FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Bennet and Mr. Justice Bajpai

SURAJ PALI (PLAINTIFF) *v.* ARYA PRATINIDHI SABHA (DEFENDANT)*

1936 *May*, 11

Civil Procedure Code, section 115—"*Case decided*"—*Order refusing amendment of plaint—Civil Procedure Code, order VI, rule* 17.

No revision lies from an order merely refusing to allow an amendment of a pleading. An order passed purely under order VI, rule 17 of the Civil Procedure Code does not amount to a "case decided" within the meaning of section 115 of the Code; but cases where the amendment comes under some other order of the Code, for example the addition or substitution of parties, or the striking off of a pleading, may amount to a case decided.

Mr. *Shiva Prasad Sinha*, for the applicant.

Mr. *Shri Prabhat Kumar*, for the opposite party.

SULAIMAN, C.J.:—This is an application in revision from an order refusing to allow an amendment of the plaint. The plaintiff applied that the word "defendants" should be added in paragraph 2 wherefrom, according to her, it had been omitted by mistake. The case has been referred to a Full Bench owing to a conflict of opinion in this Court on the question whether the refusal to allow an amendment of a plaint is a case decided within the meaning of section 115 of the Civil Procedure Code or not.

That there has been an unfortunate conflict of opinion in this Court cannot be denied. Confining attention to the cases dealing with revisions from orders either allowing or refusing amendments of plaints, and not considering other cases, for instance applications for setting aside *ex parte* decrees or for setting aside awards or for applying to sue *in forma pauperis*, etc., the cases in favour of the applicant are as follows:

*Civil Revision No. 476 of 1935.

1936

SURAJ PALI v. ARYA PRATINIDHI SABHA

Sulaiman, C.J.

In *Kishan Lal Babu Lal* v. *Ram Chandra* (1) the court below had definitely debarred the plaintiff from proving a part of his claim by refusing to allow an amendment on the ground that the application had been unduly delayed. The learned Judge on the analogy of certain previous cases, which admittedly were not directly in point, came to the conclusion that where the effect of the order was definitely to debar the plaintiff from proving a part of his claim it was a final decision of the court on that part of the case and was therefore a case decided within the meaning of section 115 of the Civil Procedure Code.

In *Bala Prasad* v. *Radhey Shiam* (2) an application for revision was directed against an order refusing to substitute the names of the two sons of a defendant who had died before the filing of the suit, but of whose death the plaintiff had been ignorant. The Bench came to the conclusion that the court below should have allowed the amendment, and that the refusal to substitute the names of the sons in place of the defendant who was dead was the decision of a case within the meaning of section 115 of the Civil Procedure Code. Now this ruling is clearly distinguishable. Strictly speaking it was not a case purely of a mere amendment of a plaint. The suit as originally filed had been filed against a dead defendant and the proceeding was therefore a nullity as against his heirs. When an application was made that the heirs who should have been impleaded as defendants and were the real defendants should be brought on the record, a fresh proceeding was started against them and the previous suit could not be considered to have been merely continued as against them. The point for consideration before the Bench was whether the names should be added under order I, rule 10 of the Civil Procedure Code. Now sub-rule (5) of that rule provides that subject to the provisions of the Limitation Act the proceeding as against any person added as defendant shall be

(1) (1932) I.L.R., 55 All., 256. (2) [1934] A.L.J., 126.

deemed to have begun only on the service of the summons. Thus the sub-rule itself contemplates that the addition of a new party implies a fresh proceeding which is deemed to have begun only on the service of the summons on the added defendants and not to have commenced retrospectively from the institution of the suit. That case, therefore, is not really directly in point.

In a later case in *Ruramal Ramnath* v. *Kapilman Misir* (1) a revision was filed from an order refusing to amend the plaint in a suit which had originally been brought for the recovery of money on the basis of a promissory note and the plaintiff had sought to amend the plaint in such a manner as to base his claim alternatively on the bahi khata account. The learned Judges thought that the case came within the purview of order VI, rule 17, the latter portion of which makes it imperative for a court to allow amendments as may be necessary for the purpose of determining the real questions in controversy between the parties. The Bench approved of the opinion expressed by the learned single Judge in *Kishan Lal's* case (2).

The question also arose in *Beni Prasad* v. *Salig Ram* (3), before one of us. That was an application in revision against an order refusing an amendment of the plaint. There too the amendment was in the nature of a note made against defendants 1 and 2 that they were President and Secretary respectively of a certain committee and also for the addition of a new party who had been alleged in the written statement to be the manager of that committee. The case came within the purview of order 1, rule 8; but the court below had disallowed the application on the ground that the plaintiff was seeking to alter the nature of the claim to a large extent. The case of *Ruramal* (3) was cited before the learned single Judge and he observed: "In view of this ruling I consider that I should hold that the refusal to allow an amendment of the plaint is a case decided within the meaning of

(1) (1934) I.L.R., 57 All., 459. (2) (1932) I.L.R., 55 All., 256.
(3) A.I.R., 1935 All., 651.

1936

SURAJ PALI v. ARYA PRATINIDHI SABHA

Sulaiman, C.J.

section 115 of the Civil Procedure Code." The learned Judge obviously felt bound to follow the Bench ruling as no ruling to the contrary was cited before him.

