

Court No. - 7

Case :- MATTERS UNDER ARTICLE 227 No. - 19095 of 2019

Petitioner :- Shahnwaz Alam

Respondent :- Balsara Hygiene Products Ltd.
Thru. Authorized Signatory Andor

Counsel for Petitioner :- Ratnesh Chandra, Ajit Verma

Counsel for Respondent :- Ajai Krishna Yadav, Mohd.Saulat Wasim, Rohit Kumar Verma, Saleeem Ahmad Khan, Zakir Ali

Hon'ble Pankaj Bhatia,J.

1. Heard Sri Ratnesh Chandra, learned counsel for the petitioner, Sri Rohit Kumar Verma, learned counsel for the respondent and perused the record.

2. The present petition has been filed by the petitioner challenging the order dated 14.02.2019 whereby the application filed under Order 1 Rule 10 CPC being Application No. C-101 was allowed on payment of cost of Rs.1000/-.

3. The facts in brief are that the suit in question was instituted in the year 1999 by the plaintiff no. 1-Balsara Hygiene Products Limited and the plaintiff no. 2 i.e. Besta Cosmetics Limited, subsequently the said companies were amalgamated with the applicant company Dabur India Limited sometimes in the year 2006 and as the suit in question was pending, an application was filed seeking incorporation as a plaintiff on account of amalgamation, the said application was opposed by the defendants, however, the application came to be allowed by means of the order, which is impugned in the present petition.

4. The contention of the counsel for the petitioner is that the application filed by the respondent, the proposed application was highly belated and thus ought to have been rejected on that ground alone. He further argues that on the basis of the

provisions of Order 22 Rule 3 read with Order 22 Rule 10, the application was not maintainable and ought to have been dismissed. Reliance is placed upon the judgment of the Supreme Court in the case of ***Pankajbhai Rameshbhai Zalavadiya Versus Jethabhai Kalabhai Zalavadiya (2017) 9 Supreme Court Cases 700***. Emphasis is laid on para 6 & 7 of the said judgment.

"6. The only question which is to be decided in this appeal is, whether the legal representatives of one of the defendants can be impleaded under Order 1 Rule 10 of the Code where such defendant expired prior to the filing of the suit, particularly when the application filed by the plaintiff to bring the legal representatives of the deceased on record under Order 22 Rule 4 of the Code was dismissed earlier as not maintainable.

7. The bare reading of Order 22 Rule 4 of the Code makes it clear that Order 22 Rule 4 of the Code applies only in the case where the death of one of the several defendants or the sole defendant occurs during the subsistence of the suit. If one of the defendants has expired prior to the filing of the suit, the legal representatives of such deceased defendant cannot be brought on record in the suit under Order 22 Rule 4 of the Code. Before proceeding further, it is relevant to note the provisions of Order 1 Rule 10 and [Sections 151](#) & [153](#) of the Code, which read thus:

"10. Suit in name of wrong plaintiff.--(1). Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(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.

(3). No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4). Where defendant added, plaint to be amended.- where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

(5). Subject to the provisions of the India Limitation Act, 1877

(15 of 1877), [section 22](#), the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

[Section 151](#): Saving of inherent powers of Court - Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

[Section 153](#): General power to amend - The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding."

5. The counsel for the respondent on the other hand argues that in terms of the provision of order 1 Rule 10 (2) CPC, the application can be filed at any stage of the suit and an impleadment was sought on account of amalgamation, which was duly accepted under the provisions of the Companies Act by the High Court of Bombay and New Delhi.

6. Considering the fact that the suit in question was filed for infringement of trademark by the original plaintiff and thereafter both the plaintiffs stood amalgamated with the applicant company, the applicant company rightly moved that application, the delay in moving the application would have no effect in view of the mandate of Order 1 Rule 10(2) CPC. No interference is called for in exercise of power under Article 226 of the Constitution of India. The petition lacks merit and is accordingly ***dismissed***.

Order Date :- 19.12.2024

Arun