

Chhotelal Pyarelalthe Parenership ... vs Shikharchand on 27 July, 1984

Equivalent citations: 1984 AIR 1570, 1985 SCR (1) 268, AIR 1984 SUPREME COURT 1570, (1984) 2 RENCER 325, 1984 (4) SCC 343, (1984) 2 ALL RENTCAS 550, (1984) MAH LJ 839

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Sabyasachi Mukharji

PETITIONER:

CHHOTELAL PYARELALTHE PARENERSHIP FIRM AND ORS.

Vs.

RESPONDENT:

SHIKHARCHAND

DATE OF JUDGMENT 27/07/1984

BENCH:

BHAGWATI, P.N.

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BHAGWATI, P.N.

MUKHARJI, SABYASACHI (J)

CITATION:

1984 AIR 1570 1985 SCR (1) 268

1984 SCC (4) 343 1984 SCALE (2) 125

CITATOR INFO :

F 1989 SC 865 (3)

ACT:

Central Provinces and Berar Letting of Houses and Rent Control Order 1949, Clause 13(3) (vi) and (vii)-Eviction Application against partnership firm in the firm name as respondent-Whether maintainable-Non-joinder of partners-Whether misdescription and can be corrected.

Code of Civil Procedure, 1908, 0.30-Whether applies to proceedings under C.P. and Berar Letting of Houses and Rent Control Order, 1949.

HEADNOTE:

In an eviction application, filed by respondent-landlord against the appellant-a partnership firm under

Clause 13(3) (vi) and (vii) of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 (HRC Order for short) the appellant raised a preliminary objection that the application against the partnership firm was not maintainable without joining its partners as respondents. The High Court ultimately held that such an application for eviction was maintainable. Hence the appeal to this Court.

Allowing the appeal and remitting the case back to the Rent Controller,

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HELD: (1) It is only by virtue of the provisions of Order 30 of the Code of Civil Procedure that a firm can sue and be sued in its own name without the partners being impleading co-nominee. But, since the Code of Civil Procedure does not apply to proceedings under the HRC Order, no application for eviction under HRC order can be maintained against a firm in the firm name. [270D-E]

(2) The firm is merely a compendious name for the partners consti-

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tuting it and an eviction application filed under HRC Order against a partnership firm without joining any partner constituting the firm as a respondent to the application would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. [270E-F]

(3) In the instant case, the Court allowed the respondent to amend the title of the original application by adding the names of the partners of the appellant firm and remitted the case back to the case Rent Controller for early disposal on merits. [270H; 271A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3027 of Appeal by Special leave from the Judgment and Order dated the 9th day of April, 1984 of the Bombay High Court in W.P. No. 51 of 1979.

U.R. Lalit and Mrs. J. Wad for the Appellants. V.A. Bobde and A.G. Ratnaparkhi for the Respondent. The Judgment of the Court was delivered by BHAGWATI, J. The respondent filed an application under clauses 13 (3) (vi) and (vii) of the C.P. and Berar Letting of Houses and Rent Control Order of 1949 (hereinafter referred to as HRC Order) to evict petitioner No. 1 firm of M/s. Chhotelal Pyarelal. The respondent alleged that the firm was a tenant in respect of the premises and eviction of the firm was sought on the ground of bona fide requirement of the respondent for the purpose of his occupation under paragraph (vi) as also for the purpose of making essential repairs under paragraph (vii) of Clause 13(3). The firm of Chhotelal Pyarelal raised a preliminary contention that no application could be maintained against a partnership firm and such an application was liable to be

rejected. This contention ultimately came to be considered by a learned single Judge of the High Court at Nagpur. The learned single Judge being under the impression that there was still operative a judgment of another single Judge of the High Court taking the view that such an application against a partnership firm was not maintainable, referred this question to a larger Bench. This question accordingly came up before a Division Bench of the High Court. It was pointed out before the Division Bench that undoubtedly a view was at one time taken by a learned single Judge that an application for eviction against a partnership firm was not maintainable but this view was over ruled by a Division Bench of the High Court in a Letters Patent appeal filed against that decision. The Division Bench accordingly held that an application for eviction under the HRC Order was maintainable against a partnership firm without joining any partner constituting the partnership firm as a respondent to the application. This view taken by the Division Bench is assailed in the present appeal filed by the firm of M/s. Chhotelal Pyarelal with special leave obtained from this Court.

Now, there can be no doubt that since the Code of Civil Procedure does not apply to proceedings under the HRC Order, no application for eviction can be maintained against a firm in the firm name. The firm is merely a compendious name for the partners constituting it and it is only by virtue of the provisions of Order 30 of the Code of Civil Procedure that a firm can sue and be sued in its own name without the partners being impleaded co-nominee. It is therefore clear that the firm of M/s, Chhotelal Pyarelal could not be sued in the firm name by the respondent in so far as the application for eviction under the HRC Order was concerned. But we agree with the Division Bench of the High Court that this cannot by itself result in the dismissal of the application. It would be merely a case of misdescription of the respondents to the application and this misdescription can be corrected at any stage of the proceedings. There can be no doubt that the partners of the firm are before the Court though in a wrong name.

The learned counsel appearing for the respondent has, therefore, applied to us for leave to amend the cause title of the original application by adding the names of the partners of the firm of M/s Chhotelal Pyarelal as respondents along with the firm of M/s Chhotelal Pyarelal and carrying out necessary consequential amendments in the body of the application. We allow the application for amendment and remit the case back to the Rent Controller so that he may dispose it of on merits. The respondent will carry out the amendment in the application for eviction within two weeks from the date of receipt of this Order by the Rent Controller and the newly added respondents will file their written statement in answer to the application for eviction within a further period of four weeks thereafter. The Rent Controller will then proceed to dispose of the application for eviction as expeditiously as possible and in any event before the expiration of a period of 6 months. There will be no order as to costs of the appeal.

M.L.A. Appeal allowed.