On the other hand, in the unreported case of *Sheikh Ghulam Husain* v. *Sheikh Ghulam Mohammad* (1) MUKERJI, A.C.J., and THOM, J., held that no revision lay from an order refusing to allow an amendment of the written statement. The Bench observed: "The view as to revisions, which this Court now holds, is well known and it is settled law so far as this Court is concerned that it would not interfere with a case which is pending. This is undoubtedly in accordance with the expression 'of any case which has been decided' to be found in section 115 of the Civil Procedure Code." In *Chhiddu Singh* v. *Makhan Lal* (2) THOM and RACHHPAL SINGH, JJ., also held that although that was a case where the amendment of the written statement should have been allowed, no revision lay from the order refusing to allow such an amendment. A similar view had been expressed by one of the same learned Judges in *Kundan Lal* v. *Chhajju Mal* (3).

It is, therefore, obvious that there is a conflict of opinion in this Court on this question.

Now so far as revisions from orders allowing an amendment of a pleading are concerned the rulings seem to be one way. The learned counsel for the applicant has not been able to cite any case in which a revision was allowed from an order where an amendment had been permitted. In *Sunder Lal* v. *Razia Begam* (4) it was definitely ruled by a Bench of this Court that no revision would lie from an order allowing an amendment of a plaint as it cannot be said that a case has been decided within the meaning of section 115. The Bench refrained from considering the soundness of the decision in *Kishan Lal's* case (5) inasmuch as the

(1) Civil Revision No. 555 of 1932, decided on 8th December, 1932.
(2) Civil Revision No. 661 of 1934, decided on 16th January, 1936.
(3) Civil Revision No. 297 of 1935, decided on 7th January, 1936.
(4) [1934] A.L.J., 757.
(5) (1932) I.L.R., 55 All., 256.

case before them was a converse one. A similar view was expressed in the unreported case of *G. A. John* v. *Seth Indra Chand* (1).

The word "case" has not been defined in the Code of Civil Procedure and cannot, therefore, be given any exhaustive definition. EVANS, J.C., and SUNDAR LAL, A.J.C., in *Hevanchal Kunwar* v. *Kanhai Lal* (2) remarked that "where there are independent proceedings arising out of a case, such as a proceeding to restore a case dismissed in default or to set aside a decree *ex parte*, for which the legislature has provided an independent remedy or a different procedure, such proceeding may be a 'case' within the meaning of the section." This dictum was quoted with approval by LINDSAY, J., in the Full Bench case of *Ram Sarup* v. *Gaya Prasad* (3). This opinion of LINDSAY, J., was accepted by another Bench of this Court in *Radha Mohan Datt* v. *Abbas Ali Biswas* (4).

Sulaiman, C.J.

In the Full Bench case of *Gupta & Co.* v. *Kirpa Ram Brothers* (5) it was observed: "It seems to me that it is not possible to lay down any complete and exhaustive definition of the word 'case'. Certainly the word 'case' is not an exact equivalent of the word 'suit'. Obviously it is something wider. At the same time it may not be so wide as to include every order that is passed by a court during the trial of a suit or proceeding pending before it." Thus the word "case" could not be given such a wide meaning as to cover every interlocutory order passed by a court during the trial of a suit. Now if a case within the meaning of section 115 of the Civil Procedure Code is started as soon as an application for the amendment of a pleading is made then the case would be decided when final orders on that application are passed, no matter whether the application is allowed or disallowed. There would be an anomaly in holding

(1) Civil Revision No. 572 of 1934, decided on 24th April, 1935.
(2) (1909) 12 Oudh Cases, 405.
(3) (1925) I.L.R., 48 All., 175(177).
(4) (1931) I.L.R., 53 All., 612(629).
(5) (1934) I.L.R., 57 All., 17(21).

1936

SURAJ PALI v. ARYA PRATINIDHI SABHA

Sulaiman, C.J.

that if the application is allowed the case is not decided, but if it is not allowed the case is decided. If the filing of the application was the commencement of a new proceeding or a case, then the case must necessarily be decided if the application is allowed. But it has been held consistently by this Court that when an application for amendment has been allowed no case can be said to have been decided so as to be made the subject of a revision to this Court. The cases laying down that no revision lies from orders merely allowing or disallowing amendments which are to some extent matters of discretion seem to have laid down the correct law. It must accordingly be held that no revision lies from an order merely refusing to allow an amendment of a pleading. Cases where the amendment comes under some other Order of the Code, for example the addition or substitution of parties, or the striking off a pleading, may amount to a case decided; but an order passed purely under order VI, rule 17 does not.

BENNET, J.:—I agree with the judgment of the CHIEF JUSTICE.

BAJPAI, J.:—I agree.

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Bennet and Mr. Justice Allsop

1936 *May*, 11

CHUNNA MAL (DEFENDANT) *v.* BHAGWANT KISHORE (PLAINTIFF)*

Civil Procedure Code section 149; *order XXXIII, rules* 5, 7 *and* 15—*Application for leave to sue as a pauper—Rejection or refusal of application—Simultaneous or subsequent order allowing the requisite court fee to be paid, treating the application as a plaint—Validity.*

An application for permission to sue as a pauper was contested by the defendant and by the Government Pleader, and after taking evidence as to the applicant's pauperism the court held that he was not a pauper and disallowed the application with costs. Two days later the applicant applied for review of judgment and also prayed that the court should have allowed

*Civil Revision No. 694 of 1934.