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VARUN PAHWA

v.

MRS. RENU CHAUDHARY

(Civil Appeal No. 2431 of 2019)

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MARCH 01, 2019

**[DR. DHANANJAYA Y CHANDRACHUD AND
HEMANT GUPTA, JJ.]**

Code of Civil Procedure, 1908 – O. VI, r.17 – Amendment of pleadings – Appellant-plaintiff as director of a company filed a suit for recovery of Rs.25,00,000/- – Thereafter, plaintiff filed an application for amendment of the plaint on the ground that the counsel had inadvertently made the title of the suit wrongly as the loan was advanced through the Company, therefore, the suit was to be in the name of the Company – Trial Court declined the amendment – High Court affirmed the order of the trial court – On appeal, held: The plaint was not properly drafted in as much as in the memo of parties, the plaintiff was described as ‘VP’ through director of the Company though it should have been Company through its director ‘VP’ – It was inadvertent mistake on the part of the counsel who drafted the plaint – Such inadvertent mistake could not be refused to be corrected when mistake was apparent from the reading of the plaint – Therefore, the order declining to correct the memo of parties not justified in law – Consequently, orders passed by the trial Court and the High Court set aside.

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Allowing the appeal, the Court

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HELD: 1. The plaint is not properly drafted in as much as in the memo of parties, the Plaintiff is described as ‘VP’ through Director of SG Pvt. Ltd. though it should have been SG Pvt. Ltd. through its Director ‘VP’. Thus, it is a case of mistake of the counsel, may be on account of lack of understanding as to how a Private Limited Company is to sue in a suit for recovery of the amount advanced. [Para 8][131-B, C]

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2. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The Rules of Procedure

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are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. [Para 9] [131-C-E]

3. Thus, this Court finds that it was an inadvertent mistake in the plaint which trial court should have allowed to be corrected so as to permit the Private Limited Company to sue as Plaintiff as the original Plaintiff has filed suit as Director of the said Private Limited Company. Therefore, the order declining to correct the memo of parties cannot be said to be justified in law. [Para 11] [133-G,H]

State of Maharashtra v. Hindustan Construction Company Limited (2010) 4 SCC 518 : [2010] 4 SCR 46;
Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Another (2006) 1 SCC 75 : [2005] 5 Suppl. SCR 157 – relied on.

Case Law Reference

[2010] 4 SCR 46	relied on	Para 9
[2005] 5 Suppl. SCR 157	relied on	Para 10

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2431 of 2019.

From the Judgment and Order dated 20.08.2018 of the High Court of Delhi at New Delhi in CM(M) No. 958 of 2018.

Avinash Kr. Lakhanpal, Adv. for the Appellant.

The Judgment of the Court was delivered by

HEMANT GUPTA, J. 1. Leave granted.

2. The Order dated 20.08.2018 passed by the High Court of Delhi is subject matter of challenge in the present appeal. By the aforesaid order, a petition against an order passed by the learned trial court on 23.01.2018 seeking permission to amend the plaint was dismissed.

A 3. The appellant as Director of Siddharth Garments Pvt. Ltd. filed a suit for recovery of Rs. 25,00,000/- along with pendente lite and future interest on or about 28.05.2016. The Plaintiff has claimed the said amount advanced as loan of Rs. 25,00,000/- remitted to the defendant through RTGS on 16.06.2013 on HDFC Bank, Delhi. It is also averred that Plaintiff has given Special Power of Attorney to Shri Navneet Gupta and that a copy of the Power of Attorney is enclosed.

B 4. The defendant raised one of the preliminary objections in the written statement that suit has not been filed by the Plaintiff and even the alleged authorised representative has not filed any document showing that he has been authorised by the above-named Plaintiff. The Special Power of Attorney is neither valid nor admissible.

