

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.1 OF 2014

Process Pumps (I) Private Limited

.. Applicant

Versus

Eagle Burgmann India Private Limited

.. Respondent

Mr. S. S. Kanetkar, for the Applicant.

Mr. V. V. Pai, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 13th OCTOBER, 2015

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the order dated 31.03.2012 passed by the Learned 7th Joint Civil Judge Senior Division, Pune, by which order the preliminary issue which was framed as regards the locus-standi of the Respondent to prosecute the suit in question was answered by the Trial Court by ruling in favour of the Respondent and holding that the Respondent is entitled to prosecute the suit in question.

2. The suit in question was originally filed by one Sealol Hindustan Company Limited against the Applicant for recovery of an amount of Rs.40,00,000/- towards the payment of the mechanical seals supplied by the said company to the Applicant herein who is the Defendant in the suit in question being Special Civil Suit No.161 of 2001.

It appears that the name of the company was changed from Sealol Hindustan Company Limited to Eagle Poonawalla Industry Limited on 15.10.1998. The suit was filed in the year 2001 in the name of said Eagle Poonawalla Industry Limited. The factum of the change from Sealol Hindustan Company Limited to Eagle Poonawalla Industry Limited has been referred to in paragraph 1 of the plaint and it has been stated that on the change in name taking place the company remained the same and rights and liabilities of the erstwhile Sealol Hindustan Company Limited are not altered in any way and that the Plaintiff is entitled to all the rights and is subject to all liabilities of the erstwhile Sealon Hindustan Company Limited. The suit was being prosecuted by the said Eagle Poonawalla Industry Limited when it came to be dismissed for non-prosecution in the year 2004. The application for restoration being Misc. Application No.583 of 2007 was filed by one Eagle Seals and Systems India Limited which was the change in name effected on 26.06.2006, whereby the name of the company was changed from Eagle Poonawalla Industry Limited to Eagle Seals and Systems India Private Limited. The said application for restoration was opposed to on behalf of the Defendant i.e. the Applicant herein. The Trial Court by order dated 17.11.2008 allowed the said application and restored the suit to file subject to payment of costs of Rs.3000/-. The said order dated 17.11.2008 was taken exception to by

way of Civil Revision Application No.322 of 2010. The ground of challenge to the order of restoration, amongst other grounds, was the ground that the suit filed by the Eagle Poonawalla Industry Limited which has stood dismissed for non-prosecution is sought to be restored by an application filed by Eagle Seals and Systems India Limited. The said contention urged on behalf of the Revision Applicant i.e. Applicant herein was not countenanced by the Learned Single who heard the matter as according to the Learned Single Judge the said contention would be on the merits of the case of the Applicant and could not be considered at the stage of considering an application for restoration. Hence by granting liberty to the Applicant to raise the contention at the appropriate stage, the Civil Revision Application was dismissed on 13.04.2011. Thereafter in terms of the liberty granted by order dated 13.04.2011 the Applicant herein i.e. the Defendant to the suit raised an objection to the locus-standi of the Respondent to prosecute the said suit. As the name of the company had changed from Eagle Sales and Systems India Limited to the present name i.e. Eagle Burgmann India Private Limited. The Trial Court accordingly framed an issue as to the locus-standi of the said Eagle Burgman India Private Limited to prosecute the suit. The Trial Court by the impugned order has answered the said issue in favour of the said Eagle Burgmann India Private Limited and whilst doing so has held that there is only

change in the name of the company and that the new company holds the assets and the property belonging to the erstwhile company under new name along with the rights and obligations. The Trial Court further held that since Section 23 of the Companies Act covers the cases where a change of name of the company has taken place, the same would override the provisions of the general law i.e. the Transfer of Property Act. The Trial Court did not countenance the submission urged on behalf of the Defendant that the factum of the assets and liabilities being transferred to the new entity has not been substantiated by producing any material on record. The Trial Court held that if only the change in the name takes place and other characteristics remain the same, there is no warrant to execute a document, as the same would amount to the company executing the document in favour of the company itself.

3. In the present Petition also the Respondent i.e. the Plaintiff has filed the affidavit of one Mr. George Easo stating therein how the change in name of the company has taken place from time to time from Sealol Hindustan Company Limited to the present name i.e. Eagle Burgmann India Private Limited. The certificates of incorporation in the changed name issued by the Registrar of Companies have been annexed to the said affidavit. The Learned Counsel for the Applicant Mr. S. S. Kanetkar sought to re-urge the case of the Applicant before the Trial Court

and would contend that the Respondent has not placed any material on record as to how the assets and liabilities of the erstwhile company were to be dealt with. In my view, it is not necessary that the assets and liabilities are to be provided for, in terms of Section 23 of the Companies Act, there are no consequences only if a change in the name of the company has taken place. In the instant case, it is the consistent stand of the Plaintiff right from the beginning that the change that has taken place is only in the name of the company as otherwise all other aspects in respect of the assets and liabilities and rights and obligations remain the same. If that be so, the order passed by the Trial Court answering the preliminary issue as regards the locus-standi of the Eagle Burgmann India Private Limited i.e. the Respondent herein to prosecute the suit does not suffer from any error of jurisdiction for this Court to interfere in its Revisionary Jurisdiction. The Civil Revision Application is accordingly dismissed.

4. It appears that after the instant order came to be passed the evidence of the Defendant i.e. the Petitioner herein has been closed. Needless to state that if any application is filed for setting aside of the “no evidence order”, the same would be considered by the Trial Court on its own merits and in accordance with law. All interim orders stand vacated.

[R.M. SAVANT, J]