(1987) 10 DEL CK 0013

In the Delhi High Court

Bank of India APPELLANT

Vs

Vinod Kumar Bhalla RESPONDENT

Date of Decision : 06-10-1987

Acts Referred:

Citation : AIR 1988 Delhi 79 : (1991) 70 CompCas 340

Hon'ble Judges : Mahesh Chandra, J

Bench : Single Bench

Advocate : B. Mohan, for the Appellant; S.P. Chugh, for the Respondent

Judgement

Mahesh Chandra, J.—BY this order, I propose to dispose of issues Nos. 3 and 4 framed, vide orders dated February 10, 1987, by G. C. Janin J. in this suit for recovery of Rs. 6,47,476.31 inasmuch as both these issues were ordered to be treated as preliminary. This suit has been filed by the plaintiff, Bank of India, for recovery of Rs. 6,47,476.31 against the defendant, Shri Vinod Kumar Hhalla, sole proprietor of Navik Commercial Enterprises. The issues are as follows :

"3, Whether the suit was bad for misguide of parties ?

4. Whether proper court fee had been paid ?"

2. I have heard learned counsel for the parties and have gone through the plaint and the written statement and the documents placed on record and after giving my considered thought to the matter before me, I have come to the following findings :

Issue No, 3. - It would be appropriate to mention at the outset that from the perusal of the plaint, it would be found that the suit relates to recovery of amounts due to the plaintiff from the defendant on account of one account maintained in Karol Bagh branch thereof and two accounts maintained with Parliament Street branch thereof. In para 1 of the preliminary objections of the written statement, the contention of the defendants :

"the suit is bad for multifariousness of parties and causes of action, hence the same merits dismissal. The suit comprises accounts of two different branches of the bank with different causes of action. Each branch is a separate entity for the purposes of the suit and as such causes of action arising at two different branches under different accounts/dealings cannot be joined together and thus the suit is bad and liable to be dismissed.

3. In reply there tom the plaintiff has submitted in para 1 of its replication :

"The objections as contained in para 1 of the preliminary objections are not maintainable. The plaintiff in the suit is a body corporate having different branches and the defendants having transacted with the plaintiff in its corporate character the plaintiff is entitled to file the suit in respect of both the branches in the same suit. It is denied that the suit is bad for any alleged misguide of parties or multifariousness as alleged."

4. My attention has, in this behalf, been drawn by learned counsel for the plaintiff to section 3, sub-section (4) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. This sub-section lays down as follows :

"Every corresponding new bank shall be a body corporate with perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract and may sue and be sued in its name."

5. This shows that u/s 3(4) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the right to sue vests in the bank as a body corporate rather than in any particular branch thereof and as such the suit has to be filed in the name of the plaintiff bank and not in the name of any of its particular branches. That being the position, it should be open to the plaintiff bank under Order 2, rule 3, Civil Procedure Code, to file the suit for consolidated amount due to the plaintiff from the same defendant in one suit. Learned counsel for the defendant has not been able to draw my attention to any bar in the CPC in this behalf. Let us also consider the provisions of the CPC in this behalf.

6. It is Orders 1 and 2 of the CPC which lay down the law on the point''s Order 1, Civil Procedure Code, relates to "parties to suit" while Order 2 relates to "frame of suit". Strictly speaking, these tow orders cannot be treated as relating to two distinct topics. The question of parties involves that of cause of action and vice versa. Provisions of these orders are rather intended to avoid multiplicity of suits. Order 1, rule1, of the Civil Procedure Code, Provides for persons "who may be joined as plaintiffs". It reads as under :

"1. All persons may be joined in one suit as plaintiffs where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) if such persons brought separate suits, any common question of law or fact would arise."

