

17.03.2026
Court No.13
Item No.76
AP

FA 65 of 2001

Chairman, Syama Prasad Mookerjee Port and Anr.

Vs.

Smt. Papiya Basu and Ors.

Mr. Ritzu Ghoshal, Senior Advocate

Mr. Ashok Kumar Jena, Advocate

... For the Appellants.

1. The appeal is directed against a judgement and order dated 12th January, 2000 passed by the learned Judge, 3rd Bench of the City Civil Court at Calcutta in Money Suit No.133 of 1988.

2. There are far too many errors including description of the plaintiff and the principal defendant. The plaintiff has been described as M/s. Electrical Construction & Equipment Company. In the verification page of the plaint it is indicated that the M/s. Electrical Construction & Equipment Company is the sole proprietorship concerned of one Sanjit Bose.

3. It is now well settled that a person, who carries on business in any name and style would be the proprietor himself. It is the proprietor, who ought to have been the plaintiff and not the name and style in which he was carrying on business. The plaint ought to have been rejected on this ground since no amendment was carried out before the Trial Court.

4. Upon the death of the sole proprietor plaintiff, his legal heirs have been substituted during the pendency of

the appeal, on 15th July, 2025. This, however, would not cure the defect in description of the plaintiff in the plaint or this appeal.

5. This Court secondly notes that the Calcutta Port Trust now known as Syama Prasad Mookerjee Port, Kolkata has not been impleaded as a party defendant to the suit. It is the Chairman and the Manager (P&E), Calcutta Port Trust have been impleaded as respondents. The pleadings in the plaint are, however, directed against the Port Trust. In terms of the Major Port Trust Act, 1963 and its previous incarnation, the Port Trust ought to have been sued in the name and style of the “Board of Trustees of the Port at Kolkata”, which is a statutory body corporate. The suit ought to have been rejected on this ground as well.

6. It further appears that in the written statement filed in the Trial Court the defendant had urged these points specifically as also the territorial jurisdiction of the City Civil Court at Calcutta to receive, try or entertain the suit in question, apart from the question of limitation.

7. It further appears from the cross-examination of P.W.-1 that there is an admission to the following effect:-

“All formalities in connection with the present suit were observed by me at Haldia. The supply of materials was also made at Haldia. I also submitted the bills for the materials supplied at Haldia. The plaintiff runs its business within the territorial jurisdiction of Keshipur P.S. The supply of one piece of L.T.

Motor Testing Pannel was made on some terms and conditions. As such, I say that such terms and conditions were the essence of the contract.”

8. It is clear and explicit from the above, that a substantial if not the entire cause of action of the plaintiff arose outside the territorial jurisdiction of the City Civil Court at Calcutta i.e. at Haldia.

9. The City Civil Court at Calcutta could not have entertained the subject suit. While it is true that territorial jurisdiction can be a mixed question of facts and law, the said suit after evidence ought to have been dismissed or the plaint allowed to be withdrawn to be presented before the Court having territorial jurisdiction over it. The plaintiff had not made any prayer to that effect. The Trial Judge was, therefore, obliged in law to frame, territorial jurisdiction as a preliminary issue and decide the same before entering into the merits.

10. While this Court has serious reservations about the limitation of the plaintiff's claim, it does not wish to pronounce upon the same as it is not necessary.

11. For the reasons stated above, the impugned judgement and order dated 12th January, 2000 is set aside.

12. According, FA 65 of 2001 is allowed. Consequently, all connected pending applications, if any, are also disposed of.

13. The sums deposited by the appellants with the Registrar of the City Civil Court at Calcutta against Challan No.6182004001 dated 17th May, 2000, at the time of admission of the appeal, together with any accrued interest thereon, shall be returned by the Registrar of the City Civil Court at Calcutta to the Syama Prasad Mookerjee Port, Kolkata within a period of three weeks from the date of receipt of a copy of this judgement and decree.

14. There shall be no order as to costs.

15. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)