

State Bank of India Vs The Podar Mills Ltd. and Others

Court: Bombay High Court

Date of Decision: Aug. 8, 1988

Acts Referred: Civil Procedure Code, 1908 (CPC) & Order 1 Rule 10(2)

Citation: AIR 1989 Bom 215 : (1989) 59 FLR 482

Hon'ble Judges: G.H. Guttal, J

Bench: Single Bench

Advocate: K.K. Singhavi, instructed by Shah and Sanghavi and N.G. Thakkar, for the Appellant; T.K. Cooper Advocate, instructed by Mehta and Girdharilal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This Chamber Summons is by Rajasthan Trade Union Kendra who represent the interest of the workers employed by the Defendant No. 1.

They seek an order that they be joined as Defendants to the suit. They claim that they ought to be joined as Defendants as their presence before

the Court necessary "in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit".

2. The plaintiff a bank, has instituted this suit against the Defendant No. 1 inter alia, for the recovery of a sum of Rs. 14,76,08,669.18 and interest.

The Defendant No. 1 is a Company, the Defendant No.2 and Defendant No.3 are Directors, the Defendant No.4 and Defendant No. 5 are

National Textile Corporation Ltd, and National Textile Corporation Ltd, and National Textile Corporation (South Maharashtra) Ltd, respectively.

By the order dated 8th March, 1988 in the Notice of Motion No. 337 of 1987 taken out by the Plaintiffs this Court appointed Receiver of the

immovable property of the Defendant No.1 situated at Jaipur together with the machinery goods, stock etc.

3. The Applicants' case is based on these averments;

The Central Government has taken over the management of Podar Mills (Process House) at Bombay under the Textile Undertakings (Takeover of

Management) Act, 1983. The production in the Jaipur unit came to a total halt on 2nd Aug.1985. the worker's salaries for the months of June and

July 1983 are still unpaid. The workers held a decree in their favour for a sum of Rs. 14,34,000/-. A total amount of Rs. 4,25,00,000/- inclusive of

arrears of wages and gratuity is claimed as due and payable by the Defendant No.1

The Applicants claim that the workers are keen to restart the Mill and have approached the appropriate authorities of the State Government as

well as the Central Government. Ahmedabad Textile Industries Research Association, in an exhaustive survey, has concluded that the Jaipur unit is

technically viable. The workers claim that they are confident of working the Mills to its full capacity, the possibilities of which are being discussed

with the State Government of Rajasthan and various financial institution. An application has been made to the State of Rajasthan and the Central

Government to permit the workers to run the Jaipur unit. It in these circumstances, the Court Receiver sells or disposes of the machinery and other

assets which are the means of production and source of the livelihood of the workers, the entire exercise of the Applicants will become infructuous.

4. Mr. Singhavi, Learned Counsel for the Applicants drew my attention to the judgment of the Supreme Court in Workers of Rohtas Industries

Ltd. Vs. Rohtas Industries Ltd., and urged that in the circumstances of this case, the Applicants ought to be joined as Defendants to this suit. On

the other hand, counsel for the Plaintiffs drew my attention to the subsequent judgment of the Supreme Court in Workers of M/s Rohtas v. M/s

Rohtas Industries Ltd. Writ Petn. Civil No. 5222 of 1985 : (Reported in 1987 LJT (SC) 28)and urged that the Supreme Court itself has held that

the earlier decision in Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., . ""Was made under peculiar circumstance obtaining in this

case and may not be taken as a precedent."" Therefore, he urged that the Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., does not

assist the Applicants. He, then, relied upon Virbhadrapa Shilvant v. Shekabei Harun 41 Bom LR 249 : AIR 1939 Bom 188 and Jivanlal

Damodardas Wani Vs. Narayan Ukha Sali, and urged that unless the Applicants are able to show that no decree can be passed in the suit without

affecting their rights, it cannot be said that the Applicants are necessary parties.

5. The application is made under the provisions of O.I. R. 10(2) of the Code of Civil Procedure. The name of a person may be added as Plaintiff

or Defendant, if such person to have been joined"" as Plaintiff or Defendant ""in order to enable the Court effectively and completely to adjudicate

upon and settle all the questions involved in the suit.

6. The necessity of the presence of the Application before this Court for the purposes set out in O.I. R. 10(2) has to be judged having regard to

the nature of the suit, the manner in which the decree may affect the Applicant and the need to avoid multiplicity of suits. For example in a suit

relating to immovable property, a person having proprietary right in any capacity either as trustee, mortgagee or lessee etc, may become a

necessary party. Order 1.R. 10(2) covers not only such persons, but all persons who are likely to be biased by a decree that may be passed. If a

person is likely to be biased or prejudiced by the decree in the suit, he has an interest in the subject matter of the suit and his presence will enable

the Court to adjudicate upon and settle all the questions involved in the suit. The Court's power under O.I, R. 10(2) of the CPC has to be so

exercised as to enable the Court to ""completely adjudicate upon and settle all questions involved in the suit"". Another significant feature of O.I.R.

