

Subhash Chander Vs. Siddharth Singhal

Subhash Chander Vs. Siddharth Singhal

SooperKanoon Citation : sooperkanoon.com/46281

Court : Delhi

Decided On : Feb-23-2015

Judge : Manmohan Singh

Appellant : Subhash Chander

Respondent : Siddharth Singhal

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment pronounced on 23rd February, 2015 % + I.A.Nos.19196/2013 & 19197/2013 in CS (OS) No.1410/2013 SUBHASH CHANDER Through Plaintiff Ms. Geeta Luthra, Sr. Adv. with Mr. Narender Goyal, Adv. versus SIDDHARTH SINGHAL ThroughDefendant Mr. Vikram Aggarwal, Adv. CORAM: HON'BLE MR. JUSTICE MANMOHAN SINGH MANMOHAN SINGH, J.

1. By this order I shall propose to decide the two following applications in the matter, the details of the same are given as under:(a) I. A.No.19196/2013 under Order VI Rule 17 read with Section 151 CPC filed by the plaintiff seeking amendment of plaint. (b) I.A.No.19197/2013 under Order I Rule 10 read with Section 151 CPC filed by the plaintiff seeking impleadment of Mr. Ashok Kumar and the partnership firm M/s Sadhu Ram Manish Ram as defendant Nos. 2 and 3 in the array of parties.

2. As per the original plaint the plaintiff has filed a suit for recovery under Order XXXVII Rule 1 CPC for a sum of Rs.88,00,755/- against the defendant i.e. Siddharth Singhal sole proprietor of M/s Sadhu Ram Manish Kumar. Along with the suit, the plaintiff has also filed two interim applications i.e. I.A.No.11242/2013 under Order XXXIX Rule 1 and 2 CPC praying for ad-interim injunction restraining the defendant from parting with the possession, selling, alienating, mortgaging etc. or creating any third party interest in his Trading licence No.A206B111 issued by the APMC, Narela and his property i.e. Flat No.501, Shree Ram Hill View and 101-D/2, Mahalaxmi Vihar, Vishrantwadi, Pune-15 and I.A.No.11241/2013 under Order XXXVIII Rule 5 CPC praying for passing an order of attachment against the aforesaid property and aforesaid Trading licence No.belonging to the defendant till the suit is finally decided.

3. The case of the plaintiff is that the plaintiff is the sole proprietor of M/s Rajan Trading Company which was established in the year 1991 and is a commission agent/ Arhtia who conducts auctions of agricultural products, on behalf of a seller who approaches him. Once the said auction is conducted, the plaintiff charges 2% commission from the purchaser of the said product in the auction. Further, an additional 1% is also charged from the purchaser by the plaintiffs firm as the charges to be paid to the market committee established by the Government i.e. Krishi Upaj Vipnan Samiti (APMC) Narela. In case, there is a delay by the purchaser in the said auction, there is an interest of 1.6% per day imposed by the commission agent according to the agreed market practices.

4. It is alleged in the plaint that the defendant is the sole proprietor of M/s Sadhu Ram Manish Kumar and conducts its business with the license issued by the APMC, Narela. The defendant used to purchase paddy in the auctions which were conducted by the plaintiffs firm at Agricultural Product Market Committee (APMC), Narela Mandi, Delhi. During the period from 29th June, 2010 to 24th December, 2010 the defendant, on behalf of his firm, had purchased paddy in an auction conducted by the plaintiff at APMC. The total value of all the said transactions which the defendant undertook with the plaintiff collectively, is Rs.1,39,12,509.81/-. The plaintiff issued receipts as per the requirement under Rule 26(12) Delhi Agricultural Produce Marketing (Regulation) General Rules, 2000 and also paid

market fees to the APMC. Further, a certificate has also been issued by the APMC, which shows the market fees which has been paid by the plaintiffs firm to APMC for the said period.

