

(2011) 06 CAL CK 0058

Calcutta High Court

Case No: C.O. No. 2691 of 2008

Bagmari Industrial Corporation
and Others

APPELLANT

Vs

Sirajul Hossain Niazi and Others

RESPONDENT

Date of Decision: June 17, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 30 Rule 4

Hon'ble Judges: Prasenjit Mandal, J

Bench: Single Bench

Advocate: Mrityunjoy Saha and Subrata Bhattacharya, for the Appellant; Khwaja A. Rahaman, for the Respondent

Final Decision: Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the Defendant Nos. 1, 2 and 7 and is directed against the order No. 72 dated April 10, 2008 passed by the learned Civil Judge (Senior Division, Sealdah in Title Suit No. 142 of 1999, thereby allowing an application under Order 30 Rule 4 of the Code of Civil Procedure.

2. The short fact is that the Plaintiff/opposite party herein instituted a suit against M/s. Bagmari Industrial Corporation, a partnership firm and its partners for recovery of possession, arrears of rent, mesne profits and other relief's. The firm and its partners are contesting the said suit by filing a written statement denying the material allegations made in the plaint. The suit at the stage of further peremptory hearing. In the mean time, the Defendants Nos. 4 and 6 died during the pendency of the suit. Then the Plaintiff filed an application under Order 30 Rule 4 of the CPC and the application was allowed by the impugned order. Being aggrieved, this application has been filed by the aforesaid Defendants. Now the question is whether the impugned order should be sustained.

3. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the Plaintiff instituted the said suit for recovery of possession and other relief's as stated hereinabove against the firm and its partners. The suit was instituted against the Defendant No. 1 being a partnership firm having its office at 18, Mallick Street, Calcutta - 700 007 under Police Station Burrabazar and its partners who are described as the Defendant Nos. 2 to 9. There is no dispute that the Defendant Nos. 4 and 6 died during the pendency of the suit and that they were partners of the firm. It is not also dispute that the firm is also represented by other Defendants and the verification of the written statement was done by the Defendant no 7. The relief sought for in the plaint could well be granted against the firm and its partners. The Defendant Nos. 2 to 9 were, therefore, being termed as partners of the firm and when two of the partners died the suit can well proceed against the firm and other partners. It may be pointed out that the learned Trial Judge has rightly observed in the impugned order that the lease deed executed between the Plaintiff and the firm were signed by three partners only on behalf of the firm and not by all the partners. The lease deed clearly indicates that the lease shall be bound upon the firm, their respective heirs, executors, administrators and representatives on the Other Part. At present there is no indication that the heirs of the deceased partners have been included as the partner of the firm.

4. Under the circumstances, the relief's sought for in the suit are mainly against the firm and the partners have been described as proper parties and not the necessary parties. The relief's as claimed by the Plaintiff can well be granted in favor of the Plaintiff and against the firm and its existing partners. Under the circumstances the heirs of the deceased Defendants need not be added as parties to the suit. The suit could well proceed against the firm and the remaining partners. During argument the learned advocate for the Petitioner has referred to the decision of The Upper India Cable Co. and Ors. v. Bal kishan, reported in AIR 1984 SCC 1381 and thus, he submits that the legal representatives of the deceased partners should be included. On careful perusal of this decision I hold that his decision does not favor the Petitioners at all. Rather it supports the impugned order passed by the learned Trial Judge. It has been clearly indicated therein that where in the suit for eviction a firm was impleaded as the tenant and its partners were impleaded merely as proper parties and no relief of any kind was prayed for against them in their personal capacity, for the failure to substitute heirs and legal representatives of the partners who died pending appeal who neither have joined the firm nor were entitled to be taken in as partners in place of the deceased partners as partners in the firm, the appeal would not abate. I hold that the impugned order is in consonance with the said decision. Therefore I am of the view that the learned Trial Judge has rightly allowed the application under Order 30 Rule 4 of the CPC and there is nothing to interfere with the impugned order.

5. This revisional application is, therefore, devoid of merits. Accordingly, the revisional application is dismissed.

6. Considering the circumstances, there will be no order as to costs.

7. Urgent Xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.