

Calcutta High Court

Bimal Krishna Bose vs Alanga Medical Hall And Ors. on 9 March, 2004

Equivalent citations: 2004 (3) CHN 46

Author: A K Bhattacharya

Bench: A K Bhattacharya

JUDGMENT Arun Kumar Bhattacharya, J.

1. The hearing stems from an application filed by the petitioner, Rabindra Nath Roy praying for revision of the order being No. 156 dated 6.7.2002 passed by the ld. Judge, 2nd Bench, City Civil Court at Calcutta in T. S. 1109/1989.

2. The circumstanced leading to the present revision are that the suit being T. S. 1109/1989 was instituted originally in the name of St. John Ambulance Clinic as plaintiff. On an application under Order 7 Rule 11 CP Code filed by the defendant/ respondent for rejection of the plaint on the ground that the plaintiff St. John Ambulance Clinic being not a juristic person has no locus standi to institute the suit, the ld. Court below allowed the same vide Order No. 48 dated 10.05.1991 holding that the plaintiff not being a registered partnership firm or a private or public limited or a trust represented by sebaith has no right to institute the suit. In appeal being F. A. T. 1951/1991 preferred by the plaintiff, this Court set aside the said order of the ld. Court below directing the plaintiff to file an application for amendment of the plaint for rectification of the defects and thereafter the ld. Court below to dispose of the application under, Order 7 Rule 11 CP Code filed by respondent No. 4. The ld. Court below allowed the application under Order 6 Rule 17 CP Code filed by the plaintiff followed by rejection of the application under Order 7 Rule 11 CP Code filed by defendant No. 4 holding that Dr. Bimal Krishna Basu, Honorary Secy, St. John Ambulance Clinic being incorporated as plaintiff by amendment, the original plaintiff St. John Ambulance Clinic could not be considered as plaintiff and so the question of registration of the plaintiff under the Societies Registration Act, does not arise. On the death of the said Dr. Bimal Krishna Basu on 16.05.2000, the present Secretary Sri Rabindra Nath Roy being his legal or official representative filed the application for substitution under Order 22 Rules 3 & 4 CP Code within time which was rejected by the impugned order.

3. Being aggrieved by and dissatisfied with the said order, the petitioner has preferred the present revision.

4. All that now requires to be considered is whether the ld. Court below was justified in passing the said order.

5. Mr. Subhas Kumar Banerjee, ld. counsel for the petitioner, on drawing Court's attention to Order No. 65 dated 18.09.1992 & No. 77, dated, 23.11.1993 contended that Dr. Bimal Krishna Basu, Honorary Secretary of St. John Ambulance Clinic was substituted in place of the original plaintiff St. John Ambulance Clinic by virtue of an amendment and as such on the death of the said Dr. Basu on 16.05.2000, the present Honorary Secy. Rabindra Nath Roy who stepped into the shoes of Dr. Basu was sought to be substituted and that in the application instead of Order 22 Rule 4A, Order 22 Rule 4 has been mentioned through mistake. Mr. Bimal Kr. Mitra, ld. counsel for the O.ps., on the other

hand, on referring to the Schedule (3) as also the prayer thereunder of the amendment application (Annexure B) whereby the words "Dr. Bimal Krishna Basu may be allowed to proceed with the suit as independent capacity as a plaintiff" was sought to be incorporated in the Verification contended that in view of the said amendment, the proposed substitution of Rabindra Nath Roy who cannot be said to be the legal representative of Dr. Basu, was rightly rejected by the Id. Court below.

6. Indubitably, in the application for substitution in place of the plaintiff Dr. Bimal Krishna Basu, since deceased, the provision has been wrongly quoted as Order 22 Rule 4 instead of Order 22 Rule 3 since the former applies in case of death of defendant. The contents as also the prayer of the aforesaid application will reveal that the petitioner Rabindra Nath Roy, present Honorary Secretary of St. John Ambulance Clinic has sought to be substituted in place of deceased plaintiff Dr. Bimal Krishna Basu. A wrong label or nomenclature is not at all a guiding factor since the Court should look to the substance rather than the form. So the above mistake may be ignored and the application may be treated as one under Order 22 Rule 3 CP Code.

7. After amendment of the plaint, the plaintiff, as borne out in the Cause Title, is Dr. Bimal Krishna Basu, Honorary Secretary, St. John Ambulance Clinic. The background history of the said amendment has been stated above. On the death of the said plaintiff Dr. Basu the petitioner Rabindra Nath Roy, present Honorary Secretary, St. John Ambulance Clinic has sought to be substituted in place of the plaintiff. A glance to the order being No. 65 dated 18.09.1992 by which the prayer for amendment was allowed followed by amendment of the Cause Title will reveal that the said Dr. Basu wanted to be incorporated as plaintiff in the capacity of Honorary Secretary and in fact he signed the plaint as Honorary Secretary. That being so, merely because the verification was sought to be amended by an averment that Dr. Basu may be allowed to proceed with the suit in independent capacity which is purely self-inconsistent and defective, apparent on the face of the record, it does not necessarily follow that the name of Dr. Basu was incorporated in the plaint as plaintiff in individual capacity and not as Honorary Secretary. Verification is required to be made at the foot of the plaint for the simple reason that what is to be verified is the preceeding paragraphs of the plaint. Omission to verify or defective verification can be remedied at a later stage and is a mere irregularity which is well-settled. The rule of harmonious construction demands that the expression in a document should ordinarily be understood in a sense in which they best harmonize with the object, void conflict and advance the remedy and for that the document is to be read as a whole and not in piecemeal so as to adopt the process of etymological dissection and after taking words or sentence out of their context to proceed to construe it. Legal representative ordinarily means a person who in law represents the estate of the deceased person or persons on whom the estate devolves on the death of the individual. It is not always a legal requisite that inevitably, only the heirs, all of them or any of them should figure as legal representatives. The procedural law requiring representation will stand satisfied if there is substantial representation in the sense that all that could be done or has done by someone interested in the issue in the suit (AIR 1976 MAD 303). A person in possession of the estate or a person who intermeddles with the estate is legal representative even if he is not the legal heir. Considering all the above, the present petitioner who has stepped into the shoes of Dr. Basu, since deceased, may be held to be a legal representative. The Id. Court below having failed to consider the matter in proper perspective resulting in a wrong decision committed a jurisdictional error which cannot legally be sustained.

8. In the premises, in the light of the above discussion, the revisional application be allowed on contest but without any cost.

9. The impugned order being No. 156 dated 6.7.2002 passed by the Id. Judge, 2nd Bench, City Civil Court at Calcutta in T. S. 1109/1989 be set aside. The application for substitution filed by the petitioner be allowed. The plaint and register be amended accordingly.

10. Let a copy of this order be sent down at once to the Id. Court below.

Arun Kumar Bhattacharya, J.