

(2011) 01 DEL CK 0161

In the Delhi High Court

Case No : Regular First Appeal 131 of 1996

Allahabad Bank

APPELLANT

Vs

Krishan Chander Ramesh Chander and Bors

RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:

Citation : (2011) 2 BC 327 : (2011) 177 DLT 429 : (2011) 122 DRJ 137

Hon'ble Judges : Reva Khetrpal, J

Bench : Single Bench

Advocate : Vishnu Mehra, R.L. Kadamb and Sumit Kaul, for the Appellant;
Ashok Bhasin Sunklan and Shuchisnita Ojha, for the Respondent

Judgement

Reva Khetrpal, J.—By this appeal the Appellant-bank seeks to impugn the judgment and decree dated 20.12.1995 passed by the learned Additional District Judge in favour of the Respondents and against the Appellant.

2. The brief facts leading to the filing of the appeal are that the Respondent, which is a registered partnership firm, instituted a suit for rendition of accounts against the Appellant-Allahabad Bank. The Respondent is a cloth merchant having its principal place of business at 571, Katra Asharfi, Chandni Chowk, Delhi. The Respondent had been maintaining and operating a current account with the Appellant-bank at their Chandni Chowk branch since March, 1986 and approached the Appellant for grant of various banking facilities. The Appellant-bank agreed to grant cash credit/overdraft facility to the tune of Rs. 1,50,000/-, subject to the Respondent paying the stipulated rate of interest and furnishing adequate security and guarantee for the amount advanced to it and the interest accruing thereon. The Respondent by way of securities pledged 4000 shares of M/s. Sirpur Papers Ltd., 400 shares of M/s. Jagjit Cotton Textiles, 6964 shares of M/s. Sutlej Cotton Mills Ltd. and 7572 shares of Orient Paper Mills Ltd. with the Appellant-bank. These shares were pledged in the year 1969.

3. It is a case of the Respondent firm in the suit instituted by it that while

pledging the aforesaid shares, the Respondent had appointed the Appellant-bank as its agent with an authority to receive all dividend warrants, bonus, shares, warrants of tax declared at source and to correspond with the respective companies on behalf of the decree holder. It is further the case of the Respondent that the Appellant was under an obligation to give prompt credit to the Respondent's account after receipt of the dividend warrants and intimate to the Respondent accordingly and further to forward the certificates for the tax deducted at source to the Respondent so that the Respondent was able to claim the adjustment of the said amount from the Income Tax Department. The Respondent asserts in the plaint that during the currency of the account, i.e., from the year 1969 to 1977, the Appellant-bank had been receiving dividend warrants and certificates for the tax deducted at source from the aforesaid companies, but the Appellant-bank was very negligent in giving credit to the account of the Respondent. Thus, while on the one hand, the Appellant-bank was charging interest on the account of the Respondent, on the other the Respondent was not only deprived of the use of the various amounts realized by the Bank from the respective companies, but it was made liable to pay interest on the said amount. Thus, the Appellant-bank which was under a legal as well as contractual obligation to render true and correct accounts to the Respondent every six months, i.e., on 30th June and 31st December of every year, besides advising the Respondent about the amounts received by them from the aforesaid companies and the dates when such amounts were received, failed to do so. The Respondent thereupon called upon the Appellant to render true and complete accounts and served legal notice upon them. The Appellant having denied their obligation to render true and complete accounts, the Respondent instituted the suit from which this appeal arises.

4. Written statement to the aforesaid suit was filed by the Appellant-bank contesting the suit, wherein it was stated that there was no relationship of principal and agent between the parties. The Respondent/Plaintiff filed replication. On the pleadings of the parties, the following issues were framed:

1. Whether there is a relationship of principal and agent between the Defendant and the Plaintiff, if so, its effect.
2. Whether the suit is barred by time? OPD
3. Whether the Plaintiffs are estopped from filing the present suit as alleged in the preliminary objections No. 3 of the W.S.? OPD
4. Whether the Plaintiff is entitled to the rendition of the accounts as prayed in the plaint? OPP
5. Whether the Plaintiff firm is a duly regd. Partnership firm? If not its effect? OPP
6. Whether there was no contract to pay any interest by the Defendant to the Plaintiff, on the amount received by the deft. on behalf of the Plaintiff? OPD (Onus objected to)

