propriety and/or legality of the order dated 1.11.2008.

9. Upon a contested hearing, a learned Judge of this Court by judgment dated 6.2.2009 dismissed the application. It was, inter alia, observed that the dispute centered around the address of the club itself, genuineness whereof cannot be determined without evidence being led in the Trial Court. The learned Judge concurred with the Appellate Court''s finding that it was not clear which address of the said club was genuine and from which address the club would run its office.

10. Review of the judgment dated 6.2.2009 passed in C.O. No. 4106 of 2008 has been sought for by the plaintiffs by filing R.V.W. No. 45 of 2009. The only ground that has been urged in course of hearing by Mr. Bhattacharya, learned Advocate for the petitioners/plaintiffs is that the learned Judge had proceeded to dismiss C.O. No. 4106 of 2008 based on an impression that the same had been filed by the added defendant. According to him, such error in the judgment is apparent on the face of the record and therefore the same ought to be reviewed.

11. I have perused the judgment dated 6.2.2009. Apart from the inaccurate factual description in the second line of the first paragraph thereof to the effect that the application under Article 227 was filed by the "defendant No. 2 petitioner", there is absolutely nothing therein to suggest that the learned Judge proceeded to dismiss the application based on any erroneous impression regarding the identity of the party that approached the Court. It has not been shown as to how such mis-description affected the merits of the decision given by the learned Judge. A simple typographical error in the second line of the judgment has been set up as a ground for reviewing it. I have no hesitation to hold that the review application is absolutely misconceived and merits outright rejection. It is ordered accordingly.

12. In view of the above order, nothing survives for decision on the connected applications i.e. CAN No. s 6258 and 6259 of 2009, being applications for appropriate orders filed by the plaintiffs. The same also stand dismissed, without entering into its merits.

13. The grievance of the added defendant as highlighted in C.O. 2044 of 2009 (filed on 30.6.2009) may now be noticed. It is directed against an order dated 15.6.2009 passed by the Trial Court granting leave to the plaintiffs to tender additional documents as evidence in support of the plaint case.

14. Mr. Ghoshal, learned Advocate for the added defendant/petitioner contended that the Trial Court committed gross jurisdictional error in passing the order impugned. According to him, while it is the requirement of law that the facts should

be pleaded in the plaint, the documentary evidence sought to be relied on in support of the plaint case ought to be filed at the time of presentation of the plaint. However, there is no pleading worth the name in the plaint for accepting the evidence sought to be additionally tendered by the plaintiffs and the added defendant runs the risk of being taken by surprise not knowing the case it has to meet. The Trial Court, therefore, without examining the worth of the additional documents for a decision in the said suit clearly fell in error. He referred to the decision in AIR 1930 57 (Privy Council) , for the proposition that "no amount of evidence can be looked into upon a plea which was never put forward" and submitted that without an amendment of the pleadings, there could be no justification for the Trial Court to grant leave to the plaintiffs.

15. The next objection raised by him related to the stage of introduction and reception of the additional evidence. According to him, the issues in the said suit have been settled and the second plaintiff has, in accordance with the procedure laid down in Order XVIII Rule 4 of the Code, filed his evidence (examination-in chief) on affidavit. Provisions contained in Order XIII Rule 1 of the Code were also referred to in support of the contention that the Trial Court exceeded his jurisdiction in allowing the prayer of the plaintiffs.

16. I do not consider the first contention raised by Mr. Ghoshal to be creditworthy. In paragraph 3 of the plaint, the plaintiffs have averred that the club Satya Sandhi had its registered office at 181/5A, A.P.C. Road Kolkata - 700004 and in paragraph 8 thereof it has been averred that due to certain problems that surfaced which were insurmountable, the office bearers of the first plaintiff adopted a resolution in a special general meeting held on 9.11.2004 deciding to shift the office at B/16/H/6A, Balu Hakkak Lane, Kolkata 700017 on monthly rental and the club started functioning from that address.

