Before Hon'ble A. L. Bahri & V. K. Bali, JJ.

JASWANT,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER, HARYANA AND OTHERS —*Respondents*

Civil Writ Petition No. 13804 *of* 1991

July 7, 1992

Constitution of India, 1950—*Art.* 226/227—*Civil Procedure Code,* 1908—*Order* 1 *Rule* 10 *and Order* 22 *Rule* 4—*Application for impleading legal Representatives of a person who died prior to filing of writ petition*—Bona fide *mistake in drafting—Plea that such application under order* 1 *Rule* 10 *not maintainable and that such application being permissible only under Order* 22 *Rule* 4 *barred by limitation—Not tenable—Once mistake made by person who drafted is* bona fide *proviso to section* 21(1) *Limitation Act comes into effect.*

Held, that we are of the view that in preparing the memo of parties by filing the present writ petition, a *bona fide* mistake has been made by the one who drafted the petition for filing in this Court. It is, however, a matter of common knowledge that while preparing memo of parties, the names are picked up from the array of parties as shown in the orders that are to be impugned. We, by no means, want to hold that such a practice should be invariably adopted and no effort should be made to ascertain the latest position but the question for determination is as to whether it can come under the protection of *bona fide* mistake or not. It can certainly be termed as an act of carelessness but the same is not of the type which should result in refusing the relief and denying a citizen decision on merits which is a guaranteed right, be it a statutory appeal or writ under Article 226 of the Constitution of India. Once the mistake made by one who drafted the petition is held to be a *bona fide* mistake then immediately proviso to Section 21(1) of Limitation Act 1963 would come into play.

(Para 4)

Held, that in the light of what has been stated above the contention of learned counsel for the respondents that an application for impleading legal representatives of a person who had died prior to the institution of the writ petition would not be competent under Order 1 Rule 10 of the Code of Civil Procedure and that such an application being permissible only under Order 22 Rule 4 of the Code of Civil Procedure will be barred by time would have no substance.

(Para 5)

Held, that the application filed under Order 1 Rule 10 of the Code of Civil Procedure is, thus, competent. However, even if the matter falls within the provisions as contained in Order 22 Rule 4 of the Code of Civil Procedure the same in the facts and circumstances of the case would not make any difference because we have already held that the mistake so as not to implead the legal representatives of Kansi Ram was on account of *bona fide* mistake and if that be so then proviso to Section 21(1) of the Limitation Act would be attracted.

(Para 6)

H. S. Hooda, Senior Advocate with Ravi Verma, Advocate, *for the Petitioner.*

L. N. Verma, Advocate, *for the Respondents 5 to 8.*

ORDER

V. K. Bali, J.

(1) This order will dispose of Civil Miscellaneous No. 2454 of 1992 in Civil Writ Petition No. 13804 of 91 and Civil Miscellaneous No. 2457 of 1992 in Civil Writ Petition No. 13806 of 1991 as common questions of fact are involved in both the applications. The facts, however, have been extracted from Civil Misc. No. 2454 of 1992.

(2) The petitioner in the main Writ Petition seeks quashing of the orders dated November 16, 1979, March 3, 1981, March 24, 1989 and August 30, 1990 which have been passed by Assistant Collector 1st Grade Collector, Commissioner and the Financial Commissioner respectively,—*vide* which application of Ladhu Ram and Kansi Ram sons of Mam Raj for purchase of land of the petitioner who is stated to be a big landowner was allowed under the provisions of Punjab Security of Land Tenures Act, 1953. It is during the pendency of the Writ Petition challenging the orders aforesaid that the present application under Order 1 Rule 10 of the Code of Civil Procedure has been filed so as to implead Dalip Singh, Bhup Singh, Mahabir and Ram Chander sons of Kansi Ram as also Sruji Devi widow of Kansi Ram as also Bimla, Parvati and Leela Wati daughters of Kansi Ram as party (respondents) to the Writ Petition. In the other Civil Miscellaneous, also, the prayer is to implead the same very persons as respondents. The case of the petitioner-applicant is that the legal representatives of Kansi Ram could not be brought on record earlier as their names did not appear in the copy of the order passed by the Financial Commissioner and as such the mistake was inadvertent and *bona fide.*

(3) The applications have been hotly contested by respondents No. 5 to 8. By way of preliminary objection, it is stated that application for such a relief i.e. to add legal representatives of a person who had died prior to the institution of the writ petition is not permissible under Order 1 Rule 10 of the Code of Civil Procedure and that appropriate provision for bringing on record the legal representatives is Order 42 Rule 4 of the Code of Civil Procedure. It is stated that resort has not been made to Order 22 Rule 4 of the Code of Civil Procedure as the applicant knew it fully well that the same would be successfully contested on the plea of limitation. It is further stated that the purchase application was jointly filed by Ladhu Ram, since deceased, the father of answering respondents as also Kansi Ram deceased and that it is the joint order which has been challenged before the Collector, Commissioner and the Financial Commissioner as also this Court and inasmuch as the petition filed in this Court as against the heirs of Kansi Ram is a nullity, the same also cannot proceed against the contesting respondents. On merits, it has been pleaded that although the counsel for the answering respondents had brought the factum of death of Kansi Ram to the notice of this Court on November 12, 1991 yet the application was filed after February 27, 1992 and that too by seeking an adjournment. It is also stated that the petitioner-applicant was well aware of the death of Kansi Ram having occurred during the pendency of the revision petition before the Commissioner as not only respondent No. 2 but the applicant himself had moved an application on July 25, 1984 for permission to implead one of the sons of Kansi Ram as a party before the said Court. The obvious prayer of the respondents is to dismiss the application.

