

(2013) 07 DEL CK 0443

Delhi High Court

Case No: Regular First Appeal (OS) 120 of 2010

SNP Punj and Another

APPELLANT

Vs

Punj Star Industries
Pvt. Ltd.

RESPONDENT

Date of Decision: July 10, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(5), Order 41 Rule 11, Order 41 Rule 20, Order 41 Rule 33, Order 41 Rule 4
- Limitation Act, 1963 - Section 21

Citation: (2013) 07 DEL CK 0443

Hon'ble Judges: Reva Khetrapal, J; Pratibha Rani, J

Bench: Division Bench

Advocate: J.P. Sengh, with Ms. Gurkamal, Mr. Sumeet Batra and Ms. Ankita Gupta, for the Appellant; Naresh K. Thanai, for the Respondent

Judgement

Pratibha Rani, J.

C.M. No. 2172/2011

1. CS (OS) No. 4607/1992 was filed by M/s. Punjstar Industries Pvt. Ltd. (respondent herein) against three defendants, namely, Atna Engineering Pvt. Ltd., Shri SNP Punj and Shri Uday Punj. While Atna Engineering Pvt. Ltd. was sued as defendant No. 1, Shri SNP Punj and Shri Uday Punj were impleaded as defendants No. 2 & 3, in their capacity as Managing Director and Director respectively. Feeling aggrieved by the judgment and decree dated 06.09.2010 passed by the learned Single Judge in the civil suit, the appellants, that is, Shri S.N.P. Punj and his son Shri Uday Punj have preferred the present appeal bearing RFA(OS) No. 120/2010 impugning the judgment and decree in the above suit.

2. In consonance with the plea taken in the written statement, in the present appeal also, the appellants (defendants No. 2 & 3 in the suit) have not described themselves as Managing Director/Director of Atna Engineering Pvt. Ltd.

3. On the notice of the appeal being served, the respondent questioned the maintainability of the appeal as the defendant No. 1 company was not impleaded as a party in the appeal.

4. C.M. No. 2172/2011 u/s 151 read with Order 41 Rule 20 CPC which is being disposed of by us by this order, has been filed in view of the objection taken by the respondent challenging the maintainability of the appeal without impleading Atna Engineering Pvt. Ltd. as a party in the present appeal.

5. The appellants have invoked the power of this Court u/s 151 CPC read with Order 41 Rule 20 CPC to implead Atna Engineering Pvt. Ltd. as respondent No. 2 in the present appeal. Amended memo of parties to this effect was also annexed with this application.

6. Instant matter pertains to a dispute arising out of family business being run by Punj brothers. As per averments made in the plaint, Punjstar Industries Pvt. Ltd. (plaintiff) was earlier controlled by the defendants No. 2 & 3 and later after the arbitration award and family settlement, the control of various companies was shared by Punj brothers and their families in terms of settlement which was entered into and implemented. Prior to the settlement, the control of the plaintiff company being in the hands of defendants No. 2 & 3, they have been now sought to be made liable for the acts of misfeasance committed at that time. It is further the case of the plaintiff that after the family settlement Atna Engineering Pvt. Ltd. came to the share of defendants No. 2 & 3.

7. The respondent Punjstar Industries Pvt. Ltd. (plaintiff in the suit) strongly opposed the prayer made by the appellants not only on the ground of limitation but also for the reason that decree against Atna Engineering Pvt. Ltd. has attained finality and prejudice shall be caused to the answering respondent in case Atna Engineering Pvt. Ltd. is impleaded as respondent in the present appeal at this stage.

8. We have heard learned counsel for the parties and have also considered the oral/written submissions put forth by them.

9. Perusal of the record reveals that the present application (C.M. No. 2172/2011) was necessitated as on 07.12.2010, during the course of hearing of the appeal the respondent questioned the maintainability of the appeal without impleading defendant No. 1 Atna Engineering Pvt. Ltd. as a party. The appellants while maintaining their stand that no relief has been sought against Atna Engineering Pvt. Ltd. and it was not necessary to implead Atna Engineering as a party, to avoid any technical objection by the respondent, sought permission of this Court to implead Atna Engineering Pvt. Ltd. as respondent in the present appeal.