7. Relief.

5. The parties led their evidence and on the basis thereof, a preliminary decree for rendition of accounts was passed in favour of the Respondent/Plaintiff and against the Appellant/Defendant on 18.12.1989. On the same date a Local Commissioner was appointed on the directions from the Court to inspect the relevant records of the Appellant-bank and to submit his report before the Court in accordance with law. After the passing of the preliminary decree dated 18.12.1989, the Respondent/Plaintiff filed a detailed claim dated 20.03.1990 before the learned Local Commissioner claiming a sum of Rs. 7,13,389.26p. The learned Local Commissioner submitted his report dated 23.4.1990 stating that the Respondent/Plaintiff was justified in claiming the amount of Rs. 6,61,327.96p. on account of interest from the Appellant/Defendant Bank.

6. On 24.07.1990, the Respondent/Plaintiff filed an application before the learned District Judge for passing of the final decree in terms of the report of the learned Local Commissioner, as aforesaid. The Appellant-bank on its part filed objections dated 13.12.1990 to the report of the Local Commissioner dated 23/24.07.1990. However, since the Respondent had filed the claim petition before the learned Local Commissioner, claiming a specific amount of Rs. 7,13,389.26p. as against the suit for rendition of accounts wherein it was alleged that they were not aware of the amount due from the Appellant, which was likely to be in the sum of Rs. 95,000/-, the Appellant-bank on 27.03.1995 filed an application u/s 21 and Section 151 of the Code of Civil Procedure, 1908 and Section 11 of the Suit Valuation Act praying that the Court may not further hear the suit as the value of the suit was Rs. 6,61,327.96p., which was beyond the pecuniary jurisdiction of the Court and it was prayed that the suit file may be sent to the High Court of Delhi having pecuniary jurisdiction to hear/pass decree in the sum exceeding Rs. 5 lacs.

7. The Respondent filed its reply to the aforesaid application and in the order sheet dated 17.07.1995, it was recorded thus:

Present: Counsel for the parties. Deft had moved an application and reply has been filed. Copy given. Put up for arguments on this application on 11.8.95.

The proceeding sheet dated 11.8.95 reads as follows:

Pr.C. for the parties. Part arguments heard. Now to come up for 16.10.95 for remaining arguments.

8. Thereafter, the proceeding sheet dated 16.10.1995 reads as under:

Present parties counsel. No court time is left. Put up on 20.11.95 for final arguments.

9. The grievance of the Appellant-bank as expressed by its counsel Mr. Vishnu Mehra is that on 20.11.1995, the arguments on the application u/s 21 and Section 151 of the Code of Civil Procedure, 1908 and Section 11 of the Suit

Valuation Act were concluded by the counsel for the parties and after hearing the counsel for the parties, the application was orally reserved for orders without giving any next date. Thereafter, from time to time, Mr. Dilip Ahuja, associate counsel of Mr. Vishnu Mehra, Advocate had been enquiring from the Court Master of the Court about the orders and each time he was told that the order had not been pronounced. On 18.01.1996, however, on further enquiry from the Court Master, it was learnt by him that orders had been passed on 20.12.1995. On perusal of the said orders, the same were found to read as follows: "Present Both. Arguments heard and announced in open court. Final Decree passed vide separate order/Judgment. File be consider to R.R."

10. The contention of Mr. Vishnu Mehra, the learned Counsel for the Appellant-bank, is that the aforesaid order sheet suggests that the counsel for both the parties were present in the Court on 20.12.1995, when arguments were heard, while the fact was that no further date was given on 20.11.1995. The Appellant had received no notice for 20.12.1995 or for any other date from the Court and as such, there was no occasion for the counsel for the Appellant/Defendant Bank to appear in the court. The counsel for the Appellant had perused the daily cause list dated 20.11.1995 maintained by the court of the learned Additional District Judge and it transpired that even there no next date was mentioned corresponding to the cause title of the instant case. The daily cause list dated 20.12.1995 maintained by the learned Additional District Judge's court was also perused and it was noted that the cause title of the instant case was not shown in the daily cause list dated 20.12.1995 also. Thus, the matter had been disposed of by the court of the learned Additional District Judge and final decree in the suit pronounced without hearing or giving any opportunity to the Appellant-bank to make submissions either on the objections dated 13.12.1995 filed by the Appellant to the report of the Local Commissioner or on the application filed by the Respondent/Plaintiff for passing of the final decree. Instead, the court pronounced the orders on the application dated 27.3.1995, being M-62/1990, filed by the Appellant-bank u/s 21 and Section 151 of CPC and Section 11 of the Suit Valuation Act and in paragraph-5 thereof observed as under:

