
(1997) 01 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Revision No"s. 669 and 670 of 1995

Ballabh Dass and Another

APPELLANT

Vs

S.B.B.J. and Others

RESPONDENT

Date of Decision : 03-01-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 46 Rule 1, Order 46 Rule 4A, Order 8 Rule 6C, 113

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 31

Citation : AIR 1997 Raj 199 : (1997) 1 WLC 479

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : P.N. Agarwal, for the Appellant; S. Kasliwal and Mukesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—As identical legal question arises in both these revision petitions, they are being disposed of by a common order.

2. Rule 6-C of Order 8 of the CPC emphasises by implication that on a general rule a suit claim and a counter claim ought properly to be regarded as constituting a unified proceeding. If the plaintiff wants the counter claim to be excluded he must make an independent application for the purpose. A counter claim can be excluded, under this rule, where the Court finds that it is embarrassing, or the filing of the counter claim is not fair to the plaintiff or where it is likely to create complications and prolong the trial. The objections to the filing of the counter claim under Rule 6-C must be raised in the reply or written statement to the counter claim by the plaintiff. If no such reply or written statement is filed and the counter claim is set down for issues or trial, the plaintiff cannot then make the application for striking off the counter claim.

3. In the light of above settled legal position I proceed to examine the points raised in these revisions.

4. The facts that lie in short compass are that the plaintiff non-petitioner No. 1 (for short plaintiff) instituted two civil suits in the trial court. Civil Suit No. 152 of 1988 was against Ballabh Das & Company and others for the recovery of Rs. 56,36,200/- and civil suit No. 69 of 1989 was against Ballabh Das and others for the recovery of Rs. 75,46,921/-. The defendant-petitioners filed the written statements and contested the claim. The petitioners' main defence is that they obtained financial facilities from the plaintiff for promoting their export Jewellery business in order to earn the precious foreign exchange for the country with a view to ensure and indemnify the plaintiff from suffering any loss, the petitioners got an insurance policy from the External Credit Guarantee Corporation. A Govt. department under the Finance Ministry of the Govt. of India of which the principal object is to provide the facilities for the exporters particularly the precious jewellery with a view to earn more foreign exchange to the country.

5. In Civil Suit No. 152 of 1988, the defendants-petitioners, along with their written statements, also submitted counter claims under Order 8 Rule 6A of the Code of Civil Procedure. However, no such counter claim was instituted in civil suit No. 69 of 1989.

6. As per defence pleaded by the defendant petitioners, all the titled documents relating to the export of precious jewellery, which were all the negotiable instruments, were handed over to the plaintiff for the purpose of making collection of money for the export of the jewellery which was of much more value than the value of the advance allegedly made by the plaintiff.

7. The trial Court framed issues arising from the pleadings of the parties and proceeded to examine the witnesses. In suit No. 152/88 statement of P.W. 1 Dharam Narain was recorded whereas in suit No. 69/89 Babu Lal Bewal was examined as PW. 1.

8. On 20-9-1994 the plaintiff filed application in both the suits, stating that Govt. of India by way of Notification dated 30-8-1994 published in the Gazette of Govt. of India under THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 (ACT NO. 51 OF 1993) (for short the Act) has established a DEBT RECOVERY TRIBUNAL at Jaipur and in pursuance of the provisions contained in Section 18 of the Act, the jurisdiction to entertain the suit for recovery for an amount more than Rs. 10,00,000 of any civil court is ousted and as such both the suits stand transferred to the said tribunal.

9. The defendant-petitioners in addition to file objections against the said application, submitted independent petition u/s 113 read with Order 46 Rule 1 and 4A of the CPC formulating four substantial questions of law and requested the trial court to refer the said questions to this court.

10. The trial court vide orders dated 20-1-1995 allowed the applications of the plaintiff and both the civil suits were transferred to the Debts Recovery Tribunal Jaipur. However, counterclaim filed by the defendant petitioners in Civil Suit No. 152 of 1988 was ordered to be separated and it was directed that the said

counter claim shall be tried by the trial court. These orders have been assailed by the defendant-petitioners.

11. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties and carefully perused the impugned orders.

12. As stated earlier, a suit claim and counter claim ought properly to be regarded as constituting a unified proceeding. If the plaintiff wants the counter claim to be excluded, he must make an independent application for the purpose. A counter claim can be excluded under Order 8 Rule 6 C of the Code of Civil Procedure. In civil suit No. 152 of 1988 the plaintiff did not raise objection that the counter claim filed by the defendant petitioners, was embarrassing or the filing of the counter claim was not fair to the plaintiff or it was likely to create complications and prolong the trial. In absence of such objections, the counter claim was set down for issues and trial of the suit commenced.

13. The trial court, overlooking the provisions contained in Order 8 Rule 6C of the CPC passed the impugned order separating counter claim filed by the defendant petitioners from civil suit No. 152 of 1988. Neither the application under Order 8 Rule 6C was moved by the plaintiff for exclusion of the counter claim nor such application was maintainable after framing of the issues. The Presiding Officers of the trial courts are expected to read the elementary legal provisions before adjudicating the cases. The trial court has illegally exercised the jurisdiction not vested in it by making the impugned order whereby the counterclaim has been ordered to be separated from the plaint. As the Bank Recovery Tribunal has no jurisdiction to adjudicate the counterclaim of the defendant petitioners, the Civil Suit No. 152 of 1988 could not have been transferred to the said Tribunal for disposal.

14. In both the suits, the defendant petitioners raised objections before the trial court that advances made to the defendant petitioners by way of financial facilities can be termed as "non recourse - finance" and the averments made in the plaint by the plaintiff do not fall within the meaning of "Debt" as defined under Clause (g) of Section 2 of the Act and therefore the suits do not fall within the provisions of Section 31 of the Act and the provisions of Section 17 of the Act are not applicable to the suits. According to Section 31 of the Act any suit pending before the civil court which comes under the jurisdiction of the tribunal, stands automatically transferred with effect from the date of constitution of such tribunal. In view of Section 17(1) of the Act, the tribunal has jurisdiction to decide the suits filed by the Bank or Financial institutions for the recovery of the "Debts".

15. Referring a judgment of the Hon"ble Apex Court reported in Indian and General Investment Trust Ltd. Vs. Shri Purna Chandra Mardaraj and Co., the trial court has observed that amount involved in both the civil suits are legally recoverable and simply by raising the objection that advance made by the plaintiff Bank is insured by E.C.G. Corporation, the defendant petitioners are not

absolved from the liability. The trial court has further observed that liability of the corporation can be co-extensive but it does not absolve the defendant petitioners from the liability. In my humble view this observation of the trial court can be termed as "premature". Following issue has been framed by the trial court in both the suits :--

"Whether the credit facility of export and packing (pre-shipment and post shipment both) given to the defendants are entirely covered by the E.C.G. Corporation policies and it was secured by the export documents/exchange bills sent for collection and the defendants are not liable for this amount?"

This issue has to be decided after recording the evidence of the parties but the trial court has prejudged this issue and made certain objections in the impugned orders. The question as to whether the amount referred to in the suits is legally recoverable or not, is a question of fact and can be adjudicated only after recording the evidence. Whether the amount involved in the suits falls within the meaning assigned to the word "debt" as defined under Clause (g) of Section 2 of the Act, is also a question of fact and under such circumstances, the provisions of the Act are not applicable to both the suits pending before the trial court on the date of the constitution of the tribunal. As such the trial court has committed material irregularity in the manner of exercise of its jurisdiction in passing the impugned orders. If the orders are allowed to stand, it would occasion a failure of justice.

16. Consequently, I allow both the revisions and set aside the impugned orders. The trial court is expected to adjudicate the civil suits as expeditiously as possible. Costs easy.