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C.R.P. (PD) .No.1994 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.1994 of 2021

and

C.M.P.No.15175 of 2021

M/s.Iffco Tokio General Insurance Co.Ltd.,
No.28, North Usman Road, T.Nagar,
Chennai – 600 017.

.. Petitioner

Vs.

1.Foods, Fats & Fertilizers Limited
Represented by Senior Executive and
Power of Attorney Agent Sathyanathan
No.222, Fountain Plaza, Pantheon Road,
Chennai – 600 008.

2.M/s.Balmer & Lawrie Ltd.,
No.52, Anna Salai, Teynampet,
Chennai – 600 018.

3.New India Assurance Company Ltd.,
D.No.47-10-12, Dwarka Nagar,
Visakhapatnam – 530 016

.. Respondents

Page No.1/8



C.R.P. (PD) .No.1994 of 2021

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.03.2021 made in I.A.No.2 of 2020 in O.s.No.28 of 2015 on the file of the IV Additional District and Sessions Judge, Tiruvallur @ Ponneri and allow the CRP with costs.

For Petitioner : Mr.M.B.Raghavan

For Respondents : Mr.T.Sai Krishnan for R1

Mr.Ashok Mandal for R2

Mr.Ashok Rajaraman for R3

ORDER

Challenge in this Revision is to the order of the trial Court allowing the application for amendment seeking to amend the name of the plaintiff.

2. The suit was originally presented before this Court in the year 2011 by one M/s.Foods Fats & Fertilizers Limited. Leave to sue was obtained in an application in A.No.2314 of 2011. The suit is one for recovery of damages. The petitioner has been impleaded as 3rd defendant since it had insured the risk. It appears that the leave was revoked and the plaint was returned for presentation before proper Court. Thereafter, the plaint had

Page No.2/8



C.R.P. (PD) .No.1994 of 2021

been presented before the Principal District Court, Tiruvallur in the year

2014. The defendants have filed the written statement contesting the claim.

3. After the evidence of PW1 was over, the plaintiff came up with the instant application seeking amendment as the fact that the name of the plaintiff has been wrongly stated in the plaint was highlighted in the cross-examination of PW1. The plaintiff which was known as Foods, Fats & Fertilizers Ltd., was re-named as 3F Industries Limited in the year 2012 and a certificate of re-incorporation was issued on 08.08.2012.

4. The application for amendment was opposed on the ground that it is belated, the original plaint was filed by unauthorised person as there is no authorization by M/s.3F Industries Limited and on the ground that the requirement of the proviso to Rule 17 of Order VI of the Code of Civil Procedure has not been satisfied. The learned trial Judge overruled the defence and allowed the application.

5. Mr.M.B.Raghavan, learned counsel appearing for the petitioner

Page No.3/8



C.R.P. (PD) .No.1994 of 2021

would submit that the trial Court was not justified in allowing the application for amendment, in view of the fact that the resolution of change of name was even approved in the year 2012 and the suit was filed in the old name in the year 2014. He would also point out that there is no proper authorisation by the plaintiff for the person who has signed the plaint in December 2014. Arguing further, the counsel would submit that there is no explanation in the affidavit as to why the application was not filed earlier in point of time.

6. Contending contra Mr.T.Sai Krishnan, learned counsel appearing for the 1st respondent/ plaintiff would submit that the mistake in the name is actually a mistake caused by oversight. When the plaint was filed in this Court in the year 2011, the plaintiff was known by the same name M/s.Foods, Fats & Fertilizers Limited. During the pendency of the suit in this Court, the name of the plaintiff was altered and re-incorporation was made. Unfortunately, when the plaint was returned for re-presentation before proper Court, upon revocation of leave, the correction was not carried out and the same plaint was re-presented which resulted in the suit being



C.R.P. (PD) .No.1994 of 2021

filed in the old name.

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7. The other deficiency viz. lack of authorization, according to Mr.T.Sai Krishnan, is curable and there can be post facto authorisation_also. On non-compliance of proviso Order VI Rule 17 of the Code of Civil Procedure, Mr.T.Sai Krishnan would submit that the mistake itself was discovered only when certain suggestions were made in cross-examination and before that the parties were under a *bona fide* impression that the suit has been filed in correct name. Therefore, there is no lack of diligence on the part of the plaintiff.

8. I have considered the rival submissions. The fact that the plaintiff was known by the old name viz., M/s.Foods, Fats & Fertilizers Limited is not in dispute. The fact that the suit was filed before this Court in the year 2011 is not in dispute. Though the Company was re-named and re-incorporated in the year 2012, when the plaint was returned by this Court, upon revocation of leave, it appears to have been re-presented by correcting the dates alone without taking care to correct the name of the plaintiff. As

Page No.5/8



C.R.P. (PD) .No.1994 of 2021

rightly pointed out by Mr.T.Sai Krishnan, counsel for the respondent, it is a slip and human error which cannot result in a capital punishment of the suit being dismissed.

9. Though Mr.M.B.Raghavan is justified in contending that since the re-incorporation having taken place in 2012, the very suit instituted in 2014 in the old name cannot be treated to be properly instituted suit. I am unable to accept his submission for the reason that the suit was filed in 2011 before this Court and it was re-presented before the District Court subsequently. The change of name that took place in the interregnum was overlooked and the plaint came to be presented in the old name. These are all minor errors which would occur and the Court must actually lend a helping hand for correcting these kind of errors. As the object of the Court is for dispensation of justice and the Court cannot adopt technical approach which would lead to denial of justice.

10. The learned trial Judge had considered the situation and has held

Page No. 6/8



C.R.P. (PD) .No.1994 of 2021

that in the absence of any prejudice being caused allowing of amendment application is not an error. I do not see any error in the order of the Court below, in order to enable me to interfere, particularly in exercise of the jurisdiction under Article 227 of the Constitution of India. Supervisory jurisdiction is conferred on this Court only to see as to whether the lower Courts act in accordance with law and not to interfere with each and every one of their orders.

11. I therefore do not see any reason to interfere with the discretion exercised by the learned District Judge. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

01.02.2022

dsa
Index : No
Speaking order

R.SUBRAMANIAN, J.

Page No.7/8



C.R.P. (PD) .No.1994 of 2021

dsa

WEB COPY

To

The IV Additional District and Sessions Judge,
Tiruvallur @ Ponneri.

C.R.P.(PD).No.1994 of 2021

01.02.2022

Page No.8/8