In the objections, the applicant-Defendant has taken a number of preliminary objections but same were not pressed at the time of arguments. On merits, only pecuniary jurisdiction issue was raised and same has been answered in my above discussion. Hence the objections raised by the applicant-Defendant are also dismissed as they are devoid of any merit. Hence final decree is passed and the Defendant do pay to the Plaintiff a sum of Rs. 6,61,327.97 with interest thereon at the rate of 12% p.a. w.e.f. 24.7.90 till realization of the decretal amount. Accordingly, the Plaintiff is directed to pay the requisite court fees and thereafter the decree-sheet be drawn. File be consigned to the record room. Announced in open court.

11. It was submitted by Mr. Vishnu Mehra, the learned Counsel for the Appellant-bank that in the impugned judgment the learned Additional District Judge has

recorded that the counsel did not press any other argument except the pecuniary jurisdiction of the court, which is not factually correct. It is submitted that the hearing of the arguments before the court was confined to the application u/s 21 and Section 151 of the Code of Civil Procedure, 1908 and Section 11 of the Suit Valuation Act, being M-62/1990. No arguments were addressed at all on the application for final decree filed by the Respondent/Plaintiff or for that matter the objections dated 13.12.1990 filed by the Appellant-bank to the report of the Local Commissioner dated 23/24.07.1990. There was no occasion to address the arguments on the aforesaid two applications nor indeed did the learned Additional District Judge call upon the Appellant to address arguments on the aforesaid two applications. Notwithstanding, in the impugned judgment, the learned Additional District Judge recorded that at the time of the arguments, the counsel did not press any other argument except the pecuniary jurisdiction of the Court.

12. Without prejudice to the aforesaid contention, Mr. Vishnu Mehra, the learned Counsel for the Appellant-bank submitted that it was incumbent upon the learned Additional District Judge before passing the final decree to have gone into the report submitted by the Local Commissioner so as to ascertain its worth and whether the same was within the scope of the directions given in the judgment and the preliminary decree dated 18.11.1989, but from a bare perusal of the impugned judgment dated 20.12.1995, it was clear that the learned Additional District Judge had not gone into the report of the Local Commissioner at all or applied his mind to the findings rendered by the Local Commissioner. As such, the impugned judgment and decree had occasioned grave miscarriage of justice to the Appellant-bank. Mr. Mehra emphasized that according to the directions contained in the judgment dated 18.11.1989, the learned Local Commissioner was only required to inspect the accounts of the Respondents maintained by the Appellant-bank. In the instant case, the learned Local Commissioner did not care to inspect the accounts, as would be apparent from the report of the learned Local Commissioner itself. To put it differently, what was required of the Local Commissioner was to report as to when the amount of dividends were received by the Appellant-bank and when the credit for the same was given to the Respondent in the account maintained by the Appellant-bank. Thereafter, it was for the Court to decide whether interest had to be awarded to the Respondent and if so, at what rate, on what amount and for what period. The Local Commissioner however chose to don the mantle of the Court, which was obvious from a reading of his report.

13. Mr. Mehra also contended that it was not clear as to how the amount of Rs. 6,61,327.96p. had been worked out/computed and that it appeared that the aforesaid amount included interest compounded at quarterly rests, which was clearly illegal and without the authority of law. Not only this, the learned Additional District Judge had failed to appreciate that the Respondent had waived its right to claim its interest or any other amount in writing and the said letters dated 23.12.1977 and 06.01.1978 were on the file of the learned Additional

District Judge. The Local Commissioner merely confirmed the figure of Rs. 6,61,327.96p. claimed by the Respondent even before the process of inspection of accounts, which was not even commenced by him.