10. On behalf of the appellants, Mr. J.P. Sengh, learned senior counsel submitted that this Court has ample power under Order 41 Rule 20 and u/s 151 CPC to implead Atna Engineering Pvt. Ltd. as a party in this appeal. It has been further submitted by him that the objection raised by the respondent invited this application. Shri J.P. Sengh urged that when the family business was being run by all the four brothers it was the practice of all the companies to divert surplus funds of one company to another for investment purposes and the funds stated to be diverted from Punjstar Industries to Atna Engineering Pvt. Ltd. was as per the practical policy of this family business running various companies. Hence this could not have been termed as an act of misfeasance. Learned senior counsel for the appellants further submitted that irrespective of the pleas taken by the appellants in the civil suit or in appeal before this Court, this Court in exercise of inherent power may implead Atna Engineering Pvt. Ltd. as required in the present appeal. Learned counsel for the appellants has relied upon (i) [Bajranglal Shivchandrai Ruia Vs. Shashikant N. Ruia and Others](#), ; (ii) [State Bank of India Vs. Ramkrishna Pandurang Barve and anothers](#), ; (iii) [E. Madhavi Amma and Others Vs. E. Indusekharan and Others](#), and (iv) M/s. Invest Import, Deograd (Yugoslavia) vs. M/s. Satkin Mayors & Co. Jullundur, ILR (1978) I Del, in support of his submissions.

11. In Bajranglal Shivchandrai Ruia (supra), the Supreme Court, after dealing with the power of the Appellate Court with reference to Order 41 Rules 4, 33 and 11 and to make appropriate orders in consonance with justice, equity and good conscience, held as under:-

43. The respondents then contend that, even if the appeal is not liable to be dismissed on the principle of res-judicata, even otherwise the appeal should be dismissed as it may result in conflicting decrees. Upon dismissal for default of Civil Appeal No. 7490/93, the decree made by the High Court became final as against Shyamsundar. If the present appeal is allowed, resulting in setting aside the decree or making any modification thereof, it would result in the anomalous situation of there being conflicting decrees between the same parties, arising out of same cause of action, is the contention.

44. In our view, this contention has no merit. Where there are several defendants, who are equally aggrieved by a decree on a ground common to all of them, and only one of them challenges the decree by an appeal in his own right, the fact that the other defendants do not choose to challenge the decree or that they have lost their right to challenge the decree, cannot render the appeal of the appealing defendant infructuous on this ground. In fact, Rule 4 and Rule 33 of Order XLI of the CPC are enacted to deal with such a situation.

12. Mr. Naresh Thanai, learned counsel for the respondent referred to the provisions of Order 41 Rule 20 CPC and submitted that not only the application is barred by limitation but no justified reason or bona fide omission has been pleaded in the application so as to satisfy this Court about the necessity to implead Atna Engineering Pvt. Ltd. as a party in this appeal. Mr. Thanai further submitted that had the appellants claimed it to be a bona

fide mistake on their part or had given some other justification for not impleading Atna Engineering Pvt. Ltd. as a party, he would have conceded to the application. But when the appellants themselves are claiming in the application that Atna Engineering Pvt. Ltd. is not a necessary party, this Court should decline the prayer made in the application.

13. Learned counsel for the respondent conceded that under Order 41 Rule 20 CPC, this Court is vested with ample power to implead a party in the appeal, but the circumstances in which this discretion can be exercised by this Court are non-existent in the present case when the appellants are still of the view that Atna Engineering Pvt. Ltd. (defendant No. 1 in the suit) is not a necessary party. Atna Engineering Pvt. Ltd. has not preferred any appeal against the impugned judgment and decree, thus qua defendant No. 1 i.e. Atna Engineering Pvt. Ltd. the decree has attained finality and has become executable. Thus, in the given facts and circumstances of the case a right has accrued in favour of the respondent to get the decree executed against Atna Engineering Pvt. Ltd. (defendant No. 1 in the suit) and the application deserves to be dismissed. In support of his contentions, counsel for the respondent relied upon (i) AIR 1927 252 (Privy Council) ; (ii) Labhu Ram & Ors. Ram Pratap AIR (31) 1944 Lah 76 (FB) and (iii) M/s. Invest Import vs. M/s. Walkin Mayors ILR 1978 (1) Del 658.

