
(1955) 10 AP CK 0042

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 9.1 of 1955

Andhra Bank Ltd.

APPELLANT

Vs

N.V. Narendranath Baladur and Others

RESPONDENT

Date of Decision : 07-10-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 18(1), Order 11 Rule 18(2)

Citation : (1955) 10 AP CK 0042

Hon'ble Judges : Umamaheswaram, J

Bench : Single Bench

Advocate : P. Souiasundaram, for the Appellant; P. Suryanarayana, D. Surya Prakasa Rao and A. Satyanarayana, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application to revise the order of the Subordinate Judge of Masulipatani in I. A. No. 1699 of 1954 directing the Petitioner herein to give inspection of the documents referred to in para. 6 of the affidavit filed by the Respondents in support of their application. Sri P. Somasundaram on behalf of the Petitioner raised two objections, namely, (i) .that the inspection ought .not to have been ordered under Order 11 Rule 18(2) Code of CPC before the Respondents filed their written statements, and (ii) that the Subordinate Judge did not address his mind to the question whether Union Respondents were entitled to inspection of these document (2) For the purpose of appreciating his contentions,- I shall set out a few relevant facts. The Petitioner-Bank is the Andhra Bank Ltd, Masulipalnain and it held a suit for recovery of Us. 1,24,044-14-0 due on a promissory note executed by the Respondents and others. In the lawyer"s notice dated 18-9-1954 which preceded the suit the bank demanded the repayment of the amounts due fewer than two heads. It was stated therein that if the two loan amounts were not paid within a week after the receipt of tins notice, the bank would enforce the mortgage created by deposit of title deeds and recover the amounts from the mortgaged properties as also

personally.

2. No reply having been received the Petitioner-bank filed the suit for enforcement of the promissory note dated 17-10-1951. The claim based on the mortgage has been given up in the suit as conceded by Sri P. Somasundaram. The Advocate for the Respondents by his letter dated 25-11-1954 wrote to the General Secretary of the bank that he should be permitted to inspect the relevant accounts and documents at the bank premises in order that his clients might decide after inspection "either to defend the suit or to submit to a decree and thus shorten, the life of the suit which in ordinary course would cover many months or years."

As the bank did not give the inspection of the documents, the Respondents filed J. A. No. 1699/54, even before filing the written statement. It is stated in para. 2 of the affidavit filed in support of the application that "the promissory note was a collateral security and was enforceable only if and when the assets of Defendant 1 company were insufficient to meet the amount; due to the bank."

3. It was further stated that the letters addressed by the bank to Sri K. Subbarao Naidu, the Managing Director of the company of Managing Agents of (Respondent 1) company could not be found and so all the copies of the letters maintained by the bank might be given inspection of. In para 6, the Respondents stated the several documents in respect of which they required inspection.

The banks opposed the application on the ground that inspection ought not to be directed because the Defendants filed their written statement, that the object of the application was only to fish out information, that the documents were not relevant and that inspection was not necessary either for disposing of the suit fairly or for avoiding costs. The Subordinate Judge upheld the claim of the Respondents for inspection on the ground that their counsel is permitted to look into the accounts and documents lying with the Plaintiff-bank, they (will not be in a position to make up their mind whether to defend the suit or not." The Plaintiff-bank has consequently filed the civil revision petition against the order of the Subordinate Judge directing inspection. V73) Order 11 R. 15, Civil P. Code, enacts that every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader. Order 11 Rule 18(1) provides that where the party served with notice under R. 15 omits to give such notice for inspection, the Court.

may, on the application of the party desiring it, make an order of inspection.

The proviso to Sub-rule (1) empowers the Court to refuse inspection if it is satisfied that inspection is not necessary either for disposing of the suit fairly or for saving costs. In *Kama Chettiar v. It. Annamalai Chettiar* AIR 1931 825 (A), the question arose whether inspection of the documents entered in a list attached to the plaint could not be ordered before filing the written statement; under Order 11 H. II(1), Civil Code, Curgenven J., held that the only reasonable construction of Order 11 R. 14, with

Order 11 Rule 15, was to that the expression referred to was eluvia "entered in the list" and date the that iam!3" deemed to be part of the plaint.