10(2) is that the words ""between the parties to the suit"" have not been employed by the legislature to qualify the words"" completely adjudicate

.....in the suit.

7. Consider now the tests that have been applied by judicial decisions, for determining whether a person may be added as a party. Once of the

tests is whether the suit or a part of the suit can be dismissed if the Applicants claim is upheld., for instance, where , in an administration suit, the

original parties did not dispute one another"s status as heirs, an applicant who claims to be the sole heir of the deceased can be joined as a

Defendant because if his claim is established, the suit will be dismissed. Moungh Tin v. Mung Po AIR 1927 Rang 192, Rama Swamy v. V.

Vellappa AIR 1931 Mad 357 . For the same reason in a suit to recover debts due to the partnership firm, the legal representatives of a deceased

partner were held to be necessary parties Shri Shrikrishan Moolchand Vs. Deokinandan Sardharam and Others, .

Another principle is that an applicant may be joined in a suit in order to avoid multiplicity of suits and such an applicant may not be compelled to

file a separate suit to establish his Claim; Moungh Tin v. Moungh Po AIR 1927 Rang 192.

8. The words employed in O.I. R. 10(2) are ""question involved in the suit."" The Patna High Court has held that the words"" settle all the questions

involved in the suit"" mean all material questions arising from the subject matter of the suit which affect not only the Plaintiffs and the Defendants but

also third parties who may apply to be impleaded ; Bindeshwari Chaudhary Vs. Dr. Sheo Nandan Upadhyaya and Others, .

9. The general principle that emerges is that a third party whose claim, if upheld, will result in the dismissal of the whole or a part of the suit, should

be added as a party. Such a person may be said to have interest In the subject matter of the suit.

This suit by the Plaintiff Bank is for recovery of the debt, if necessary, by selling the property mortgaged and/or hypothecated with them. What

interest do the Applicants representing the workers have in the subject matter of the suit? In order to answer this question, the nature of the reliefs

sought may be first considered.

The Defendant No. 1 borrowed from the Plaintiffs a sum of Rs. 14,76,08,669.18 by mortgaging immovable property in which the factory is

situated and by hypothecation of the movables, viz., machinery used for production of the goods. It is prayer (c) in the plaint that is of significance

to the Applicant's case. By this prayer the Plaintiffs seek a decree that the immovable property viz., the premises of the factory where the

Applicants work be sold and the sale proceeds applied towards the satisfaction of the Plaintiff's claim. Prayers (d) and (e) seek a decree that the

movables including the machinery be sold and the sale proceeds applied to satisfy the Plaintiffs' claim. Therefore prayers (c), (d) and (e) of the

plaint if granted, result in the sale of the premises of the factory and the machinery. The workmen earn their livelihood by working on the machines.

There is, thus, a nexus between the workers, machinery and the land on which the machinery is kept. If the machinery and the land are sold, the

workers lose the source of their livelihood. This is the connection between the workers and the property which has been mortgaged and/or

hypothecated to the Plaintiffs.

10. In the case of Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd., the Supreme Court while recognizing that the stock of goods was

pledged with the Bank who has a priority of claim emphasized that "these stocks were the products of this industry before its closure and, therefore,

the workers also contributed their labor and it is the result of their hard work that these stocks could be produced." Then, they went on to

"observe that the workers' "substance and living is also perhaps of paramount importance and has to rank with highest priority". No doubt, in a

subsequent judgment in Workers of M/s Rohtas Industries Ltd, v. M/s Rohtas Industries Ltd., Writ Petn (Civil) No. 5222 of 1985 the Supreme

Court clarified that the order referred to above was made "Under peculiar circumstances" and may not be taken as a precedent. In this, suit, this

Court is not called upon to order any payment to the workers. The order to the Supreme Court was that the workers shall be paid out of the sales

proceeds of the stock hypothecated with the bank. The need to clarify the earlier order arose out of the submission made by the Official liquidator

that there was, in respect of the goods, a liability of the payment of sales tax and excise duty. It is in that context that the Supreme Court referred

to the peculiar circumstances and said that the judgment should not be considered as a precedent. The observations of the supreme court in regard

to the workers' livelihood or of importance not because the payment was ordered to be made to the workers out of the sales proceeds of the

Hypothecated goods, but because the observations establish the nexus between the workers' labor and the goods produced by such labor. The

observations of the Supreme Court have shaken the validity of the traditional concept that in a fight between the company and the creditors, the

workers, presence is irrelevant. This is the significance of the observations of the Supreme Court. It should be borne in mind that I am called upon

to decide the limited question where the workers and their representative union are necessary or proper parties to the suit where the degree in

favour of the plaintiffs deprives the workers of the source of their livelihood.

The relevance of the workers, presence in a dispute between the company and creditors was once again highlighted by the Supreme Court. In an

enterprise like the defendant No. 1, the workers who supply labor are as much interested in the enterprise as are those who supply the capital.

They are not mere vendors of toil. They are producers of wealth as much as capital. In the days when the workers participation in the management

is encouraged it is ideal to contend that the workman have no locus in the dispute of this nature. National Textile Workers' Union and Others Vs.