17. A complete reply to such contention is furnished in paragraphs 9 and 10 of the decision of the Apex Court reported in Bhagwati Prasad Vs. Shri Chandramaul, relied on by Mr. Bhattacharya. The same are extracted below:

9. There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The same principle was laid down by this Court in Sheodhari Rai and Others Vs. Suraj Prasad Singh and Others, In that case, it was held that where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only not made in the written statement, but which is wholly inconsistent with the title set up byte defendant in the written statement. The new plea on which the defendant sought to rely in that case was that he was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that

this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by it in its pleadings.

10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would-be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.
18. The principle of law laid down in the decision in Siddik Mahomed Shah (supra) appears to have been explained in the decision in Bhagwati Prasad (supra) and I do not consider that determination of the controversy at hand with a rigid mindset would be prudent.

19. I find that on the basis of the pleadings of the parties, the Trial Court has framed nine issues for decision in the said suit and two of them are as follows:

6. Whether the defendant No. 1 is bound to send all sorts of communications in relation to Satya Sandhi Club at 16A, Balu Hakkak Lane, Kolkata -17?

7. Whether the address of 16A, Balu Hakkak Lane, Kolkata-17 is the only address of Satya Sandhi club?

20. The additional documents that the plaintiffs urged the Trial Court to receive as evidence are mostly letters/reports/correspondence whereby they seek to strengthen their assertion that the club Satya Sandhi is indeed functioning from its registered office at 16A, Balu Hakkak Lane and not from its earlier office at 181/5A, A.P.C. Road, Kolkata - 700004. Whether a document tendered in evidence is beyond the pleadings or not or is relevant or not need not be decided by the Trial Court

while considering a prayer for grant of leave under Order VII Rule 14(3) of the Code. By and large, which part of the evidence is to be discarded being beyond the pleadings or being irrelevant is something that the Trial Court ought to consider when it discusses the evidence in course of writing its judgment and it would be well within its authority to reject any documentary evidence on either of such grounds. The contention raised, therefore, does not impress me at all.

21. Next, the apprehension of the added defendant/petitioner that in the absence of pleadings it would be taken by surprise is considered to be entirely without basis. Having regard to the issues framed by the Trial Court vis-�-vis the nature of relief claimed in the suit, the defendants in the suit are well and truly aware of the case to be proved by the plaintiffs for obtaining relief and the defence they ought to offer. I do not consider that the Trial Court committed any error in granting leave to the plaintiffs, as prayed for, even without an amendment of the plaint in the circumstances being effected.

22. The objection in respect of the stage of seeking leave and grant thereof by the order impugned is considered to be equally without merit. Order VII Rule 14(3) does not preclude the Trial Court from receiving such evidence from the plaintiff which could not be filed or presented in accordance with the terms of Clause (1) of Rule 14. Clause (3) of Rule 14 authorizes reception of evidence, subject to grant of leave, even at the hearing of the suit. I am of the view that new/additional evidence may be received by the Trial Court even after settlement of issues and without amendment of plaint if an issue on the point in controversy has already been framed. The Trial Court, I am minded to hold, has certainly not exceeded its jurisdiction by granting the prayer for leave.

23. The order impugned is sustained. Accordingly, C.O. No. of 2009 stands dismissed.

24. The Trial Court is encouraged to dispose of the suit as expeditiously as possible without granting unnecessary adjournment.

25. Mr. Mukherjee, learned Advocate for the CAB, submitted that in the event I do not interfere with the impugned order his client may be granted liberty to file supplementary written statement in view of new evidence received by the Trial Court. Mr. Ghoshal had also made a similar prayer. I do not consider it necessary to grant the prayer since there has been no amendment of the plaint. Needless to observe that this order shall not preclude the defendants to assert their right before the Trial Court in accordance with law on any other point, if at all they consider it necessary, and the same shall be considered and disposed of also in accordance with law.

26. Photocopy of this judgment and order, duly countersigned by the Assistant Court Officer, shall be retained with the records of R.V.W. No. 45 of 2009.

27. Department shall now, acting in compliance with the order dated 21.7.2009 passed on C.O. No. 2044 of 2009, place the file before the appropriate Bench taking up ''criminal contempt'' matters.

28. Urgent photostat certified copy of this judgment, if applied for, be furnished to the parties as expeditiously as possible.