14. The stand taken by the Respondent through its counsel Mr. Ashok Bhasin, Senior Advocate and in the reply filed by the Respondents to the Memorandum of Appeal is that it does not lie in the mouth of the Appellant-bank to allege that it had not been afforded an opportunity to address arguments on their objections since, during the course of arguments, the learned Counsel for the Appellant-bank only pressed their arguments with regard to the pecuniary jurisdiction of the Court and it was stated that they did not press the other points raised in the objection petition. It is further contended that the learned trial court had found that what had been argued by the Appellant on their application u/s 21 CPC, etc. was also contained in their objections and as such, the learned trial court posted the case for arguments both on the application as well as the objections. It is denied that on 20.11.1995 the learned trial court did not give any further date and reserved the application u/s 21 CPC for orders. It is also denied that there was no occasion for the counsel for the Appellant-bank to appear in the court on 20.12.1995 since no such date was fixed by the learned Additional District Judge on 20.11.1995. It is categorically denied that the learned trial court had pronounced a judgment and final decree in the suit without giving an opportunity to the Appellant to make submissions either on the application filed by the Respondent/Plaintiff for passing the final decree and/or the objections dated 13.12.1995 by the Appellant to the report of the Local Commissioner.

15. Interestingly in para-3 of the reply, it is stated by the Respondent/Plaintiff that the order dated 16.10.1995 clearly states that the case is being posted for final arguments, meaning thereby that the arguments were to be heard in the application as well as on the objections of the Appellant simultaneously, as both were in substance the same.

16. Mr. Ashok Bhasin, the learned senior counsel for the Respondent also contended that the Appellant-bank not having filed any appeal against the preliminary decree for accounts, the correctness of the findings rendered in the preliminary decree could not be challenged by the Appellant-bank by way of an appeal against the final decree, and the preliminary decree would be taken to have been correctly passed. Mr. Bhasin contended that the whole object which Section 91 of CPC intends to achieve would be frustrated if it is held to the contrary. Reliance was placed in this context by Mr. Bhasin on the judgment of the Hon'ble Supreme Court in Kaushalya Devi and Others Vs. Baijnath Sayal and Others, .

17. Mr. Vishnu Mehra, the learned Counsel for the Appellant countering the aforesaid contention of Mr. Bhasin relied upon the decision of the Supreme Court in Chitturi Subbanna Vs. Kudapa Subbanna and Others, and in particular on the portion extracted below:

(25) We are, therefore, of opinion that it is open to the Court to construe the direction in the preliminary decree about the inquiry with respect to future mesne profits when such direction is not so fully expressed as to cover all the alternatives mentioned in O.20 R.12(1)(c), CPC and to hold that the decree be construed in accordance with those provisions.

(26) It is urged for the decree-holder Respondent that the trial Court, when passing the final decree, could not have ignored what had been decreed under the preliminary decree as no appeal against the preliminary decree had been preferred and Section 97 C.P.C., provided that where any party aggrieved by a preliminary decree passed after the commencement of the Code did not appeal from such decree, it would be precluded from disputing, its correctness in any appeal which might be preferred from the final decree. The object of Section 97 is that questions which had been urged by the parties and decided by the Court at the stage of the preliminary decree will not be open for re-agitation at the stage of the preparation of the final decree and would be taken as finally decided if no appeal had been preferred against the preliminary decree. The provisions of this section appear to be inapplicable to the present case.

(27) The preliminary decree directed an inquiry about the mesne profits from the date of the institution of the suit upto the date of delivery of possession to the decree-holder. The decree-holder could not have felt aggrieved against the order. The judgment-debtor could not have insisted for detailing all the various alternatives mentioned in O.20 R.12(1)(c) and he could not have expected that possession would not be taken within three years of the decree. The direction about the enquiry with respect to future mesne profits does not amount to an adjudication and certainly does not amount to an adjudication of any controversy between the parties in the suit. It has no reference to any cause of action which had arisen in favour of the Plaintiff-decree holder before the institution of the suit. The direction was given on account of a special power given to the Court under O.20 R.12(1)(c) of the Code to make such a direction if it considered it fit to do so. It was within the discretion of the Court to make the direction or not. The Court does not decide, when making such a direction, the period for which, the decree holder would be entitled to get mesne profits. No such point can be raised before it. The judgment-debtor's liability to mesne profits arose under the ordinary law and a suit for realizing mesne profits could be separately filed by the decree-holder. The provisions of O.20 R.12(1)(c), are just to avoid multiplicity of suits with consequent harassment to the parties. The mere fact that the direction for an enquiry into mesne profits is contained in a preliminary decree does not make it such a part of the decree against which alone appeal could have been filed. The appeal could be filed only after a final decree is passed decreeing certain amount for mesne profits to the decree-holder. It follows that the question about the proper period for which mesne profits was to be decreed really comes up for decision at the time of passing the final decree by which time the parties in the suit would be in a position to know the exact period for which future mesne profits could be decreed in view of the provisions of

O.20.R.12(1)(c).

