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In re MAGANLAL JIVABHAI

Vyas J.

that this Court should act as a revising authority in the same sense or manner in which the Advisory Board constituted under the Act was intended to be a revisory authority over the orders of detention passed by the detaining authority. In our view, it is entirely for the executive authority, who is the custodian of public order, to decide whether a person's being at large is detrimental to the interests of the State, the maintenance of public order, etc. Such a question really relates to the governance of the State and is not one for judicial decision. For these reasons we are of the view that we have got no power to interfere with the order of detention passed against the petitioner on such grounds as are pressed before us by Mr. Sule on the authority of the Madras case. If we turn to the affidavit which has been filed by the District Magistrate of Ahmedabad in this case he says:

> "It is denied that the situation and circumstances have materially changed since March 1950. The grounds of detention still subsist and there is no change in the situation whatsoever."

As this Court has repeatedly pointed out, in such cases it is that authority alone who has got to come to a conclusion of his own whether the detention of a person is justified or not in the interest of the maintenance of public order.

The net result therefore is that the application fails and is dismissed.

Rule discharged.

M. W. P.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice.

1952 *Apr.* 18

DAHYABHAI GIRDHARDAS (ORIGINAL PLAINTIFF), APPLICANT *v.* BOBAJI DAHYAJI KOTWAL AND OTHERS (ORIGINAL DEFENDANTS), OPPONENTS.*

Practice—Civil—Signature on plaint affixed by plaintiff's son as his Kulmukhtyar—Son having no proper authority to sign the plaint—Whether plaintiff can be allowed to amend plaint by striking off son's signature and to sign plaint himself.

In a suit filed by the plaintiff the plaint was signed by his son who described himself as the plaintiff's kulmukhtyar. As the son had no

*Civil Revision Application No. 449 of 1951.

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proper authority to sign the plaint, the plaintiff applied for amendment of the plaint by striking off the son's signature and for permission to sign the plaint. On the question whether such an amendment could be allowed:—

Held, that failure to sign the plaint properly was merely a formal defect; it was not a serious defect which went to the root of the matter and vitiated the institution of the suit. The defect could be cured at any stage on a proper application being made for the purpose.

Nanjibhai v. *Popatlal*,[1] followed.

Chunilal Bhagwanji v. *Kanmal Lalchand*,[2] not followed.

Mohini Mohun Das v. *Bungsi Buddan Saha Das*,[3] referred to.

Civil Revision Application from the decision of P. H. Buch, Civil Judge (J. D.) at Kaira.

One Dahyabhai Girdhardas (plaintiff) filed a suit in ejectment against Bobaji and others (defendants) in 1946 in the Court of the Nyayadhish at Ghodsar in Kaira District. The plaint was signed by the plaintiff's son Vadilal who described himself as his Kulmukhtyar. After merger the suit was transferred to the Civil Judge (J. D.) at Kaira. The plaintiff's son had no proper authority to sign the plaint and, therefore the plaintiff applied for an amendment of the plaint by striking off the son's signature and by being permitted to sign the plaint. The trial Court dismissed the application.

The plaintiff applied in revision to the High Court.

The application was heard.

D. V. Patel, for the petitioner.

No appearance for the Opponents.

CHAGLA C. J. The suit out of which this revision application arises was filed in the Court of the Nyayadhish at Ghodasar and the plaint was signed by the plaintiff's son Vadilal Dayabhai and he was described as a Kulmukhtyar. After merger the suit was transferred to the Civil Judge at Kaira. The plaintiff then applied for an amendment of the plaint by striking off the signature of his son and by being permitted to sign the plaint. The plaintiff realised that his son had no proper authority to sign the plaint and that was the reason for this application for amendment. The learned Judge dismissed the application, and it is from that order that this revision application is preferred.

(1) (1931) 34 Bom. L. R. 628. (2) [1944] Bom. 66.
(3) (1889) 17 Cal. 580, P. C.

