1969 KHC 317
Kerala High Court
V. R. Krishna Iyer, J.
South India Corporation (Agencies) Private Ltd. v. State Trading Corporation of India Ltd.
C. R. P. No. 530 of 1968
20 December, 1968

Code of Civil Procedure, 1908, S.115, S.153, O.6 R.17, O.29 R.1 - Scope of -- A plaint by a Company may be signed by one or the other of the persons mentioned in the rule -- As a Company is unable to sign itself the words 'good cause' in the latter rule enable a Company to authorise a person to sign a plaint on its behalf -- A mere authorisation by the plaintiff Corporation was enough to make its officer's signature sufficient in law-- Amendment of pleadings -- Amendment refused by Trial Court as lacking in bona fides -- Delay as such is not destructive of the right of a party to seek permission for amendment of his pleading -- Lower Court has not misexercised its discretionary power in refusing the amendment. (Para 3, 5, 8)

1878 (VII) Chancery Division 842; 1960 KLJ 444; Mulla's Code of Civil Procedure (13th Edition) Vol. II Page 1340; Referred to

P. K. Kurian; V. Desikan; K. A. Nayar; K. Sukumaran; C. M. Ramachandra Menon; K. K. Usha; For Petitioner
V. Rama Shenoi; R. Raya Shenoi; For Respondent

ORDER

1 Amendments of pleadings should be allowed liberally since permission to amend is the rule and refusal the exception, the guiding principle being promotion of Justice. Even so, is there no limit to this liberality? This question is highlighted in the present revision petition where the counsel for the petitioner - and, of course, for the respondent too - have pressed before me arguments of learned length, relying on rulings large in number and weighty in authority; at the end of all of which, I am persuaded neither to reverse the discretionary order rejecting the amendment nor to agree that the discretion has been erroneously exercised by the lower Court.

2 A suit was filed as early as 1962 by the State Trading Corporation of India (Plaintiff) against the South India Corporation (Agencies) Private Ltd., (2nd defendant) and another, a Shipping Company incorporated in Liberia - West Africa - for compensation for short landed reels of newsprint. The 2nd defendant entered appearance on 17-10-1962 but filed its written statement somewhere about August 1963. In keeping with this snail's pace issues were settled in July 1965 or thereabout. There were the usual dilatory vicissitudes of litigation, such as framing of further issues, trial of a preliminary issue, an occasional excursion to the High Court on interlocutory matters, decreeing of the suit *ex parte*, setting it aside and adjournments galore from one side or the other, or on account of the absence of the Judge; with result that the oral evidence was begun in the suit only in the first quarter of 1968. It does not very much serve the purpose of the case to investigate who was responsible for the delay of several years in the career of this litigation since the Court itself cannot be completely free from blame in such cases. The more relevant fact is that the application for amendment of the written statement has been made 5 years after the original written statement, when the suit has reached the last lap of its journey, even the evidence has been closed and arguments alone remain to be heard.

Anyway, at a very late stage i.e. on 25-3-1968, following the examination of the plaintiff's only witness, the 2nd defendant applied to amend his written statement to insert the following:
"The defendant does not admit Mr. B.M. Sundra's competency to sue on behalf of the plaintiff and puts the plaintiff to strict proof of his authority to sign and file the plaint."
Of course, the 2nd defendant has contended in his written statement that the suit is not maintainable in law and on the facts, so far as he is concerned, his case being that he has acted with due diligence that there has been excess landing of news reel elsewhere and that, on the merits, the claim cannot be sustained against him. The present amendment has been moved, largely encouraged by a windfall in the cross examination of P.W. 1 who is said to have admitted on oath that he had no power to institute the suit and omitted to swear that he has a principle officer of the plaintiff - Company. O.29 R.1 of the Civil Procedure Code requires a pleading in suits by or against a Corporation to be signed and verified on behalf of the Corporation either by the Secretary or by any Director or other principal officer of the Corporation who is able to depose to the facts of the case. By making this amendment in the written statement the 2nd defendant wants to urge the contention that the suit has not been properly instituted in that the plaint has not been signed and verified in compliance with O.29 R.1 C.P.C. The learned Subordinate Judge dismissed the application for amendment on several grounds, although it must be frankly stated that he was obsessed by the delay in bringing the application for amendment. Of course, the lower court also observed:

"..... The additional plea now sought to be raised by the defendant by the amendment of the written statement, I am constrained to observe, is not supported by bona fides.
The Court did not stop with this either, for it went on to state,

"*By the amendment now sought for, no clarification is intended to express in respect of the issues raised in the suit and therefore it cannot be said that the purpose to be served - the purpose of determining the real question in controversy between the parties - will in any way be advanced by allowing the amendment now sought for by the defendant."*

The learned Subordinate Judge fortified his decision to reject the application on the ground of mala fides by the following argument:

"Here in this case, apart from the fact that no question of law arises, it is also to be noted that when it is specifically alleged in the plaint that Sri B.M. Sundra has been residing at Ernakulam at the time when the suit has been instituted and has been the principal officer of the plaintiff company at Willingdon Island since 1958 for the relevant period and that he will be able to depose the facts of the case, which averments are not disputed in the written statement, there is no bona fides on the part of the defendant to urge this contention that Sri. B.M. Sundra is not competent to sue on behalf of the plaintiff, when it is deposed by him in the box as P.W.1. and averred by him in the plaint to the effect that he is the principal officer of the plaintiff company at the relevant period, particularly when nearly 7 years have lapsed since the filling of the plaint in the suit."

3 I agree with the petitioner's counsel that delay as such is not destructive of the right of a party to seek permission for amendment of his pleading. It is trite law that ordinarily "mere delay is not a ground for refusing an amendment. As a general rule, however late the amendment is sought to be made, it should be allowed" except in cases such as where the amendment is not sought in good faith or is not necessary for the purpose of determining the real question in controversy between the parties, or the objection sought to be raised thereby is purely technical or useless and of no substance or where the amendment would introduce a totally different,

new and inconsistent case, or would otherwise inflict serious prejudice to the opposite party which cannot be compensated for by costs (I am not attempting to be exhaustive). Even where a fresh suit on the amended cause of action would be barred by limitation, an application for introducing that amendment would not be necessarily disallowed although it may be a factor to be taken into account in exercise of the discretion as to whether the amendment should be ordered or not. I do not propose to rest my decision on mere delay. Nor am I impressed with any possible prejudice to the plaintiff on account of the allowance of this amendment; for, after ail, if Mr. Sundra had really been the principal officer of the plaintiff Corporation in Willingdon Island, there must be some document to prove it and indeed such evidence could easily have been placed before the Court long ago, when this matter was mooted. The plaintiff, instead of resisting the amendment application, could easily have taken the wind out of the sails of the defendant's plea by producing the necessary documentary material; but inscrutable is the reason for the plaintiff not adopting this simple course, That is by the say.

4 There is a clear averment in the plaint - Apart from the cause title - which runs as follows: "Mr. B.M. Sundara, son of M. Monappa, Hindu, residing at Ernakulam has been its principal Officer at Willingdon Island since 1958. He will be able to depose to the facts of this case." The written statement of the defendant does not controvert this allegation nor state that it does not admit the capacity claimed by Sundra. During the long course of this litigation there has been no challenge of position; and one way assume that till the inspiration derived from the answers in the cross examination of P.W.1, the 2nd defendant was prepared to proceed on the footing that the suit had been properly instituted. Therefore, there is something to be said in favour of the plaintiff's argument that in a fishing cross examination about a matter unconnected with the merits of the case an answer has been secured from the witness who might have been caught unawares and this forms the foundation of the application for amendment. It savours of mala fides when so presented.

