

(1993) 01 GAU CK 0014
In the Gauhati High Court
Case No : Second Appeal No. 134 of 1989

Assam Co-Operative Apex Bank Limited.	APPELLANT
Vs	
Tarun Kumar Chakravarty	RESPONDENT

Date of Decision : 20-01-1993

Acts Referred:

Civil Procedure Code, 1908 — Order 1 Rule 9
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 9

Citation : (1993) 1 GLJ 102 : (1993) GLR 22 Supp

Hon'ble Judges : S.N.Phukan, J

Bench : Single Bench

Advocate : T.C.Majumdar, S.Sharma, N.Goswami, J.N.Sharma, A.S.Choudhary, A.Mannan, Advocates appearing for Parties

Judgement

1. This appeal has been filed by the Assam Cooperative Apex Bank Ltd. which is a banking society registered under the provisions of the Assam Cooperative Societies Act, 1949. The respondent who is an employee of the above Bank filed the title suit in question, namely TS No. 96 of 1986, before the Munsiff No, 1, Goalpara. The second appeal is preferred against the judgment and decree of the learned District Judge, Goalpara, in TA No. 32 of 1988 by which the judgment and decree of the learned Munsiff No. 1, Goalpara (TS No. 96 of 1985) was set aside. It may be stated that the learned trial Court dismissed the suit but the learned lower appellate Court decreed it.

2. The respondent herein as plaintiff filed the title suit against the Chairman, Administrative Council and Board of Directors of the Assam Cooperative Apex Bank Ltd., Managing Director of the Bank and Branch Manager of Goalpara Branch of the Bank namely; defendant Nos. 1, 2 and 3 respectively. The Bank which is the sole appellant in this case was not made a party.

3. The plaintiff respondent was initially appointed as an Office "Assistant of the Bank at Gaolpara Branch in the year 1958 and subsequently promoted to the post of Sub Accountant in the year 1977. After serving two years he was

transferred to a new branch at Abhayapuri in the same district of Goalpara in the year 1979 and he was put in charge of the said Branch and working along with two other persons. On 16.9.80 the plaintiff was placed under suspension and departmental proceeding was drawn up in respect of six charges and enquiry was duly conducted. The plaintiff and one Shri Ramesh Das, an Assistant of the said branch were found guilty of charge Nos. 1, 3 and 4 and they were not found guilty in respect of other three charges. The disciplinary authority namely, Managing Director, accepted: the finding of the Enquiry Officer and imposed the punishment of reversion of rank of the plaintiff/respondent from Sub Accountant to an Assistant. Hence, the present suit.

4. The plaintiff/respondent averred that the order dated 9.11.81 passed by the Managing Director of the Bank (defendant No. 2) reducing the rank of the plaintiff and the order dated 17.3.86 passed by the Chairman of the Administrative Council and Board of Directors, Assam Cooperative Apex Bank Ltd. (defendant No. 1) rejecting the appeal against the above order is void and illegal and for further declaring that the plaintiff is still continuing in service in the post of Sub Accountant.

5. On behalf of all the defendants one written statement was filed. It was specifically pleaded that the suit was bad in law for nonjoinder of the parties it cannot proceed against the defendant without impleading the Bank as party. It was also mentioned in the written statement the Assam Cooperative Apex Bank is a body corporate and as the said "Bank has not been made a party the suit is not maintainable. It was pleaded that the plaintiff was negligent in discharging his duties and he was" found" guilty after due enquiry. According to the defendants there was no violation of principles of natural justice, no malafide or vindictive action in conducting the departmental enquiry and in passing the impugned order.

6. The learned trial Court framed three issues namely, (1) whether there is a cause of action for the plaintiff suit; (2) whether the plaintiff was illegally demoted to a lower post; and (3) whether the plaintiff is entitled to the reliefs prayed for.

7. The parties adduced evidence both oral and documentary and thereafter the trial Court dismissed the suit, but decreed by the lower appellate Court. Hence, this present second appeal.