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Now, there are two decisions of this Court to which my attention has been drawn bearing on the question as to whether failure to sign the plaint properly is such a material defect that the Court would be entitled to say that in the absence of a plaint being properly signed there is no suit before the Court at all, or whether the failure to sign the plaint properly is merely a formal defect which can be cured at any stage on a proper application being made to that effect. The former view has been taken by Sir John Beaumont in *Chunilal Bhagwanji* v. *Kanmal Lalchand.*[1] In that case a person acting under a power-of-attorney executed by a next friend of a minor presented a plaint and signed it, and the learned Chief Justice held that he had no authority to do so and that the plaint was not a valid plaint. The learned Chief Justice further held that the suit was never properly instituted, and that a defect of that sort could not be cured by amendment, and the natural course open to the plaintiff was to file a fresh plaint. With respect, the learned Chief Justice did not consider an earlier decision of this Court in *Nanjibhai* v. *Popatlal.*[2] As a matter of fact no authorities whatever were cited before the learned Chief Justice. Turning to the other judgment of this Court in *Nanjibhai* v. *Popatlal,*[2] Mr. Justice Mirza there held that a plaint filed within time can, if not properly signed, be allowed to be signed by the plaintiff at a later stage irrespective of the bar of limitation. There the munim of the plaintiff had signed the plaint without having a general power-of-attorney and the plaint was not therefore properly signed, and the learned Judge allowed the plaint to be amended. There is a judgment of the Privy Council which also perhaps throws some light on this matter, and that is *Mohini Mohun Das v. Bungsi Buddan Saha Das*[3]. In that case the suit was by three co-plaintiffs, and one of the points urged before the Privy Council was that the plaint was signed and verified by one plaintiff alone, and the answer given in the judgment of the Privy Council was that that was immaterial as there was no rule providing that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint. The rule requiring a plaint to be signed applies to all the plaintiffs, and if the Privy Council thought that the failure of one of the co-plaintiffs to sign the plaint was immaterial, it clearly shows that the Privy Council

[1] [1944] Bom. 66.
[2] (1931) 34 Bom. L. R. 628.
[3] (1889) 17 Cal. 580 P. C.

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considered this a merely formal error and not a serious defect which went to the root of the matter and which vitiated the whole institution of the suit to such an extent that the Court must consider that the suit was not properly instituted at all. If Sir John Beaumont was right in the view that he took, then the suit before the Privy Council was never instituted as far as the co-plaintiffs were concerned. Therefore, with very great respect, in my opinion the learned Chief Justice was in error in the view that he took. Ordinarily I would have been bound by his judgment as a judgment of co-ordinate authority, but there is the judgment of Mr. Justice Mirza and also the judgment of the Privy Council to which I have referred. With respect I prefer the judgment of Mr. Justice Mirza in *Nanjibhai* v. *Popatlal.*

I, therefore, set aside the order passed by the learned Judge below and direct that he should allow the plaintiff to amend the plaint by striking out the signature of the plaintiff's son and allowing the plaintiff to sign the plaint. No order as to costs.

Order set aside.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Gajendragadkar.

BATUK K. VYAS *v.* SALIM M. MERCHANT AND OTHERS.*

1952 June 17

Industrial Disputes Act (XIV of 1947), ss. 33, 33A—Dispute pending before Industrial Tribunal—Dismissal of employee without Tribunal's permission—Complaint against dismissal—Tribunal deciding upon merits of dismissal—Jurisdiction of Tribunal to go into merits— Decision of Tribunal on question of law—Power of High Court to quash decision by issuing writ.

The jurisdiction of a Tribunal adjudicating upon a complaint made to it under s. 33A of the Industrial Disputes Act, 1947, is not limited merely to considering whether there has been a contravention of s. 33 of the Act; it can go into the merits of the dispute between the employer and the workman with regard to the change in the conditions of service or the discharge of the employee by the employer.

* Civil Application No. 124 of 1952.