5 Even otherwise, what has been alleged in the plaint but has not been denied in the written statement, must be deemed to have been admitted by the defendant for all practical purposes. Apart from all this, O.29 R.1 C.P.C. is but permissive and not mandatory. A plaint by a Company may be signed by one of the other of the persons mentioned in the rule. "But" as Mulla points out at page 1340 Vol. 2 C.P.C. "this does not exclude O.6 R.14, and as a Company is unable to sign itself the words 'good cause' in the latter rule enable a Company to authorise a person to sign a plaint on its behalf". Therefore, even if Sundra is not the principal officer of the Company he may still validly sign a pleading provided he is a person duly authorised to sign it or to sue on behalf of the plaintiff. Thus, a mere authorisation by the plaintiff Corporation was enough to make Sundra's signature sufficient in law. I may also mention that it has been held, as Mulla points out at page 1342 of the same book "in the case of a registered company an affidavit is not necessary and a statement in the plaint or written statement of the company that a person is the principal officer and able to depose to the facts of the case is sufficient ....." From all this, it would appear that the objection taken is purely technical and, even if found sound, could be easily overcome by appropriate amendment of the plaint. After all, the plaintiff has been described in unmistakably clear terms and there is no dispute about the identity of the plaintiff. In such circumstances, it is only reasonable to hold that the amendment sought for by the defendant merely raises a contention which is purely technical or useless and of no substance. Says Mulla, "If after the evidence for the plaintiff has been taken, the defendant applies for an amendment merely for the purpose of enabling him to raise a purely technical objection to the plaintiff's right to sue, the application should be refused". Again, the learned author observes:

"As the object of the present rule is to enable the real questions in dispute to be raised on the pleadings, leave to amend should be refused to ..... the defendant, where the proposed amendment would not help him in supporting his defence."

6 In Collette v. Goods (VII Chancery Division 842) Fry J. had to deal with a case with close similarity to the one I am faced with. There also an amendment was sought of the written statement by the defendant with a view to raise a technical plea as to whether the name of the publisher was truly stated in an action for alleged piracy of the plaintiff's copyright by the defendant. The rule regarding amendment with which the learned Judge was concerned is substantially the same as ours and the following observations from the decision are instructive and applicable to our case.

"*I have, therefore, to inquire what is the real question in controversy here. Mr. North says, that the real question is whether the defendant shall or shall not pay damages to the plaintiff, one that anything which may tend to the determination of that question is part of the real question in controversy. I do not think that proposition is correct. I think that the real question in controversy is whether Hopwood & Crew have or have not acted in accordance with the bargain between them and the plaintiff, and that I should be bound to allow any amendment necessary for the determination of that question. It is quite true that the point which the defendant now desires to raise has come out for the first time in the plaintiff's evidence. But I do not think I ought to allow an amendment for the mere purpose of enabling the defendant to raise a purely technical objection to the plaintiff's title to sue, an objection which the defendant never intended to raise, but of which he now adroitly seeks to avail himself. I think that the plaintiff had a right to rely upon that which is in effect an admission in the statement of defence, that, in every respect but that one which is mentioned, the registration was duly made. I therefore, refuse to give leave to amend."*

The principle of that decision supports the contention of the respondent.

7 I have already stated that when a plea is technical or is liable to be easily met by a simple amendment at the instance of the opposite party, the application for amendment by the plaintiff should be disallowed. The ruling reported in Raghavan v. S.T.A.T. Kerala State (1960 KLJ 444) has held that.

"the absence of signature and verification in plaints are only defects which can be cured at any time during the litigation, and are not of a jurisdictional nature. This view leads to the conclusion that the amendment sought in the present case should be disallowed.

8 For these reasons, I hold that the lower Court has not misexercised it discretionary power in refusing the amendment. Moreover, the revisional power under S.115 of the Civil Procedure Code is trammelled by the requirement of jurisdictional error if I may so concisely put it. It is good to remember that the rulings such as the one reported in Wali Mohammed Khan v. Ishak Ali Khan (AIR 1931 Allahabad 507) have gone to the extent of holding that,

"..... the absence of signatures or verification or for the master of that the absence of presentation on the part of some of the plaintiffs out of several does not affect the jurisdiction of the Court, and the suit must be deemed to have been duly instituted on their behalf if it was filed with their knowledge and authority."
How can I say that the refusal to introduce an amendment, at a belated stage, which raised a plea which may be characterised as a technicality of technicalities, liable to be overcome

without difficulty by the opposite side and the plea itself is extraneous to the merits of the subject matter, suffers from material irregularity in the exercise of jurisdiction? I cannot; and so long as I cannot, I cannot revise the order either.

9 So, I dismiss the revision petition. The reluctance of the respondent, a public body, to produce the necessary documentary evidence to establish the competence of Sundara to subscribe to the plaint cannot be appreciated. My disapprobation can be expressed only by denial of costs. I deny it to the respondent.