18. Having heard the learned Counsel for the parties and gone through the paper-book, it deserves to be noticed at this juncture that in its order dated 02.02.2009, serious note was taken by this Court of a letter dated 17.01.2009 which had been received from the trial court, after persistent reminders had been sent for the trial court records to the effect that the trial court records had been destroyed on 17.06.2008, during the process of routine weeding out of the records. This, despite the fact that the present appeal was pending adjudication. The result inevitably is that this Court is considerably hampered in assessing the veracity of the respective contentions of the parties and the sequence of events, which led to the passing of the final decree. Thus, while on the one hand, it is the case of the Appellant-bank that on 20.11.1995 arguments on its application alone were heard by the Court and the application orally reserved for orders the Respondent, in its reply, has set out the following order passed by the learned trial court on 20.11.1995:

20.11.1995

Present: Counsel for parties.

Part arguments heard. Now to come up on 20.12.1995 for remaining arguments.

19. This Court, however, cannot help but observe that the impugned order dated 20.12.1995 whereby and whereunder a final decree was passed, in the cause title, refers to the application number of the Appellant-bank alone and there is no reference either to the registration number of the application filed by the Respondent for the passing of a final decree or to the registration number of the objections filed by the Appellant-bank even to the suit number. It is also crystal clear from the perusal of the order dated 20.12.1995 that there is no discussion in the said order by the learned Additional District Judge with regard to the report of the Local Commissioner except to state that a number of objections were taken by the "applicant-Defendant" but the same were not pressed at the time of arguments, hence, the objections raised by the applicant-Defendant were also being dismissed as they were devoid of any merit and final decree was being passed.

20. Thus, even assuming that the contention of the Appellant-bank that no opportunity was afforded to it for addressing arguments on the objections filed by it against the report of the Local Commissioner, is not accepted (though I find no cogent reason for doing so), the fact remains that the learned Additional District Judge has given no reasoning whatsoever for the passing of the final decree. The report of the Local Commissioner has not even been visited by the learned Additional District Judge nor the findings of the Local Commissioner alluded to in any manner.

21. All that the learned Additional District Judge has dealt with in the order dated 20.12.1995 is the application of the Appellant-bank with regard to the lack of

pecuniary jurisdiction. The merits of the report of the Local Commissioner have not even been touched upon nor indeed even the findings of the Local Commissioner alluded to by the learned Additional District Judge. The report of the Local Commissioner has been accepted by the learned Additional District Judge in its entirety blindfold, without even stating that the said report has been examined and found to be correct/acceptable. Such a finding, in my view, was required to be rendered by the learned Additional District Judge before the passing of the final decree and was rendered all the more necessary in the instant case as the Local Commissioner had passed a report for precisely the same amount of money as had been claimed by the Respondent/Plaintiff in the claim submitted by the Respondents/Plaintiffs before the Local Commissioner. The direction in the preliminary decree requiring the Local Commissioner to go into the accounts maintained by the Appellant-bank, it is clear from the report of the Local Commissioner was brushed aside and altogether ignored by the Local Commissioner.

22. In view of the aforesaid, the judgment and decree dated 20.12.1995 cannot be sustained and is set aside. The matter is remanded to the trial court for deciding the objections filed by the Appellant-bank and thereafter for consideration of the application of the Respondent for the passing of a final decree, after examining the report of the learned Local Commissioner rendered after the passing of the preliminary decree. Since this is an old matter pertaining to a suit instituted in the year 1980, the learned trial court is directed to dispose of the matter as expeditiously as possible, and latest before the 31st of May, 2011. The parties are directed to appear before the learned trial Court on 3rd February, 2011.

The appeal stands disposed of accordingly.