

S/L. 11.
September 30, 2020.
MNS.

C. O. No. 1188 of 2020
With
IA No: CAN 1 of 2020
(Old No: CAN 5971 of 2020)
(Via video conference)

Ramkrishna Vivekananda Mission
Vs.
M/s. Dimple Properties Private Limited

Mr. Sibasis Ghosh,
Mr. Ardhendu Nag,
Mr. Hare Krishna Halder

... for the defendant/petitioner.

Mr. Jishnu Chaudhury,
Mr. SatadeepBhattacharyya,
Mr. Saptarshi Datta

...for the plaintiff/opposite party.

In view of the urgency involved in this matter, CAN 1 of 2020 (Old No: CAN 5971 of 2020) is allowed and the main revisional application is taken up for hearing.

Learned counsel for the petitioner argues that, by the order impugned herein, an amendment application filed by the plaintiff-opposite party on July 31, 2019, that is almost fifteen years after institution of the suit, was allowed.

It is further submitted that the said order amounted to a gross abuse of the court of law

inasmuch as the defendant-petitioner has specifically taken the objection in its written statement as well as an application under Order VII Rule 11 of the Code of Civil Procedure, to the effect that the plaintiff, as originally described in the cause title, was “M/s. Dimple Properties Private Limited”, which was barred by the principle of *res judicata* from filing a second suit. Such contention led up to an order of a co-ordinate Bench of this Court dated November 15, 2018, wherein the learned Single Judge held that the trial court would frame a preliminary issue on the objection taken by the defendant-present petitioner, as taken in the demurrer application, and shall dispose of the same prior to the other issues.

It is further submitted, by placing reliance on the Supreme Court judgment reported at **(2012) 1 SCR 295 (J. Samuel and others Vs. Gattu Mahesh and Others)**, that the court’s discretion to grant permission for amendment was subject to the conditions that no injustice must be done to the other side and the amendment must be necessary for the purpose of determining the real question in controversy between the parties. It was further held in the

said judgment that “due diligence” is the idea that reasonable investigation is necessary before certain kinds of relief are requested. It is specifically used in the Code of Civil Procedure to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

In the facts of the said reported case, there was a clear lack of “due diligence” and the mistake committed certainly did not come within the purview of a typographical error. The term typographical error, as held in the reported judgment, is defined as a mistake made in the printed/typed material during a printing/typing process. The term included errors due to mechanical failure or slips of the hand or finger, but usually excluded errors of ignorance. Therefore, the act of neglecting to perform an action, which one has an obligation, to do cannot be called as a typographical error.

Learned counsel for the petitioner further relies on a judgment reported at **(2011) 11 SCC 524 (State Bank of Travancore Vs. Kingston Computers India Private Limited)** in support of the proposition that if an objection was taken as to the maintainability of the suit on the ground

that the plaint was not signed, verified and filed by a competent and authorised representative on behalf of the company and there is neither any valid board resolution nor any valid authorization on behalf of the company nor a copy of the resolution has been filed along with the suit, on the basis of evidence, the letter of authority issued in the said case by a person describing himself as the Chief Executive Officer of the company was held to be nothing but a scrap of paper as no resolution was passed by Board of Directors delegating its power to him.

Learned counsel argues that, in the present case also, 'M/s, Dimple Properties Private Limited' and 'M/s. Dimpal Properties Private Limited' are distinct and different juristic entities in law, being altogether separate companies. Since the plaintiff, as originally described in the cause title, was barred by the principle of *res judicata* from instituting the suit, the said gross error, going to the root of the issue, cannot be glossed over at this belated juncture by filing an amendment application.

Learned counsel for the plaintiff-opposite party cites a judgment reported at **1969 (1) Supreme Court Cases 868 (Jai Jai Ram**

Manohar Lal Vs. National Building Material Supply, Gurgaon) for the well-settled proposition that 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 by an order of costs. Omission or misdescription due to a *bona fide* mistake ought to be permitted to be incorporated by amendment of the plaint.