14. Reliance placed by learned counsel for the respondent on AIR 1927 252 (Privy Council) is not of any help to the respondent, as in that case it was held that finding arrived at by the Trial Court are res judicata as between the plaintiff and defendant No. 1 and also as against subsequent purchaser.

15. In another decision of Labhu Ram & Ors. Ram Pratap AIR (31) 1944 Lah 76 (FB) relied upon by counsel for the respondent, it was held that once time for appeal has run out, the appellant subsequently cannot implead defendant who was not originally impleaded as respondent in the appeal. Here, it is suffice to mention that in this very case it was further held that discretion is vested in the Court to add a party who is interested in the result of the appeal. This discretion can be exercised by the Court even suo moto.

16. Learned counsel for the respondent is also unable to derive any advantage from the decision of M/s. Invest Import vs. M/s. Walkin Mayors ILR 1978(1) Del 658 for the reason if this appeal is allowed, it would result in inconsistent decree in a suit wherein subject matter was same. This is rather a ground to exercise discretion under Order 41 Rule 20 CPC to implead Atna Engineering Pvt. Ltd. as respondent in the present appeal.

17. Before dealing with the rival contentions, it is necessary to refer to the relevant facts as pleaded by the respondent Punjstar Industries (plaintiff in the suit). The facts are very crucial to examine the issue in hand. CS(OS) No. 4607/1992 was filed by M/s. Punj Star Industries Pvt. Ltd. pleading that Punj Star was owned and controlled by M/s. Punj Brothers. Financial affairs of all the Punj Group companies were controlled by SNP Punj (defendant No. 2 in the suit) during the period 1987-89. The family dispute between the parties became the subject matter of arbitration and the award passed in 1987 was made

a Rule of the Court resulting into Punj Star becoming a company controlled by SNP Punj, V.P. Punj, R.P. Punj, N.P. Punj and their families. A subsequent settlement in the year 1989 was pleaded by the plaintiff which was duly accepted and implemented by the four brothers.

18. Defendant No. 1 Atna Engineering Pvt. Ltd. fell to the share of defendants No. 2 & 3 and was owned and controlled by SNP Punj and his family including his son Uday Punj. Defendants No. 2 & 3 (the appellants before us) being Managing Director and Director of Punj Star Industries (plaintiff in CS(OS) No. 4607/1992) during 1987-89 were not empowered to act beyond the powers conferred on them. However, they committed certain acts of misfeasance by abusing their position by issuing certain cheques ostensibly acting as Directors. SNP Group (allegedly stated to be managed and controlled by SNP Punj and his son Uday Punj) confirmed certain liabilities to Punj Star Industries. The defendants despite confirming the liability and demand to this effect failed to pay the amount to Punjstar Industries. On failure of the SNP Group to clear the said liability within the agreed time, the respondent/plaintiff filed a civil suit being CS(OS) No. 4607/1992 for recovery of a sum of Rs. 96,31,953.04.

19. From the perusal of the impugned judgment (para-16), it is revealed that even written statement was not filed by defendant No. 1 Atna Engineering Pvt. Ltd. and the suit was contested only by defendant No. 2 SNP Punj and his son Uday Punj (defendant No. 3).

20. The learned Single Judge held all the three defendants liable to pay the amount to the plaintiff jointly and severally. The learned Single Judge on the basis of documentary evidence also formed the view that Atna Engineering (previously part of Punj Group of companies) fell to the share of SNP Punj and his family which included defendant No. 3, his son.