P.R. Ramakrishnan and Others, .

The Supreme Court went on to amplify the nature of the workers interest in the enterprise and the continued extenses of the industry. "It is plain

that the future of the workers is at stake and their right to work is in jeopardy as a result of the presentation of the winding up the petition. Unlike

the share holders, to most of whom the shares they hold represent mere investments and to some of whom the means to control the affairs of the

company, to the workers, the life of the Company is their own and its welfare is theirs. They are so intimately tied up that their interest in the

survival and the well being of the company is much more than the interest of the share holders. National Textile Workers' Union and Others Vs.

P.R. Ramakrishnan and Others, . "If , therefore, the very extences of the workers is under a threat of extension, it cannot said that the workers

should not heard. A similar view was taken in Fertilizer Corporation kamgar Union (Regd) , Sindri Vs. Union of India AIR 1981 SC 4344.

11. It is, no doubt, true that the cases before the Supreme Court arose out of winding up petitions under the companies Act . this fact is not of

much significance, for the Supreme Court was considering the workers right generally. The Supreme Court took into account the factors like "the

future of the workers", "their right to work", "their interest in the survival and well being of the Company" and so on. It is these factors which have

changed the context of the relationship of the worker to a suit or legal proceedings affecting his survival.

12. Consider how this relationship is immediately connected with the relief's shout in the suit. If the machinery is sold the workers right to work,

earn wages, participate in the management comes to an end. Therefore they are interested in preserving not only the machinery which provides their

livelihood but also the land and buildings in which such machinery is housed. It is this interest of the workers that makes them necessary parties to a

suit of this nature.

13. 14. Three judgments relied upon by Council for the Plaintiffs needs to be considered. In *Virbhadrappa Shivlani Vs. Shekabi Harun* 41 Bom

LR 249: AIR 1939 Bom 188 *Jivanlal Damodardas Wani Vs. Narayan Ukha Sali, and Razia Begum Vs. Sahebzadi Anwar Begum and Others*, it

was held that a person may be added as a party provided he should have "direct interest in the subject matter of the litigation". That is undoubtedly

true.

The question whether a person had interest in the subject matter of a suit cannot be considered in vacuum. The nature of the relief's, their impact on

the person seeking to be added as a party the context in which the claim to be joined arises, are factors of fundamental importance. For instance at

a given point of time the person - the worker- may have no interest in the subject matter of the proceedings. But the times change so does

jurisprudence. This is demonstrated by changes in Law. The industrial undertaking belongs to the employees; yet his freedom to close it down is

now restricted by Law. He has to seek permission of the government cannot grant it without hearing the workman.

15. In the past, Law has been adopted to changing conditions when Blackburn J. formulated the rule in *Ramsden V/s Fletcher* he was adopting the

principles of Tort liability to the era of industrial enterprises in a once predominantly agricultural society. What was, once upon a time

regarded as Tort of conspiracy is now juridically recognized as a legitimate weapon of collective bargaining of workers. *Cropper Handwoven Harris*

Tweed Co. Ltd. Vs Veitch (1942) 1 All ER 142. The Supreme Court's observations manifest the conceptual change in regard to the employees

Locus in matters involving the property owned by their employer.

16. Mr. Thakkar relied upon the order of this court in chamber Summons No. 493 of 1983 taken out by the Trade union *Bhartiya Kamgar Sena*,

for impeding them as parties to the suit. The court distinguished the judgment of the Supreme Court on the ground that the suit was not for the

purpose of closing down the enterprise of the defendant's. The court permitted the Trade Union to make such application as it thinks proper in the

Dependent Company chose to close down the factory. The Chamber Summons was dismissed. I do not see how these orders affect the Plaintiff's,

especially in view of the supreme Court's observation which establish a nexus between the claim of the workers and the subject matter of the suit.

The reliance placed on the orders is misconceived.

17. in the light of the considerations formulated and emphasize by the supreme court in relation to the workers right, the nexus between the claim of

the workers and the relief's in the suit is established. Suppose, the workers succeed in the efforts reveve and rebuild the industry, they will be able

to produce the goods and increase the wealth of the defendant No1. In the vent , the Plaintiffs will ge able to realize the Debuts without selling the

security. Consequently the claim, in regard to the sale of the Mortgaged and hypothecated property may be rejected. This suit was filed in 1986. It

is possible for workers to revive and revitalize the Mills and make it a profitable enterprise all this can happen before the suit is heard and disposed

of in its ordinary course.

18. Having regard to the decision to the supreme court and view of what I have said in the forgoing paragraphs, I have no doubt that the applicants

have ""a direct interest in the subject matter of the suit limited though, it is to the sale of the mortgaged and hypothecated property. The

a[applicant"s are necessary parties to the suit.

19. For all these reason the applicants chamber summons No. 414 of 1988 is made absolute terms of prayers (a) and (b). the plaintiffs can carry

out the amendments to the plaint consequent upon this order within two weeks from today. prayer(c) does not survive in view of the disposal of

these chamber summons. There will be no order as to costs. This order shall not come into operation for four weeks from today.

20. Order Accordingly.