Learned counsel next cites a judgment of a Division Bench of this Court reported at **AIR 1960 Cal 15 (Manilal and Sons Vs. Purushottam Umedbhai and Co.)** wherein it was held, *inter alia*, that the description of a plaintiff by a firm name in a case where the Code of Civil Procedure does not permit a suit to be brought in the firm name should properly be considered a case of description of the individual partners of the business and, as such, a misdescription which in law can be corrected and should not be considered to amount to a description of a non-existent person.

The opposite party next relies on another Division Bench judgment of this Court reported at **AIR 1979 Cal 10 (Satya Narayan Todi Vs. Sm. Surekha Chowdhury and others)**, wherein it was held that a matter where the amendment did not involve any change in the cause of action in the plaint but merely sought to correct the misdescription of the plaintiff in the suit, the amendment ought to be allowed.

Upon considering the rival contentions of the parties and perusing the impugned order, it is evident that the trial judge took into consideration several factors while allowing the amendment application. In the third page of the impugned order, as seen from the certified copy annexed herewith, the trial judge considered several aspects of the matter, including the fact that the original plaint bore the stamp and seal of 'Dimpal Properties Private Limited' and the said plaint was signed by one Sohan Lal Gupta on behalf of Dimpal Properties Private Limited and Sohan Lal Gupta was also shown as the Official representative of the company named 'Dimpal Properties Private Limited' in the present certificate of enlistment, which also reflects the change of address of the company's registered

office. The vakalatnama filed on behalf of the plaintiff-company also bears the seal of 'Dimpal Properties Private Limited', which corresponds with the seal on the amendment application as well.

Learned counsel for the petitioner is undoubtedly correct in submitting that, in the event the omission was intended *mala fide*, made to sabotage the objection to the maintainability of the suit raised by the defendant-petitioner, such amendment ought to have been struck down.

However, the settled position of law, that mere mistakes, negligence and inadvertence cannot be a grounds for rejection of amendments, has to be held in balance with the other proposition.

In the present case, the question boils down to, whether the amendment was *mala fide* and intended to withdraw an admission which was fatal to the plaint or a mere correction of error.

In consonance with the findings and observations of the trial judge, it can very well be said that the original suit was not only filed on behalf of 'Dimpal Properties Private Limited' but intended to be so filed. Unfortunately, due to

inadvertence, the name of 'Dimpal Properties Private Limited' was typed as 'Dimple Properties Limited' in the cause title of the plaint. The other materials on record show that even the original plaint and other connected documents clearly indicate that the plaintiff was 'Dimpal Properties Private Limited' and not 'Dimple Properties Private Limited'.

Rather, the technical objection taken by the petitioner, as to the party seeking amendment being different from the original plaintiff and the attempt to distinguish between juristic entities of the original plaintiff and the present opposite party, are moonshine at best.

Such a distinction, unless evident from the record, does not establish any *mala fides* on the part of the plaintiff.

On the contrary, all the evidence and materials on record indicate *ex facie* that the suit was intended to be filed on behalf of the present opposite party and not 'M/s. Dimple Properties Private Limited', which was an obvious typographical error in the cause title of the plaint, as originally filed.

Since the trial of the suit has not yet started, the proviso to Order VI Rule 17 of the

Code of Civil Procedure, as amended, does not apply in terms and mere delay cannot be a ground for rejecting the amendment, since the amendment was absolutely necessary for resolving the real controversy between the parties by correcting an obvious error of misdescription.

A bank draft is handed over in court by the advocate-on-record for the opposite party to learned counsel for the petitioner, with a denomination of the amount of costs as directed by the trial judge in the impugned order, and as accepted by learned counsel for the petitioner, on behalf of the petitioner, in final settlement of the said costs.

In the circumstances, the trial court was justified in allowing the said amendment.

Accordingly, C. O. No. 1188 of 2020 is dismissed on contest, thereby affirming the order impugned therein.

There will, however, be no further order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded in the official website of this Court. In any event, the petitioner is granted liberty to communicate the gist of this order to the opposite party even

without waiting for such server copy to be uploaded and the opposite party shall act upon the same.

(Sabyasachi Bhattacharyya, J.)