8. Before I take into consideration the contentions of the learned counsel, Mr. Sarma, on behalf of the appellant, let me first consider a preliminary point raised by Mr. Choudhury, learned counsel for the respondent. Mr. Choudhury has urged that as the Bank was not a party either before the trial Court or before the lower appellate Court, the present appeal is not at all maintainable inasmuch as the other defendants have not been impleaded either as appellants or proforma respondents. There is no dispute that the Assam Cooperative Apex Bank is a banking society registered under the provisions of the Assam Cooperative

Societies Act, 1949. Section 85 of the said Act, inter alia, provides that every registered society shall be deemed to be a body corporate by the name under which is registered with perpetual succession and a common seal, and with power to hold property, to enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it was constituted.

9. Being a body corporate, Bank has a separate legal entity and its functions through the subordinate staff; such as, Managing Director, Branch Manager etc. If the decree is upheld ultimately the Bank will suffer and the Bank shall have to implement the decree of the Court, or in other words, to decide the dispute effectively and completely it is necessary to implead the Bank as a party.

10. Mr. Choudhury, learned counsel for the respondent/plaintiff has urged that as the Chairman and Managing Director was impleaded as defendants it would be sufficient to hold that the Bank was before the Court. I am unable to accept the contention of Mr. Choudhury, learned counsel for the respondent, as the Bank being a body corporate has a separate legal entity and it has to be impleaded as party.

11. In this connection, I refer to the decision of the Apex Court in the State of Kerala vs. General Manager, Southern Railways, Madras, AIR 1976 SC 2538. In that case there was a dispute between State of Kerala and Railways and the suit was filed without impleading the Union or India, the Apex Court held that the Union of India being the owner of the Railways; merely because the General Manager was impleaded it would not be sufficient compliance of law and in the absence of the owner of the Railways, namely; Union of India the suit cannot proceed. Similarly, in the case in hand, merely because the chairman and the Managing Director have been impleaded it would not be sufficient compliance with the provisions of law and not by impleading the Bank as a party, the provisions of the proviso of order 1 Rule 9 CPC would be attracted. In other words the suit is bad for nonjoinder of parties.

12 According to Mr. Choudhury, it is not only the duty of the plaintiff to select the parties and a duty is cast on the Court and as well as on the defendants in making parties to a suit. In support of the same the learned counsel has placed reliance on the decisions of the Calcutta and Madhya Pradesh High Courts reported in AIR 1985 NOC 204 (Cal) and AIR 1977 NOC 340 (MP). In the case in hand, a specific plea was taken in written statement that Bank was a necessary party but the plaintiff did not take any step for impleading the Bank. Now the plaintiff can not turn round and say that was the duty of the defendants or the Court to implead the Bank. Therefore, the contention of Mr. Sarma is not at all acceptable.

13. In this connection, I refer to the decision of the Apex Court in Kankarathantmal vs. VSL Madaliar, AIR 1965 SC 271. In paragraph 15 of the judgment the Court considered the scope of subrule (2) Rule 10 of Order 1 CPC

and held that such step of impleading the party has be done in trial stage, applying the ratio laid down in Naba Kumar Hazra vs. R.Mahish,AIR 1931 PC 229, their Lordships held that the provisions of Order 1 Rule 10 cannot be applied at the stage of appeal when at the very outset of the proceedings nonjoinder of party has been brought to the notice of the plaintiff.

14. Mr. Choudhury, learned counsel for the respondent has placed reliaoce in the Full Bench decision of Punjab and Haryana High Court in M/s Indo Swiss Time Limited vs. Umrao & others, AIR 1981 P & H 213, but the said case is not relevant for the present purpose as that dispute was in respect of Land Acquisition Act, 1894 and the question whether the company has been impleaded as a party or not was considered. Mr. Choudhury, learned counsel has also placed reliance on the decision of the Patna High Court in Smt. Phulpati Devi vs. Parameswar Rai & others, AIR 1981 Patna 77, wherein the Court, held that without necessary parties a suit cannot continue.n "there is no dispute on tnat point and in the case in hand, as the" Bank is"a riecesary party the suit cannot continue.

