

ORIGINAL CIVIL.

Before Ghose J.

1921

July 27

RAM PROSAD CHIMONLAL

v.

ANUNDJI & Co.*

*Abatement of Suit—Sole proprietor of a business sued in the firm name—
Death—No substitution within the time allowed by law—Civil
Procedure Code, 1908, O. XXX, rr. 4, 10 ; O. XXII, rr. 4, 9 (2).*

On the 7th February 1920, this suit was instituted under Order XXXVII of the Civil Procedure Code, 1908, for the recovery of a sum of Rs. 1,005 alleged to be due to the plaintiff firm on a hundi drawn by one Meghji Bhimji and accepted by the defendant firm of Anundji & Co., of which it was alleged the proprietor was one Anundji. On the 20th February 1920, Anundji obtained leave to defend the suit. He died on the 9th June 1920. In February 1921, the plaintiff firm made an application for an order that the plaintiff firm might have leave to continue the suit against Jogjiban and Govindji (both of them infants under the age of 18 years) sons and legal representatives of Anundji, the alleged sole partner of the defendant firm and that the abatement of the suit, if any, be set aside. The application was disposed of by Greaves J. on the 2nd March 1921 when he directed that Jogjiban and Govindji be added as defendants to the suit and gave them leave to contend, if so advised, that the suit had abated so far as they were concerned.

On an application on behalf of the infant defendant Jogjiban for an order that this suit, so far as the said defendant was concerned, might be dismissed with costs.

Held, that no steps having been taken by the plaintiff firm to record the death of Anundji alleged to be the sole proprietor of the defendant firm and to bring his heirs on the record within the time limited by law, the suit had abated against the deceased defendant and that no sufficient reasons having been shown for setting aside the abatement, the application must succeed with costs.

Western National Bank of New York v. Perez, Triana & Co. (1), *Heinemann & Co. v. S. B. Hale & Co.* (2) referred to.

*Original Civil Suit No. 271 of 1920.

(1) [1891] 1 Q. B. 304.

(2) [1891] 2 Q. B. 83.

APPLICATION.

The facts are fully stated in the judgment.

Mr. B. L. Mitter, for the petitioner, contended that the application of 16th February 1921, was under Order XXII, r. 4, C. P. C., but was made after the time allowed by law. Messrs. Dutt and Sen on whom the notice of that application was served, wanted to appear in that application on behalf of the petitioner but this was objected to by the plaintiffs and accordingly they withdrew from the application. Greaves J. expressly gave the petitioner leave to contend that the suit had abated so far as he was concerned. The suit had abated against the deceased defendant Anundji. Reference was made to O. XXX, r. 4, Civil Procedure Code, and to *Sadler v. Whiteman* (1).

Mr. S. M. Bose, for the plaintiff firm, referred to O. I, r. 10 (1), O. XXII, r. 10 and O. XXX, r. 4, of the Civil Procedure Code and contended that the suit did not abate.

Cur. adv. vult.

GHOSE J. This is an application on behalf of the infant defendant, Jogjiban Anundji, for an order that this suit, so far as the said defendant is concerned, may be dismissed with costs. It has arisen under the following circumstances: On the 7th February 1920, this suit was instituted under Order XXXVII, Civil Procedure Code, for the recovery of a sum of Rs. 1,005 alleged to be due to the plaintiff firm on a hundi drawn by one Meghji Bhimji and accepted by the defendant firm of Messrs. Anundji & Co. of which, it is alleged, the sole proprietor was one Anundji, the

(1) [1910] 1 K. B. 869, 889.

1921

RAM PRASAD
CHIMONLAL
v.
ANUNDJI
& Co.

