

Raj Kumar Dhar and ors. Vs. Colonel A. Stuart Lewis

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Court : Kolkata

Decided On : Dec-19-1956

Reported in : AIR1958Cal104,61CWN445

Judge : P.N. Mookerjee and ;Renupada Mukherjee, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 15

Appeal No. : Civil Rule No. 684 of 1956

Appellant : Raj Kumar Dhar and ors.

Respondent : Colonel A. Stuart Lewis

Advocate for Def. : Amarnath Roy Choudhury, Adv.

Advocate for Pet/Ap. : Atul Chandra Gupta and ;Ram Mohan, Adv.

Judgement :

P.N. Mookerjee J.

1. This Rule raises an important question of procedure. It is directed against an order of the learned Subordinate Judge, Fourth Court, Alipore, dismissing the defendants-petitioners' objection against, inter alia, the verification of the plaint.

2. The plaint in the present case appears to contain serious allegations of fraud, falsification of accounts, culpable negligence, etc., against the defendants. The

plaintiff is one Colonel A. Stuart Lewis. The suit was instituted on his behalf by one V. G. Pai who professed to be acting under a power of attorney given by the plaintiff, and, on the strength of that power of attorney, he executed the Vakalatnama, signed the plaint and also signed the verification of the plaint on behalf of the plaintiff. The defendants-petitioners objected and the learned Subordinate Judge, upon the view that the power of attorney simpliciter was sufficient to entitle Pai to sign the Vakalatnama, the plaint and also the verification, dismissed the defendants' objections. Against that order, the present Rule was obtained by the petitioner.

3. Before us, Mr. Gupta, who appears for the defendants-petitioners, has frankly conceded that, so far as the signing of the Vakalatnama and also of the plaint is concerned, the power of attorney might be sufficient authority for Pai under the law, in view of Order III Rules 1 and 2 and Order VI Rule 14 of the Code and he did not propose to challenge the order of the learned Subordinate Judge so far as those two matters were concerned. Mr. Gupta, however, took serious exception to the order of the learned Subordinate Judge so far as it accepted the verification by Pai in the present case and rejected the defendants' objections to the same. Mr Gupta contended that under Order VI Rule 15 of the Code of Civil Procedure which governs verification of pleadings, the verification has to be made either by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case'. The power of attorney, relied upon by the learned Subordinate Judge,' merely authorised Pai to sign verifications of pleadings on behalf of the plaintiff Colonel A. Stuart Lewis, 'The party' however, in the rule, quoted above, means, in our opinion, 'the party personally' and whenever the verification is sought to be made by an agent either under a power of attorney or under some other document or by somebody on behalf of another, that verification must be justified under the latter part of the rule, namely, that the person verifying must be 'proved to the satisfaction of the court to be acquainted with the facts of the case'. Verification of pleadings is an important matter which may have very serious consequences, as in case of false verification, the person verifying may be liable to criminal prosecution. The object of verification, as it has been pointed out in decisions of courts, is to fix responsibility on the party verifying and to prevent false pleadings, being recklessly filed or false

allegations being recklessly made. It must have some sanctity and for that purpose the rule makes provision by insisting upon the competency of the person verifying where he is somebody other than the actual party concerned by requiring him to prove to the satisfaction of the court his acquaintance with the facts of the case. This is all the more imperative where the competency of the person verifying is challenged by the other side.

4. In the present case, therefore, particularly after objection by the defendants, there were prima facie two courses open to the plaintiff, namely, (i) to verify the plaint himself, or (ii) to place proper materials before the court for satisfying it that Pai who had actually signed the verification was acquainted with the facts of the case. We find, however, that the only thing that was put on the record for this purpose was the power of attorney. That was wholly insufficient for this purpose and the learned Subordinate Judge satisfied himself merely upon that power of attorney upon the wrong view that Pai, as the plaintiff's agent simpliciter, holding as he did authority to sign the verification under the power of attorney would be competent to verify the plaint. That is a misconception and a misreading of the rule, to which reference has been made, above by us, and that view of the learned Subordinate Judge cannot be supported.

5. As to which of the above two courses should be adopted in the present case is also sufficiently indicated by the nature of the allegations, made in the plaint. As we read the plaint and as we have stated above, it contains serious allegations of fraud, falsification of account, culpable negligence etc., against the defendants and, in view of these allegations, it is only proper in the circumstances of the present case, that the plaintiff should be required to verify the plaint himself so that he may accept full responsibility for it under the law and comply with the letter and spirit of the rules of pleading in that behalf.

6. It is true that in this court the plaintiff opposite party has filed an affidavit, accepting full responsibility for the statements in the plaint and also Pai's verification of the same, but that, in our opinion, will not, in the circumstances of this case, be sufficient compliance with the rules of verification, laid down in the Code.

7. We, accordingly, make this Rule absolute in part, that is, so far as the verification is concerned and direct that the plaintiff should verify the plaint himself in the presence of the learned Subordinate Judge. For that purpose the learned Subordinate Judge will give him all reasonable facilities and this personal verification by the plaintiff should be made within four weeks from the date of arrival of records in the court below. The defendants' objection to the alleged defective signing of the Vakalatnama and of the plaint, which was rejected by the learned Subordinate Judge, would stand dismissed.

8. There will be no order as to costs.

Renupada Mukherjee, J.

9. I agree.

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