If he refused to follow the decision of the High Court in - "Chandmull Gencshia Dhanraj Ganpatroy AIR 1920 Cal 416 (11, took a contrary view. He further held that Order 11 II. 18,(1) the Defendants were entitled to inspect all the documents mentioned in the list attached to the plaint even before filing the written statement. A similar view was taken by the High Court in - "Khetsidas v. Narotumdud Bom 152 (C).

In "Nagpur Glass Works Co. Ltd. v. Glass Works Co. Ltd. AIR 1938 Nag 33, Bose J. has expressed a slightly different view held that in respect of the documents code in the list attached to the plaint, the provisions of Order 11 II. 18 (2) and not Rule 18 (1) applying? unnecessary in the present case to decide which view is correct; but I will proceed on the basis that the decision of the Madras High Court is binding on this Court has correctly interpreted the provisions of Order 11 Rule 15 and 18 (1).

4 The question which arises for consideration in the present case is, whether inspection was ordered under Rule 18 (2) of documents, not mentioned in the pleading's or affidavit or included list before the Defendant filed the written statement. Neither Sub-rule (1) nor such 18 lays down at what stage inspection sought. Sub-rule (1) has been interpreted by High Courts of Madras and Bombay as enabling the Court to direct inspection even before filing of the written statement. The observations, M.R. in - "Quilter v. Fleetly", D 42 at p 48 (E), have been relied on here inspection before filing the written statement that the observations are as follows:

It is suggested that although the.

rule are general in nature is sufficient for an answer to such an application by a, say that the Defendant has not put in I cannot conceive that this is a sufficient The Defendant may say, "your case depends on a set of documents which you may kid out incorrectly. I wish to see them. If that, I have made admissions which will come out of Court. I wish to see the document whether I have made such admission, and it is important for me to see them before I put defence."

5. So far as the terms of Rule 18 (2) pending to Order 31, Rule 18 (2) of the rules Supreme Court, a different interpretation has been given, as pointed in the Annual Practice (Hon) at page 491, thus:

"From the earliest times the Court has been against allowing discovery for the purpose of fishing out a case; and for the purpose, a Defendant is, as a rule, not to act discovery before putting in his defence."

6. Rule 18 (2) refers to inspection of documents in to menu, other than those referred to in the affidavit. The question in the action and an application for production of documents referred to in the pleadings."

passage extracted from Halsbury's law of England by Curgenven J., in S.R.M.A.R. Ramanathan, Chettiar Vs. The Hon'ble Rajah Sir Annamalai Chettiar and Others,

p. 827 is also to the same effect. It is there in that: a general rule discovery cannot be obtained after defence has been delivered, since it is till then that it is known what are the matters in dispute."

Bom 152 (C)", Davar J. stated the practice Bombay High Court in the following terms: it has heretofore been the practice not to inspect documents other than those referred to in the plaint or relied on in the list annexed to the plaint till after the written statement. I will follow the practice and must decline the inspection! that is sought in this case - I must not, however, be taken as saying that to be an inflexible rule in all cases, for I can see of many cases where it would be improper to order the Plaintiffs to produce and give inspection to the Defendant before he has filed his statement of documents or documents they may not have mentioned in their plaint included in the list of documents annexed. I am inclined to follow the judgment of J., and hold that generally inspection ought to be ordered under R. 18 (2) before filing the statement. A similar view was taken by the High Court in -- "Copal Ruxrai v. Svodnood AIR 1944 Fat 177 (K), when the defendant prayed the Court to direct the plaintiff to discover on oath of documents in his possession before filing the written statement. The learned Judge J... in AIR 1938 Nag 239 (D)", is also at p. 2-1.1 he observed as follows: of course those rules do not state the exact when this application must be made and "for the Court, to decide in each case whether inspection should be granted before or after the filing of the written statement. In some cases it is desirable to allow inspection before the statement is filed and in others after, and others, not at all."