5. It is averred by the plaintiff that out of the total sum of Rs.1,39,12,509.81/- the defendant has paid only a sum of Rs.79,80,674.23/- and the balance amount of Rs.59,31,835.58/- is still due towards the defendants firm. In spite of repeated requests to the defendant for the payment of the liability, the defendant has failed to clear the outstanding liability with the plaintiffs firm.

6. It is stated that on 4th December, 2011 the defendant wrote a letter in his own hand writing which was addressed to M/s H.R.M Exports Pvt. Ltd. wherein it was stated that the said company shall clear the pending liabilities i.e. Rs.59,30,970/- of the defendants firm, with the plaintiffs firm and that the defendant shall have no claim over the said amount paid to the plaintiffs firm. On 5th December, 2011 in pursuance to the said letter, the plaintiff went to M/s H.R.M. Exports Pvt. Ltd. for collecting the amount due from the defendants firm and when the said letter was handed over to the director of the said firm, he refused to pay any amount to the plaintiff.

7. It is mentioned in the plaint that the plaintiff between the period 5th December, 2011 and 20th December, 2012 personally visited the defendants office several times and requested him to repay the said liabilities. The defendant completely disregarded the plaintiffs request and merely delayed the payment on one pretext or the other. The defendant also threatened the plaintiff with dire consequences against demanding any of the pending dues from the plaintiff. In pursuance of the said threats extended by the defendant to the plaintiff, the plaintiff filed a criminal complaint with the Crime Cell against the defendant and on 9th January, 2013 the plaintiff also made representation before Deputy Commissioner of Police, Economic Offence Wing against the defendant, but no action was taken on the same till date. On 27th December, 2012 the plaintiff issued a legal notice to the defendant to repay the pending dues to the plaintiff however, the defendant has neither paid nor tendered the outstanding amount to the plaintiff within the stipulated period of time. As the defendant has failed to make the payment of

Rs.59,31,835.58/- and is also liable to pay the interest at 19.20% p.a. i.e. Rs.28,68,919/- w.e.f. 6th January, 2011 till 15th May, 2013 thus, the total amount outstanding against the defendant is Rs.88,00,755/-.

8. By way of application being I.A. No.19197/2013 under Order 1 Rule 10 CPC filed by the plaintiff it is stated that after filing of the suit, the plaintiff filed an application under the Right to Information Act, 2005 in the Agricultural Produce Distribution Committee, Narela, Delhi seeking information about the defendants firm in the name of M/s Sadhu Ram Manish Kumar. It is stated in the application that from the reply of the RTI application, it has come to the knowledge of the plaintiff that the said firm M/s Sadhu Ram Manish Kumar which the defendant represented to the plaintiff that he was the sole proprietor of the said firm, is in fact a partnership firm. According to the said reply to the RTI application, on 5th October, 2009 one Mr. Ashok Kumar, who is the son of Late Mr. Sadhu Ram Manish Kumar entered into a partnership with the defendant for running the firm M/s Sadhu Ram Manish Kumar. It is alleged that according to the said partnership deed, Mr. Ashok Kumar would share 5% of the profit and without sharing any loss of the firm, whereas the defendant would have 95% of the profits of the firm and would also have to bear 100% of the losses of the said firm. Therefore, the defendant represented to the plaintiff as being the proprietor of said M/s Sadhu Ram Manish Kumar and entered into all the transactions with the plaintiff, which led to several financial defaults on the part of the defendant and in turn constraining the plaintiff to file the suit for recovery.

9. It is further stated that Mr. Ashok Kumar and the partnership firm M/s Sadhu Ram Manish Kumar are necessary parties to be arrayed as defendant Nos. 2 and 3 in the suit.

10. By way of another application being I.A. No.19196/2013 under Order VI Rule 17 CPC filed by the plaintiff it is stated that for the purpose of proper adjudication of the matter it is just and necessary to amend paras 3 to 19 and the prayer clause of the plaint in terms of para 8 of the application. In view of the averment made in both the applications, the defendant has strongly opposed the prayer made in both the applications.