21. The impugned judgment and decree passed by the learned Single Judge in CS(OS) No. 4607/1992 was challenged by SNP Punj and his son Uday Punj by filing RFA (OS) 120/2010 in this Court. However, Atna Engineering Pvt. Ltd. has not been impleaded as a party/respondent in this appeal obviously for the reason that during trial they had denied the case of the Punj Star Industries (the plaintiff in the suit) that Atna Engineering fell to the share of defendants No. 2 & 3.

22. In the application filed by the appellants under Order 41 Rule 20 read with Section 151 CPC, no doubt the appellants have not claimed that it was due to bona fide mistake that Atna Engineering was not impleaded as a party. It was specifically stated that the same has been filed with a view to meet the technical objection raised by the respondent herein.

23. The question that arises for consideration is whether in the given facts and circumstances, irrespective of the ground taken by the appellants in the present application moved under Order 41 Rule 20 CPC, whether this Court should exercise the

discretion to implead Atna Engineering Pvt. Ltd. as a respondent in this appeal.

24. In the case of [E. Madhavi Amma and Others Vs. E. Indusekharan and Others](#), a Division Bench of Kerala High Court had the occasion to deal with the powers of the Appellate Court after addition of sub Rule (2) to Order 41 Rule 20 CPC to add a party omitted in appeal, even after the expiry of period of limitation. The Division Bench of Kerala High Court, after discussing the decision of the Federal Court in AIR 1941 16 (Federal Court), held as under:-

14. This view has been adopted also by the decisions referred to earlier and the said decisions have held that the powers of the Court under Order 41, Rule 20 of the Civil P.C. is not exhaustive of the power of an Appellate Court to implead parties who have been left out under a bona fide mistake or for like other reasons. In fact in the decision reported in AIR 1951 415 (Nagpur) the omission to join a party as respondent in the appeal was due to a bona fide mistake as in the present case and the Nagpur High Court held that in such circumstances the Appellate Court in the exercise of its inherent powers u/s 151 of the Civil P.C. can add parties left out in the appeal. Similarly a bona fide omission to implead in the appeal due to an error in the drafting of the decree of the Court below was held not to preclude the Appellate Court from exercising its inherent power to add as party the persons so left out while filing the appeal even after the period of limitation. See [Sham Lal and Others Vs. Sultan and Others](#). There is no absolute rule propounded by the Privy Council that the party left out due to a bona fide mistake and in fact who was intended to be made a party to the appeal, cannot be said to be a person who is interested in the result of the appeal as the appeal is intended to be filed against the whole decree including a challenge to the interest of the person who has been omitted to be included. As pointed out already in the case on hand, the omission to implead the first defendant was due to a bona fide error on the part of counsel for the appellants at the time of drafting and filing the appeal and it was not the intention to leave out the first defendant from the appeal or not to challenge the decree as against the first defendant especially in view of the fact that the decree proceeded on a ground common to all the defendants including the first defendant, namely, the acceptance of the due execution of the will under which the first defendant was also a legatee with the others.

15. The addition of Sub-rule (2) to Order 41, Rule 20 of the Civil P.C. by the amendment of the Code in the year 1976 makes it clear that the Appellate Court has the power to add a party who has been omitted in the appeal even after the period of limitation, once he is shown to be a person coming within Order 41, Rule 20 of the Civil P.C. If the decision of the Privy Council is taken to lay down an absolute proposition that a party who has been left out and in whose favour the period of limitation for the appeal had expired cannot be said to be a party interested in the result of the appeal filed against the other defendants is pushed to its logical conclusion, Sub-rule (2) added by the 1976 amendment itself would become otiose. Sub-rule(2) demonstrates that the Court retains the power to implead a party who will be interested in the outcome of the appeal even after the period of limitation provided reasons are available and the Court records them. It appears to us

that the proviso adopts the view that is discernible from the decisions of the Madras, Bombay, Punjab, and Jammu and Kashmir High Courts. It also appears to us that Sub-rule (2) of Order 41, Rule 20 of the Civil P.C. is incorporated so as to put it beyond doubt that notwithstanding the fact that the appeal against an omitted party has become barred by limitation the court has still the power on cause being shown to implead him in appeal so as to bring about an adjudication of the cause on the merits. The argument therefore that "a person who is left out can never be a party interested in the outcome of the appeal cannot be accepted without qualification.

