

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/135/2024
WITH
CS/482/1982
IA NO: GA/1/2024

BRAITHWAITE BURN AND JESSOP CONSTRUCTION COMPANY LIMITED
VS
HINDUSTAN CONSULTANCY AND SERVICES LIMITED FOX AND MANDAL

BEFORE :

THE HON'BLE JUSTICE SOUMEN SEN
And
THE HON'BLE JUSTICE APURBA SINHA RAY
Date : 4th November, 2024.

Appearance:
Mr. Dhruva Ghosh, Sr. Adv.
Mr. A. Sarkar, Adv.
Mr. K. Mondal, Adv.
Mr. A. Alim, Adv.
... for the appellant.

Mr. Suman Dutt, Adv.
Mr. Rajarshi Dutta, Adv.
Mr. A. P. Agarwalla, Adv.
... for respondent.

The Court :- By consent of the parties the appeal and the applications are treated on the days' list and disposed of by this common order.

The appeal is arising out of order passed on 21st February, 2024 in connection with an application for amendment of the plaint. The amendment was necessitate by reason of amalgamation of M/s. Braithwaite Burn & Jessop

Construction Company Limited with M/s. Bharat Bhari Udyog Nigam Limited. The plaintiff has stated that on 10th August, 2023 the plaintiff has come across a letter dated 11th June, 2015 issued by the Deputy Director, Ministry of Corporate Affairs, Government of India forwarding a copy of the order dated 5th May, 2015 regarding such amalgamation. However, this was inadvertently not brought on record and the cause title was not amended accordingly.

We have heard learned Counsel for the parties.

Mr. Ghosh, learned Senior Counsel has drawn our attention to the observation made by learned single Judge that the plaintiff has constructive notice of the amalgamation, still then did not take any steps to amend the plaint. The application is belated and filed after the witness of the plaintiff has been partly examined.

Mr. Dutt, learned Senior Counsel for the plaintiff submitted that the amendment is formal in nature and it would not change the nature and character of the suit.

The proposed amendment relates to amalgamation of two companies and it is formal in nature. After amalgamation the arrayed defendant becomes a non-entity and the suit cannot be proceeded against such non-existent entity. Moreover, no prejudice would be caused to the defendant in the event the amendment is allowed. The amendment is necessary also for proper adjudication of the dispute. Moreover, in the event the suit is decreed, it would be against a non-entity and would be void and unenforceable.

On such consideration we are not inclined to interfere with the order passed by the learned single Judge. However, the time to file additional written statement by the defendant is extended by 16th December, 2024. The said direction is peremptory.

Appeal and applications are disposed of.

(SOUMEN SEN, J.)

(APURBA SINHA RAY, J.)