

(1982) 05 GAU CK 0005
In the Gauhati High Court
Case No : F.A. No. 19 of 1982

Arati Dutta and Another

APPELLANT

Vs

Eastern Tea Estate Private Limited

RESPONDENT

Date of Decision : 12-05-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10, 131, 151
Companies Act, 1956 — Section 634

Citation : (1985) 2 GLR 364

Hon'ble Judges : K.M. Lahiri, J;B.L. Hansaria, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee, B.C. Das and B. Banerjee, for the Appellant; S.K. Sen and A.R. Paul Mazumdar, for the Respondent

Final Decision : Allowed

Judgement

K. Lahiri, J.—The appeal has come up for final disposal at the instance of the learned Counsel for the parties. All materials necessary for the purpose of disposal of this appeal have been furnished to us by them. We have heard the learned Counsel and perused the records.

2. The appeal is presented against an ex-parte decree. It has been candidly admitted by the learned Counsel for the Respondents that the impugned order of ex-parte decree is not the speaking order. No cogent reason has also been ascribed as to why the prayer made in the petition dated 7.1.82 to stay the suit has been turned down by the learned judge.

2.1 We are constrained to observe that there is nothing in the impugned order to show what was the prima facie case nor is there material to show how the said Court concluded that prima facie case was established by the Plaintiff, Assuming that while making an order for ex parte decree the Court is not to write out a detailed judgment, however, the Court must show how the prima facie case is established. The expression "prima facie case has been defined in Black's Law Dictionary, 5th Edition P.1071 as one which will prevail until contradicted and

overcome by other evidence. A case which has proceeded upon sufficient proof to that stage where it will support finding if evidence to contrary is disregarded: "A prima facie case as further stated in the above work, consists of sufficient evidence in the type of case to get Plaintiff past a motion for directed verdict in a jury case or motion to dismiss in a non-jury case". The concept of prima facie case conveys two-fold facts, first, in the sense of Plaintiff producing evidence sufficient to render reasonable a conclusion in favour of allegation he asserts, it undoubtedly means Plaintiff's evidence is sufficient to obtain a decree; secondly it means not only, that the Plaintiff's evidence would reasonably allow conclusion Plaintiff seeks but also that Plaintiff's evidence compete such a conclusion in the Defendant produces no evidence to rebut it. Even while passing ex-parte decree the Court must in exercise of the judicial functions, decide the case. The impugned order is however barren without any reason as to why and how the learned judge concluded that the Plaintiffs are entitled to get the decree. For the foregoing reasons and also in view of the concession we set aside the ex-parte decree and remit the case to the trial Court for disposal in accordance with law.

3. We would observe that the rejection of the petition dated 7.1.82 wherein the Defendants also prayed for stay of the suit u/s 10 of the Code was not considered at all. We have perused the order dated 30. 9. 81 rendered by the Court of the first instance on a similar application u/s 10 of the Code which has been given as the reason for rejecting the petition filed on 7.1.82. The earlier application was rejected because the Defendants could not produce document to show that the Company petition was pending at the relevant time and issues in the main petition were substantially the same as in the suit. The relevant portion of the order states that "as the Defendant has produced no document to show that the Company petitions still pending and issues in the petition are substantially the same as in this case, the petition No. 385 is rejected. Fix...." It therefore appears that the application considered on 30-9-81 was not disposed of on merit. We make it clear that the Court of the first instance did not decide if the issues involved in the Company petition were same or not, nor did the Court decide whether matters directly or substantially in issue in the Company petition are involved in suit: nor did the Court determine the question as to whether the Company Petition and the suit is between same parties or between the Parties litigating under the same title. The learned Judge merely disposed of the application because the Defendants could not produce document to show that the Company petition was pending and also failed to produce the document to show that the issue in that petition were substantially the same as in the present suit. In the application which was filed on 7-1-82 the Petitioner renewed his prayer u/s 10 read with Section 151 Code of Civil procedure. However, no document was filed but averments made in the petition were supported by affidavit. Therefore, the question before the Court was whether it would entertain the application at all ? The learned Judge has held that in view of order passed on 30.9.81 he cannot reopen the matter.

4. But as already noted the earlier order was not on merit. Further, the learned

Judge has not given any reason whatsoever as to why the inherent powers of the Court u/s 151 CPC invoked by the Appellants were not exercised. The Court suo moto can stay suit if it finds that the ingredients of Section 10 are present in a given case. It is a restriction imposed upon the Court to try subsequent suit. It touches the jurisdiction of the Court to entertain and dispose of a suit. Even otherwise a valid decree may get invalidated if the Courts proceed with the trial of the suits which it could not try by virtue of Section 10 of "the Code". Therefore, an application u/s 10 of the Code which questions its jurisdiction is a serious business.

5. These positions are not disputed, by the learned Counsel for the Respondents, However Counsel submits that the proceedings under the Company Act are not suits contemplated under the Code and Section 10 is not applicable. This is a very important question which requires decisions of the Court below. Although, we set aside the order dated 7.1.82, we direct the learned Judge to consider the questions as to whether the provisions of Section 10 are attracted in respect of Company proceedings under the Company Act, Even if the provision of Section 10 is not attracted, Counsel for the Appellants submits that by virtue of the provision of Section 131 CPC the Court has jurisdiction to stay a subsequently instituted suit during the pendency of a Company proceedings u/s 634 the company Act. We keep these questions open. The learned Judge shall dispose of the application u/s 10 and Section 151 of the Code in accordance with law.

6. In the result, the appeal is allowed and the impugned judgment and decree are set aside. However, in view of the right stand taken by the Respondents we make no order as to costs. We appreciate the conduct of the Respondents who rightly responded to assist the Court for speedy disposal of the Case. Send down the records forthwith.