(4) After hearing the learned counsel for the parties, we are of the view that in preparing the memo of parties by filing the present Writ Petition, a *bona fide* mistake has been made by the one who drafted the petition for filing in this Court as it is apparent from the order passed by the Financial Commissioner that even though the name of Kansi Ram was substituted by one of his sons namely Dalip Singh as is the case of the respondents themselves, yet in the array of parties as reflected in the order of Financial Commissioner, the name of Kansi Ram who had died since long finds mention. It is true that Kansi Ram died way back in the year 1983 and this fact was known to the applicant as he himself made an application for substituting his name with one of his legal representatives before the Commissioner. It is, however a matter of common knowledge that while preparing memo of parties, the names are picked up from the

array of parties as shown in the orders that are to be impugned. We, by no means, want to hold that such a practice should be invariably adopted and no effort should be made to ascertain the latest position but the question for determination is as to whether it can come under the protection of *bona fide* mistake or not. It can certainly be termed as an act of carelessness but the same is not of the type which should result in refusing the relief and denying a citizen decision on merits which is a guaranteed right, be it a statutory appeal or writ under Article 226 of the Constitution of India. Once the mistake made by one who drafted the petition is held to be a *bona fide* mistake then immediately proviso to Section 21(1) of Limitation Act 1963 would come into play. Section 21 runs as follows :—

> (1) Where after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party :
>
> Provided that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted or any earlier date.
>
> (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff."

(5) In the light of what has been stated above, the contention of learned counsel for the respondents that an application for impleading legal representatives of a person who had died prior to the institution of the Writ petition would not be competent under Order 1 Rule 10 of the Code of Civil Procedure and that such an application being permissible only under Order 22 Rule 4 of the Code of Civil Procedure will be barred by time would have no substance. The learned counsel for his aforestated contention has relied upon "*Joginder Singh and others* v. *Krishan Lal and others*" (1). but in our

(1) A.I.R. 1971 Punjab and Haryana 180.

view the judgment rendered by R. S. Narula, the then Chief Justice in the aforesaid report does not support the case of the respondents. On the precise question that has been raised before us, the Chief Justice held thus :—

> "Whether an amendment of this type is made under the cover of Order 1 Rule 10 (2) of the Code or in exercise of powers vested in the Court under Section 153 would not in my opinion, make any material difference as the course to be adopted in either of the two cases would be the same and the relief to be granted would also not differ in any material particulars. What can be done in a case of this type is to strike out the name of the dead person which cannot possibly remain in the array of parties and if the law permits to substitute for the name of such dead person the name of any other person who is found to be the proper party to the suit in place of the dead person, whether it is done under Order 1 Rule 10 which certainly appears to provide for such an eventuality or done under Section 153 which obviously covers such a situation, is of mere academic interest and need not detain us further."

(6) The application filed under Order 1 Rule 10 of the Code of Civil Procedure is, thus, competent. However, even if the matter falls within the provisions as contained in Order 22 Rule 4 of the Code of Civil Procedure the same in the facts and circumstances of the case would not make any difference because we have already held that the mistake so as not to implead the legal representatives of Mansi Ram was on account of *bona fide* mistake and if that be so then proviso to Section 71 (1) of the Limitation Act would be attracted. The Apex Court in *"Ramprasad Dagaduram* v. *Vijay Kumar Motilal"* (2), observed as follows :—

> "The Court has power to add a new plaintiff at any stage of the suit, and in the absence of a statutory provision like Section 22 the suit would be regarded as having been commenced by the new plaintiff at the time when it was first instituted. But the policy of Section 22 is to prevent this result, and the effect of the section is that the suit must be regarded as having been instituted by the new plaintiff when he is

(2) A.I.R. 1967 S.C. 278.

made a party, see Ramsebuk *v.* Ramlal Koondoo, (1881) I.L.R. 6 Cal. 815. The rigour of this law has been mitigated by the provision to Section 21 (1) of the Indian Limitation Act, 1963, which enables the Court on being satisfied that the omission to include a new plaintiff or a new defendant was due to a mistake made in good faith, to direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date."

(7) Before parting with this order, we would, however, observe that carelessness that has been indulged while drafting the petition should not be totally excused particularly when Kansi Ram died way back in the year 1983 and this fact was in the notice of the applicant at least in 1984 as he himself made an application for impleading one of the legal representatives of Kansi Ram as party (respondent) before the Commissioner. The carelessness has resulted into unnecessarily prolonging the case which is an obvious harassment to an adversary. The applications are, thus, allowed subject to payment of Rs. 300 as costs in each case. The case would now come up for motion hearing on 20th July, 1992.

J.S.T.

Before Hon'ble A. P. Chowdhri & J. B. Garg, JJ.

HARYANA STATE BOARD FOR PREVENTION AND CONTROL OF WATER POLLUTION,—*Petitioner.*

versus

M/S JAI BHARAT WOOLEN FINISHING WORKS, PANIPAT AND OTHERS,—*Respondents.*

Crl. Appeal No. 123-DBA of 1986.

September 24, 1991.

Prevention and Control of Pollution Act, 1974—*Ss.* 25, 26, 43, 44, 49, 50—*Code of Criminal Procedure, (II of* 1974)—*Prosecution—Discharge of trade effluent on vacant land—Sample not found in conformity with I.S.* 2490—*S.* 378 (5) *of Cr.P.C. prescribing limitation for filing appeal in the High Court—Six months limitation provided where complainant is government servant and* 60 *days in other cases—Complaint instituted by the Board—Board is not a 'public' servant'—Appeal filed beyond* 60 *days barred by limitation—However, S.* 5 *of Limitation Act applies to appeals under* 378(4) of