11. Replies in both the applications have been filed separately on behalf of proposed defendant Nos. 2 and 3. The objections in both the replies are common. It is stated that with regard to impleadment of proposed defendant No.2 and 3 are concerned, it is the case of the defendant that defendant No.1 was the partner in predecessor to the proposed defendant No.3 being a partnership firm i.e. M/s Sadhu Ram Manish Kumar at 2033-D, Narela Mandi, Delhi-110040 being partnership between defendant No.1 and proposed defendant No.2 only, which commenced on 5th October, 2009 and dissolved on 7th August, 2012. It is stated that the License No.A-206 B111 issued by the APMC Narela is issued to the proposed defendant No.3 and only proposed defendant No.3 is the sole owner of the said license. It is further stated that the defendant No.1 has no concern with the said License of the proposed defendant No.3 i.e. M/s Sadhu Ram Manish Kumar. It is submitted that it has come to the knowledge of the proposed defendant No.2 and 3 on enquiring that the plaintiff has been transacting with the defendant No.1 in its individual capacity with its sole concern/proprietorship concern being M/s Sadhu Ram Manish Kumar which is registered with the sales tax departments and other departments as proprietorship concern only at the address of the M/s Sadhu Ram Manish Kumar namely at 2374-T/21, Bawana Road, Narela Delhi and that neither of the proposed defendant No.2 and 3 had any concern with the said proprietorship concern of the defendant No.1 nor it has any relation with the partnership firm being of the similar name namely M/s Sadhu Ram Manish Kumar at 2093/5, Narela Mandi, Delhi-110040 registered with the APMC Narela of the proposed defendant No.2 and 3. It is stated that the plaintiff knew it all this while and has deliberately played fraud upon this Court and on this count itself the said application of the plaintiff under reply under Order 1 Rule 10 CPC read with Section 151 CPC is liable to be dismissed with costs. It is alleged in the reply that the plaintiff knew all this while that he was transacting with the sole proprietorship concern namely M/s Sadhu Ram Manish Kumar at 2374-T/21, Bawana Road, Narela, Delhi of defendant No.1 and not with the predecessor of the proposed defendant No.3 namely, M/s Sadhu Ram Manish Kumar at 2093/5, Narela Mandi, Delhi-110040 and these facts are on its own amply clear on perusal of the Annexures to the plaint being Exhibit-P7 i.e. alleged letter dated 4th December, 2011 purported to be issued by the defendant No.1 to the plaintiff, Exhibit-P4

being the alleged legal notice dated 27th December, 2012 issued by the plaintiff to the defendant No.1 and the Exhibit-P1 (colly) which are raised on alleged transactions between the plaintiff and the defendant No.1 as there is not even an iota of proof of involvement of the proposed defendant No.2 and 3. It is stated in the reply that the proposed defendant No.2 and 3 have no concern with the proprietorship concern of the defendant No.1 except the fact that it was being run by the defendant No.1 under the similar name and style as of the predecessor of the proposed defendant No.3 and by that very fact the proposed defendant No.2 and 3 do not become liable to be implicated in the present suit by way of the present application under reply and hence the same should be dismissed with costs. It is submitted that the said proprietorship concern M/s Sadhu Ram Manish Kumar of the defendant No.1 had different constitution and address namely 2374T/21, Bawana Road, Narela Delhi, bank accounts, income tax, VAT being Tin Number (Sales Tax Number) 07490339654 or 07120401792 (both on the same address of residence of the defendant no.1) pan card details and more particularly it had no license from the APMC whereas on the other hand the partnership concern namely M/S Sadhu Ram Manish Kumar at 2093/5, Narela Mandi, Delhi-110040 being the predecessor of the proposed defendant No.3 had no Tin Number as it was not registered with the sales tax department or VAT department nor it had at any point of time worked/operated at/from the address of the defendant no.1 and it had always worked /operated from the address namely 2093-D, Narela Mandi, Delhi till 7th August, 2012. It is further submitted that the proposed defendant No.3 could not be operated from outside the Mandi Area otherwise the license no.A-206 and B-111 would have been revoked as it is not permissible to operate from the outside the market yard/area vide License issued by APMC whereas the address of the proprietorship concern namely M/S Sadhu Ram Manish Kumar of the defendant no.1 had different address viz. i.e. it was operating from 2374-T/21, Bawana Road, Narela, Delhi, located only outside the market area which meant it was operating from outside the Mandi. It is submitted that as the proprietorship concern of the defendant No.1 and partnership firm being the predecessor of the proposed defendant No.3 are two different entities and as the alleged transactions were entered into by the plaintiff with the defendant No.1 only or with its proprietary concern, the present application