16. This approach is also supported by the proviso to Section 21 of the Limitation Act, 1963 read with Order 1, Rule 10(5) of the Civil P.C. which gives a discretion to the Court while impleading a party to treat the party as having been impleaded within the period of limitation notwithstanding the fact that the real impleading is done beyond the period of limitation. The objects and reasons for the insertion of the proviso to Sec. 21 of the Limitation Act says that it is done so that an omission to implead a person owing to a bona fide mistake does not deprive a person of his rights against that person if the Court is satisfied in that behalf. The developing concept of justice is to give the Courts wider powers to get over the procedural bottlenecks so as to enable the Court to do real justice between the parties in a cause. This broader approach would certainly be stultified by putting undue restrictions on the power of the Appellate Court to implead the absolutely necessary parties so as to enable it to decide the cause on the merits.

25. For addition of a respondent under Order 41 Rule 20 CPC, the test is whether the proposed party's interest is likely to be prejudiced by the outcome of the appeal. Further, if appeal is allowed whether it would result in an inconsistent decree in a suit wherein subject matter was same. In order to ascertain necessity of impleading a person as a respondent, this Court is required to see whether in his absence there would be conflicting judgments. The Appellate Court has the power to add any party to the suit who has not been impleaded in the appeal provided he is interested in the result of the appeal. Since it is left to the discretion of the Court to add a party as respondent even after appeal time has expired, if the Appellate Court exercises the discretion to make persons interested in the result of appeal as party to the appeal and he is to be affected by any decree or order to be passed in the appeal, the question of limitation would not arise in that circumstance. This is for the reason that in the matter of impleading a party in the appeal, the period in the appeal is not solely governed by the provisions of Order 41 Rule 20 CPC. Even in exercise of inherent power u/s 151 CPC, despite expiry of period of limitation, the Court can exercise the said discretion vested in it.

26. The facts of CS(OS) No. 4607/1992 referred to above, would reveal that as per pleadings, while Punj Star claimed that Atna Engineering Pvt. Ltd. fell to the share of defendants No. 2 & 3 (the appellants before us), it was so denied by defendants No. 2 & 3. Thus, Atna Engineering Pvt. Ltd. became nobody's baby and the appellants in consonance with the defence taken in the written statement did not file any appeal on behalf of Atna Engineering Pvt. Ltd. The plaintiff Punj Star Industries had impleaded Atna

Engineering as defendant No. 1 and defendants No. 2 & 3 as its Managing Director and Director respectively claiming a money decree against them which fact was disputed by SNP Punj and Uday Punj (defendants No. 2 & 3 in the suit). Atna Engineering being a legal entity could have acted of its own by filing an appeal through its Director or authorized representative/officer. But, defendants No. 2 & 3, who were claimed by the plaintiff to be the Managing Director and Director of Atna Engineering Company disputed this assertion. The joint and several liability of the defendants No. 2 and 3, that is, SNP Punj and his son Uday Punj is sought to be challenged in this appeal, but not in their capacity as Managing Director or Director of Atna Engineering Pvt. Ltd. It is thus a fit case, where in exercise of discretion vested in this Court under Order 41 Rule 20 CPC as well as in exercise of inherent power u/s 151 CPC, it is necessary to implead Atna Engineering Pvt. Ltd. as respondent No. 2 in the present appeal. Amended memo of parties is already on record.

27. The application bearing C.M. No. 2172/2011 moved under Order 41 Rule 20 read with Section 151 CPC is allowed subject to costs of Rs. 10,000/- which shall be deposited by the appellants with the Delhi High Court Legal Services Committee within a period of one week and receipt showing the said deposit shall be placed on record. Notice be issued to newly impleaded respondent No. 2, on the appellant taking necessary steps, returnable on 05.08.2013. Notice be given dasti to the appellants.