C 5. It was on 29.11.2016, Navneet Gupta appeared in Court as power of attorney of the Plaintiff to examine himself as PW1. It was at that stage; an order was passed by the learned trial court to furnish address of the Plaintiff and why the Plaintiff should be examined through an attorney when the Plaintiff is a resident of Delhi. It is thereafter, the appellant filed an application for amendment of the plaint on the ground that the counsel had inadvertently made the title of the suit wrongly as the loan was advanced through the Company, therefore, the suit was to be in the name of the Company. Therefore, the Plaintiff sought to substitute para 1 and para 2 of the plaint with the following paras which read as under:-

E “1. That the Plaintiff is a Private Limited Company having its registered office at: I-VA (property bearing No. XII), Jawahar Nagar, Delhi

F 2. That the present plaint is filed through the authorised representative of the Plaintiff namely Sh. Navneet Gupta, R/o. 322, Kohat Enclave, Pitam Pura, Delhi who has been authorised vide board resolution dated 12.05.2016 to sign, verify and execute all documents, papers, complaints, applications, plaint, written statement, Counter claim, affidavits, replies revisions, etc. and to institute, pursue and depose in all legal proceedings and court cases on behalf of Siddharth Garments Pvt. Ltd against Mrs. Renu Chaudhary who was given the loan of Rs. 25 Lakhs.”

G 6. The trial court declined the amendment on the ground that the application is an attempt to convert the suit filed by a private individual into a suit filed by a Private Limited Company which is not permissible

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as it completely changes the nature of the suit. It is the said order which was not interfered with by the High Court. A

7. We have heard learned counsel for the appellant as none had appeared on behalf of the respondent.

8. The plaint is not properly drafted in as much as in the memo of parties, the Plaintiff is described as Varun Pahwa through Director of Siddharth Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun Pahwa. Thus, it is a case of mistake of the counsel, may be on account of lack of understanding as to how a Private Limited Company is to sue in a suit for recovery of the amount advanced. B

9. The memo of parties is thus clearly inadvertent mistake on the part of the counsel who drafted the plaint. Such inadvertent mistake cannot be refused to be corrected when the mistake is apparent from the reading of the plaint. The Rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives leave to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations. In *State of Maharashtra v. Hindustan Construction Company Limited*¹, this Court held as under:- C
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“17. Insofar as the Code of Civil Procedure, 1908 (for short “CPC”) is concerned, Order 6 Rule 17 provides for amendment of pleadings. It says that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. F

18. The matters relating to amendment of pleadings have come up for consideration before the courts from time to time. As far back as in 1884 in *Clarapede & Co. v. Commercial Union Assn.*² - an appeal that came up before the Court of Appeal, Brett M.R. stated: G

¹ (2010) 4 SCC 518

² (1883) 32 WR 262 (CA)

A “... The rule of conduct of the court in such a case is that, however negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment should be allowed if it can be made without injustice to the other side. There is no injustice if the other side can be compensated by costs; but, if the amendment will put them into such a position that they must be injured, it ought not to be made....”

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C **19.** In *Charan Das v. Amir Khan*³ the Privy Council expounded the legal position that although power of a Court to amend the plaint in a suit should not as a rule be exercised where the effect is to take away from the defendant a legal right which has accrued to him by lapse of time, yet there are cases in which that consideration is outweighed by the special circumstances of the case.

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D **22.** In *Jai Jai Ram Manohar Lal*⁴ this Court was concerned with a matter wherein amendment in the plaint was refused on the ground that the amendment could not take effect retrospectively and on the date of the amendment the action was barred by the law of limitation. It was held: (SCC p.871, para 5)

E “5. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the Rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.”

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This Court further stated (*Jai Jai Ram Manohar Lal* case, SCC p.873, para 7):

³ (1919-20) 47 IA 255

⁴ (1969) 1 SCC 869

“7. ...The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.” A

10. In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Another*⁵, this Court held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The Court held as under:- B

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well-recognised exceptions to this principle are: C D

(i) where the statute prescribing the procedure, also prescribes specifically the consequence of non-compliance;

(ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it; E

(iii) where the non-compliance or violation is proved to be deliberate or mischievous;

(iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court; F

(v) in case of memorandum of appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant.”

11. Thus, we find that it was an inadvertent mistake in the plaint which trial court should have allowed to be corrected so as to permit the Private Limited Company to sue as Plaintiff as the original Plaintiff has filed suit as Director of the said Private Limited Company. Therefore, the order declining to correct the memo of parties cannot be said to be justified in law. G

⁵ (2006) 1 SCC 75

A 12. Consequently, the orders passed by the High Court dated 20.08.2018 and by the trial court on 23.01.2018 are set-aside and the application filed by the Plaintiff to amend the plaint is allowed with no order as to costs.

 The appeal is allowed.

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Ankit Gyan

Appeal allowed.