implicating the proposed defendants is an abuse of law and amendment sought by the plaintiff is liable to be rejected.

12. The plaintiff in the rejoinders to the replies have denied the contentions of the defendant No.2 and 3 and stated that the plaintiff in the present suit had categorically dealt with M/s Sadhu Ram Manish Kumar which is proposed defendant No.3 (i.e. the partnership concern) wherein proposed defendant No.2 is a partner. It is stated that the proposed defendant No.2 and 3 are trying to mislead this Court by creating a faade to show that the plaintiff never dealt with the proposed defendant No.3 and had in fact dealt with the proprietorship concern of the defendant No.1 with the same name. It is stated that the proposed defendant No.2 and 3 are the part of the larger conspiracy hatched against the plaintiff by the defendant No.1, by giving an impression that proposed defendant No.3 is a proprietorship concern. It is highly unbelievable that the proposed defendant No.2 was oblivious to the fact of sale/purchase/trading, which was carried out on behalf of the partnership firm, i.e., proposed defendant No.3. The proposed defendant No.2 cannot evade from the liability, arising out of the impugned transaction. It is submitted that the concocted version presented by the proposed defendants that plaintiff has dealt with the sole proprietorship concern of the defendant no.1 having the name viz. M/s. Sadhu Ram Manish Kumar which is similar to the name of the proposed defendant No.3, does not stand. It is stated that only those firms are allowed to trade in APMC, Narela which have obtained valid license to trade in APMC, Narela which have obtained valid license to trade at APMC, Narela for the same. Obtaining the license is a condition precedent for a person/form to trade in APMC, Narela. It is submitted that corroborating documents of this case evidently demonstrates that no such license for trading in APMC, Narela was ever issued to the alleged proprietorship concern M/s Sadhu Ram Manish Kumar and licence for the same was only issued to the partnership firm bearing the name of M/s Sadhu Ram Manish Kumar. The proposed defendants also miserably failed to produce any such document in support of their version. The defendant No.1 and proposed defendants are hand in glove with each other and had a prior meeting of mind to play this fraud upon the plaintiff by misrepresentation.

13. It is stated that suit was filed based on the information and record available during that time, however in reply to the RTI Application filed by the plaintiff, startling facts came out, showing the defendants act of fraud played upon the plaintiff, causing severe prejudice and further it is requirement of the law that in view of the change in circumstance or any new information is received, pleadings have to be amended in accordance with the said information. Therefore, once the plaintiff became aware of fact that defendant no.1 defrauded him by misrepresenting that Firm bearing the name of M/s. Sadhu Ram Manish Kumar is proprietorship concern and when contrary revelations were made in reply to RTI application, amendment to this effect is being sought.

14. It is submitted that the plaintiff has not misled this Court. During the filing of the present suit the plaintiff was under the impression that due to the false representation of the defendant No.1 that the proposed defendant No.3 was a proprietorship concern of defendant No.1 and therefore the present suit was filed under the said presumption. Subsequently to the filing of the suit the plaintiff came to know about the status of the license of the proposed defendant No.3 filed a RTI application seeking information on the same. It was then that it came to the knowledge of the plaintiff that defendant no.3 was in fact a partnership concern and that the proposed defendant No.2 was also a partner in the said firm. Therefore, accordingly the present application was moved for amending the pleadings.