1921
 RAM PROSAD
 CHIMONLAL
 v.
 ANUNDJI
 & Co.
 GHOSE J.

father of the applicant. On the 20th February 1920, Anundji obtained leave to defend this suit. He died on the 9th June 1920. In February 1921, the plaintiff firm made an application for an order that the plaintiff firm may have leave to continue this suit against Jogjiban and Govindji, both of them infants under the age of 18 years, sons and legal representatives of Anundji, deceased, the alleged sole partner of the defendant firm and that the abatement of this suit, if any, be set aside. This application was disposed of by my learned brother Mr. Justice Greaves on the 2nd March 1921 when he made the following order:—“It is ordered without prejudice to the rights of Jogjiban and Govindji the minor sons of Anundji of the defendant firm to contend, if they be so advised, that this suit in fact abated after six months from the 9th day of June last by reason of the death of the said Anundji, that the said plaint and the Register of this suit be amended by adding to the cause-title thereof the names of Jogjiban and Govindji as such sons, heirs, and legal representatives as parties defendants to this suit and by making such other amendments in the body of the said plaint as may be necessary in consequence of the aforesaid amendment. And it is further ordered that a fresh writ of summons to appear and answer do issue to the said Jogjiban and Govindji.”

Govindji has, since the date of the last mentioned order, died, and the fact of his death has been recorded in the proceedings herein. The present application is opposed on the ground that no steps were taken by the plaintiff firm to record the death of Anundji and to bring his heirs on the record within the statutory period and that, therefore, this suit has abated. Order XXX of the Code of Civil Procedure deals with suits

by or against firms and persons carrying on business in names other than their own. Section 1 provides that any two or more persons claiming or being liable as partners and carrying on business in British India may sue or be sued in the name of the firm. Section 10 lays down "any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm-name and, so far as the nature of the case will permit all rules under this Order shall apply". A person sued by his trading name may be ordered to disclose his real name and private address (see rule 1). Now, for the purposes of the present application, I will assume that Anundji was the sole proprietor of the firm of Anundji & Co. And indeed the application of the plaintiff firm before Mr. Justice Greaves was urged on the footing that Anundji was the sole proprietor of Anundji & Co. It is settled law that the effect of the provisions with regard to suing partners in their firm-name is merely to give a compendious mode of describing in the writ the partners who compose the firm and that the plaintiff who sues partners in the name of their firm in truth sues them individually, just as much as if he had set out all their names: see *Western National Bank of New York v. Perez, Triana & Co.* (1), *Heinemann & Co. v. S. B. Hale & Co.* (2). The firm-name is a mere expression, not a legal entity, and for convenience it may be used for the sake of suing and being sued. The same considerations apply where the firm name is used under Order XXX, r. 10. Therefore, I must take it that in this case the person sued was Anundji. The sole defendant Anundji having died and his legal representative or representatives not having been brought on the record within

1921

RAM PRASAD
CHIMONLAL
v.
ANUNDJI
& Co.

—
GROSE J.

(1) [1891] 1 Q. B. 304.

(2) [1891] 2 Q. B. 83.

1921
 RAM PRASAD
 CHIMONLAL
 v.
 ANUNDJI
 & Co.
 GHOSE J.

the time limited by law, this suit abated. And, in my opinion, no sufficient reasons within the meaning of Order XXII, r. 9, sub-rule (2) were or have been shown for setting aside the abatement. The result is that the application succeeds. The applicant will get the costs.

Certified for counsel.

A. P. B.

CIVIL RULE.

Before Chatterjea and Cuming JJ.

H. D. CHATTERJEE

v.

L. B. TRIBEDI.*

1921
 Aug. 22.

Rent Controller—Rent Controller, Calcutta, whether a Civil Court—Standard rent, application for fixing before expiry of lease—President of Tribunal, jurisdiction of, to revise Rent Controller's order of refusal—High Court's power of revision—Government of India Act (1915, 5 & 6 Geo. V. c. 61.) s. 107—Calcutta Rent Act (Beng. III of 1920) ss. 2 (f) (ii), 18.

Where the Calcutta Rent Controller went into the question of rent, and expressed his opinion that the existing rent was fair, and even stated that the present rent might be the standard rent of the premises in suit under section 2 (f) (ii) of the Calcutta Rent Act, but did not fix the standard rent as the application therefor had been made before the expiry of the lease :—

Held, that the President of the Tribunal had no jurisdiction under section 18 of the Rent Act to revise that order as there had been no decision by the Rent Controller fixing the standard rent.

Held, further, that the Rent Controller was a Court of Civil Jurisdiction, and therefore the High Court had the power of revising the order

* Civil Rule No. 522 of 1921, against the order of S. C. Banerjee, President of the Improvement Trust Tribunal, dated July 25, 1921, rejecting the order of B. D. Banerjee, Rent Controller, dated July 11, 1921.