7. I am inclined to take the view that there is a special or peculiar circumstance to depart from the ordinary rule and direct inspection before Respondents file their written statements. The view of the Allahabad High Court relied on by the learned Judge in - Gobardhan Das Vs. Mt. Jai Devi has no application to the facts of this case. The application for inspection was not made in that case prior to the filing of the written statement. What was decided there - that the Court should decide before! Directing on, whether the documents are relevant. At the difference between sub-rules (1) and (2) "is brought out in the following terms :

difference between the two cases is that in the case of a document not mentioned in the written statement the affidavit, an affidavit to be filed by the applicant to satisfy the Court that the document is relevant to the case.

"In the case of a document mentioned in the plaint statement or affidavit of discovery, the inspection is admitted; while in the other case, the inspection has to be proved."

In this case I am also satisfied that the Judge has not applied his mind and "whether all the documents mentioned in the affidavit filed by the Defendants are relevant and should be given inspection at this stage. So far as the two documents included in the list attached to the plaint the Defendants are certainly entitled to inspection.

8. As the Plaintiff is not suing to enforce the equitable mortgage and has given up his rights there under, I am unable to gather how the documents bearing on

the equitable mortgage mentioned in Para 6, viz., (a) the deed of equitable mortgage; (b) the correspondence that passed between the Plaintiff Defendant 1 and the Registrar of Joint Stock Companies Madras in relation to the Memorandum of Equitable mortgage; and (c) the correspondence that led to execution of the excitable mortgage deed on 5-10-1953 and the said deed are relevant.

I am also not satisfied how the documents prior to and leading to the execution of the pro-note, viz., the copies of the account in the books of the company in respect of the two loan transactions and letters in connection therewith authorising the appropriation, if any and correspondence that passed between the bank and Defendant 1 from January to October 1951 which led to the granting of loans and letters giving Defendant 1 company open loan facility up to two lakhs are relevant.

If after the filing of the written statement an application under R. 18 (2) is filed by the Defendants and the Court is satisfied that the documents are relevant for deciding the points in actual controversy or dispute between the parties, it may consider the question as to whether inspection should be directed or not.

As already stated, the Subordinate Judge has not decided, or given any reasons for holding that all the documents are relevant at this stage, namely, before the Wilson statement is filed by the Respondents and before the actual points in dispute between the parties are put in issue. So far as the ground on which the learned Judge directed inspection, namely, that if their counsel is permitted to look into the accounts and documents lying with the Plaintiff, they will be in a position to make up their mind whether to defend the suit or not, I am inclined to take the view that it is not a proper approach to the case.

The observations of Jesse, M.R. in (1883) 23 Ch D 42 (E), do not apply to documents other than those referred to in the pleadings or the affidavit. The observations that apply to a case of this description are forcibly stated by Lindley L. J. in re, "H. W. Strachan (1895) 1 Ch D 439 445 (H)", in the following terms:

In England it is considered contrary to the interests of justice to compel a litigant to disclose to his opponent before trial the evidence to be adduced against him (see - "Renbow v. Low (1880) 16 Ch D 93 (I)). It is considered that so to do would give undue advantage for cross-examination and lead to endless side issues, and would enable witnesses to be tampered with, and give unfair advantage to the unscrupulous.

9. It is very true that an honest and fair dealing litigant, on seeing how strong a case his opponent had, might at once withdraw from further litigation. But our rules of evidence and of discovery are not based upon theory that it is advantageous to let each side know what the other can prove, but rather the reverse. Moreover, Courts act upon this view when asked to allow inspection of documents under their control."

10. Such being the view of what justice requires, I set aside the order passed by the Subordinate Judge and allow the Civil Revision Petition with, costs throughout.