15. With regard to the application under Order 1 Rule 10 CPC is concerned, the provision of Order I Rule 10(2) CPC is reproduced hereinbelow for better appreciation:

(2) Court may strike out or add parties - The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the

questions involved in the suit, be added.

16. From a perusal of the aforesaid provision, wide discretion has been conferred on the courts to decide as to whether to strike off the name of any party, who has been improperly joined either as plaintiff or defendant in a suit, or to include the name of any person, whose presence is found to be necessary for effective and complete adjudication and settlement of all the questions involved in the suit.

17. While discussing the general rule with respect to impleadment of parties in a suit, the Supreme Court had made the following pertinent observations in the case of *Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre and Hotels Pvt. Ltd. and Ors.* reported as (2010) 7 SCC4178. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure (Code for short), which provides for impleadment of proper or necessary parties. xxxxxxxx The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a person is

not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

(emphasis added) 18. Now I shall consider the application for amendment of plaint. It is settled law that while considering the application for amendment the Courts have very wide discretion in the matter of amendment of pleadings but Courts power must be exercised judiciously and with great care. While deciding applications for amendments the Courts must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide, worthless and/or dishonest amendments. The first condition which must be satisfied before the amendment can be allowed by the Court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the Courts discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side.

19. As per law, ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any Court grants actual costs to the opposite side and basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are: (i) whether the amendment sought is imperative for proper and effective adjudication of the case; (ii) whether the application for amendment is bonafide or malafide; (iii) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation; (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (vi) as a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. The above are some of the important factors which may be kept in mind while dealing with application filed

under Order VI Rule 17 CPC. These are only illustrative and not exhaustive.

20. It is held in the case of Abdul Rehman and Another vs. Mohd. Ruldu and others, reported in (2012) 11 Supreme Court Cases 341 that an amendment seeking declaration of title shall not prejudice the case of the other side unless the reliefs claimed are not barred by limitation. It was observed in the case referred that no prejudice would be caused to the respondents if amendments were allowed. In order to avoid further litigation, the same should be allowed as all amendment which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

21. Supreme Court in the case of Rajesh Kumar Aggarwal and others vs. K.K.Modi and others reported in (2006) 4 Supreme Court Cases 385 held as under:

18. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.

19. While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the

amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case.

22. In view of the aforesaid exhaustive discussion and the averment made in the application, this Court is of the opinion that the amendments proposed by the plaintiff are necessary to determine the real controversy between the parties as the merit of the case is not to be discussed at this stage as the proposed defendant No.2 and 3 are entitled to raise all the objections as raised in the reply.

23. Having considered the facts and circumstances of the matter and the averments made in both the applications, prima facie this Court is of the view that at this stage the prayer made in the applications cannot be disallowed as it is settled law that for the purpose of deciding the application for amendment and impleadment of other defendant, the Court is not to consider the merit of the case. In view of the specific averments made by the plaintiff and as per the pleadings at this stage the Court is of the view that defendant Nos.2 and 3 are necessary parties to go into the root of the case. Therefore, the prayer made in I.A. No.19197/2013 is allowed. With regard to application for amendment of the plaint i.e. I.A. No.19196/2013, the same has consequential effect of the prayer of the aforesaid application for impleadment. Thus, the prayer of the said application is also allowed.

24. However, the proposed defendant Nos. 2 and 3 are at liberty to raise all the pleas which are taken in their replies, in the application for leave to defend and in case the application for leave to defend is allowed, they are allowed to take the said pleas in their written statement as well.

25. Both the applications are accordingly disposed of. CS (OS) No.1410/2013 26. The amended memo of parties filed by the plaintiff is taken on record. The plaintiff is granted four weeks time to file the amended plaint.

27. List the matter before the Roster Bench on 20th April, 2015 subject to orders of Honble the Chief Justice. (MANMOHAN SINGH) JUDGE FEBRUARY23 2015