15. Situated thus, I am of the opinion that the suit is bad for nonjoinder of parties as urged by Mr. Sarma, learned counsel for the appellant. Ceding back to the question as to whether the present appeal can be maintained in this Court. I may now examine the decisions of the Apex Court as referred to by the learned counsel, Mr. Sarma.

16. In Smti Jatan Kanwar Golcha vs. Golcha Properties, AIR 1971 SC 374, the Apex Court held that it is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.

17. In State of Punjab vs. Amar Singh reported in AIR 1974 SC 994 at paragraph 29, the Apex Court held that the ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives in interest may file an appeal and under such circumstances, a person who is not a party may prefer an appeal with the leave of the appellate Court "if he would be prejudicially affected by the judgment and if it would be binding on him as res judicata under Explanation 6 to Section 11."

18. In view of the above law laid down by the Apex Court the Bank can file the present appeal as ultimately the Bank shall have to implement the decree.

19. In the impugned judgment the lower appellate Court only recorded the submission made on behalf of the respondents but did not discuss the evidence or gave its own finding. Suddently the Court came to the finding that the impugned order is improper on the ground stated in paragraph 7 of the judgment. There is no finding of the Court that there was violation of principles of natural justice or violation of any provisions of any rule. "

20. I have perused the evidence on record and though the learned lower

appellate Court held that the Managing Director namely, disciplinary authority did not agree with the finding of the Enquiry Officer but this finding is perverse inasmuch as the disciplinary authority namely, the Managing Director agreed with the finding of the Enquiry Officer and thereafter passed the impugned order. Exhibit "Chaa" is the order of the disciplinary authority and the relevant portion of the said order is quoted below:

"I agree with the finding of the Enquiry Officer and I consider the irregularities committed by Shri Tarun Kumar Chakraborty to be of serious nature. Shri Chakraborty had committed serious malpractices in the maintenance of accounts of the Branch..."

21. The learned lower appellate Court also held that the punishment Imposed was disproportionate to the charges proved. The three charges, which were found to be proved, are as follows :

Charge No. I: "That while you were in charge of Abhayapuri Branch of the Bank wef 16.1.79 to 27.9.80, you fraudulently manipulated the balance of S/B Account No. 213 of Shri Dhiren and allowed overdrawal of Rs.2,639.60 on 7.3.80 without approval of HO."

Charge No.3 : That you fraudulently altered the date of opening of S/B Account No. 398 and 399 of Shri Kamala Kanta Sarma and Smti Kamala Devi respectively from the, actual date of deposits i.e, 31.3,80 to 11 5.80 and thereby temporarily misappropriated the balance from 31.3,80 to 11.5.80.

22. It is not relevant to quote the charge No. 4. The above two charges proved are of serious nature. Therefore, the finding of the learned appellate Court that the punishment was disproportionate is not based on evidence on record. As stated above there is also no finding that there was any, violation of principles of natural justice.

23. Mr. Choudhury has urged that in view of Rule 120 of the Assam Cooperative Apex Bank Ltd. (Staff) Rules, 1980, Rule 24 of the Assam Services (Disciplinary and Appeals) Rules, 1964 would apply and the appeal preferred before the appellate authority ought to have been decided within 3 months but in the present case the appeal was decided after 3 years. Even if there was a delay in disposal of the appeal, it cannot be held that the order of reduction of rank is illegal. The learned lower appellate Court has referred to the submission of the the learned counsel for the respondents regarding application of Rule 9 of the Govt. Rules, but from reading the rule framed for the staff by the appellant Bank, it is absolutely clear that the present case is covered under Rule 46 of the above Rules framed by the Bank.

24. Admittedly the plaintiffrespondent is going to retire on superannuation shortly. Considering the facts and circumstances of the case, I am of opinion that now the plaintiff respondent may be promoted to the post of SubAccountant. If the plaintiff respondent submits any representation before the appellateBank it

may be considered and disposed of favourably within three months from the date of such submission.

25. For what has been stated above, I find merit in the present appeal and accordingly I allow the appeal and set aside the impugned judgment and decree passed by the learned District Judge, Goalpara in TA No. 32 of 1988. Parties will bear their own costs.