

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.3462 of 2014

Date of Decision: 10.09.2015

M/S MAX INDIA LTD.

.....Petitioner

Vs.

M/S EXL INDIA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE K.KANNAN

Present:- Mr.Deepak Thapar, Advocate for
the petitioner.

Mr.R.S.Guron, Advocate for the respondent.

K.KANNAN, J.

The revision petition is against an amendment ordered by the trial Court in allowing the respondent to substitute the cause title of the plaint which had been described M/S EXL INDIA through Sh.Atul Malhotra as the Director as a plaintiff. After the suit was instituted in 2007 and just on the eve of trial, an application for amendment of the cause title was made to substitute the name as Jaipur Golden Transport Company Private Limited and produced at the trial an authorization to Atul Malhotra for continuing with the suit. The contention of the application for amendment was that the controlling company which was registered company was Jaipur Golden Transport Company Private Limited but its trade name was M/S EXL INDIA. The case had been instituted through a non-entity and it should be permitted to substitute the misdescription that had come about. The plaintiff had contended that the substitution would not cause a prejudice since M/s EXL INDIA is not a legal entity but only Jaipur Golden Transport Company Private Limited was a company registered under the Companies Act and hence, a person within the meaning of

the Companies Act and competent to institute the suit in a Civil Court as required under Order 6 and Rule 7 CPC.

The application for amendment was ordered and defendant is aggrieved to state that if the suit had been filed by non-entity, the amendment which could take effect only from the date of such application will result in the suit claim being barred by law and hence, the plaint is liable to be rejected. The governing provision for how a period of limitation will be counted is clearly brought under Section 21 of the Limitation Act reproduced as under:-

“(i)Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party: Effect of substituting or adding new plaintiff or defendant.—(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:” Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(ii)Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff. (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

Clause (2) is not applicable for a new company which obtains an assignment or devolution. If, clause (1) proviso operates, the suit must be taken having been validly instituted. The issue of whether

substituted name was due to a mistake made in good faith or not is a mixed question of fact and law and I will leave that to be decided along with other issues by the trial Court. The defendant is entitled to join the issue on a contention that the plaintiff was not bona fide or did not exercise due diligence for not stating name of any undisclosed corporate name and that the limitation cannot be excluded by application of proviso. The trial Court will consider the said respective contentions of parties and decide on the issue of limitation along with other issues at the time of judgment in the light of Section 21 of the Limitation Act.

The order of Court below while maintaining the amendment is clarified to the above extent and the revision petition is disposed of. It would appear that there is no specific issue regarding limitation but in the light of the amendment that is allowed and in the prospect of defendant raising an issue of limitation, the Court may frame such an issue at the appropriate time.

10.09.2015
anil

(K.KANNAN)
JUDGE