7. Order 2, rule 3, Civil Procedure Code, provides for "joinder of causes of action" and it lays down as under :

"3(1) Save as otherwise provided a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendants or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit." Order 2, rule 6, Civil Procedure Code, contains a limited bar to joinder of accuses of action and confers power on the court to order separate trial and provides as under :

"6. Where it appears to the court that the joinder of accuses of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as may be expedient in the interests of justice."

8. A reading of Orders 1(1) and 2(3) of the Civil Procedure Code, together with sub-section (4) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, would show that the right to sue vests with the Bank of India as a body corporate rather than in any particular branch thereof and in view thereof, it would follow that it is open to the Bank of India to file on e consolidated suit in respect of its claim against the same defendant so long as it does not violates any other provision of law such as jurisdiction of the court, particularly when the right to relief in respect thereof arises out of the same act or series of transactions as is the position in the instant case. It will be only where such consolidation is likely to embarrass or delay the trial of the suit or is otherwise inconvenient that the court would exercise its jurisdiction under rule 6 of Order 2 and in that event it may put the plaintiff to election. It is always open to the plaintiff to join different causes of action against the same defendant so long as such joining does not cause any embarrassment or delay the trial of the suit or is not otherwise inconvenient within the meaning of Order 2, rule 6, Civil Procedure Code. No doubt some common link or nexus must be found in order that the requisite as to their being the same act or transaction or the same series of acts or transactions may be satisfied to enable such joinder of causes of action. Joinder of such causes of action on the same set of facts is thus in principle permissible. It cannot be said bu any strength of imagination that the present suit is bad for misguide of parties. In fact, there is no misguide of parties which is involved in the instant case. What is involved is joinder of causes of action. Joinder of different causes of action is permissible if the court trying them has jurisdiction in respect of all causes of action. The purposes of Order 2m rule 3, Civil Procedure Code, is to avoid multiplicity of suits. To achieve permit a

joinder of two or more causes of action in one suit. Order 2, rule 3m Civil Procedure Code, authorizes a plaintiff to unite several causes of action against a single defendant, subject, however, to the limitation that if such joinder is likely to embarrass or delay trial and all the causes if action cannot be conveniently tried together, an order may be made directing separate trials of the same. It is only when various causes of action are distinct and cannot be conveniently tried together and when the joinder of numerous causes of action amounts to an abuse of the process of the court and is likely to embarrass or delay the trial that the court would put the plaintiff on election and not otherwise. Thus, where a defendant transacts business with different branches of a body corporate having the right to sue, such body corporate can join different causes of action arising out of these transactions in one suit so long as it does not embarrass or delay the trial or is not otherwise inconvenient, provided the court has jurisdiction to try all these causes of action.

9. The amounts sought to be recovered in the account maintained by the defendant in the Karol Bagh branch of the plaintiff relates to irrevocable letters of credit granted through the facility of packing credit loan limit account. It has been categorically mentioned in para 8 of the plaint that after opening the abovementioned account with the Karol Bagh branch, the defendant "approached the plaintiff bank and represented to the plaintiff bank that in order to facilitate their banking operations, they would like to have further pre-shipment facilities from the Parliament Street branch of the plaintiff bank. The defendant represented that on sanctioning of the various facilities in the form of pre-shipment finance ,he will operate the banking account with the Parliament Street branch of the plaintiff bank. It was also suggested that whatever amounts is due and outstanding in the existing packing credit account with Karol Bagh branch, the same shall stand adjusted on export performance in the near future". In pursuance thereof, the packing credit loan account in the same of the defendant was opened in the Parliament Street branch of the plaintiff bank had in its Thereafter ,at the request of the defendant, the plaintiff bank had in its Parliament Street branch also granted another pre- shipment advance in the form of shipping loan having a limit of Rs. 2 lakhs tot he defendant and the amount is sought to be recovered by the plaintiff on account of balances in all these three accounts. In the face of this factual position, it would be all the more difficult to say that the transactions are altogether distinct and separate. Keeping in view all these facts, it is difficult to accepts that the defendant has established this issue and as such issue No 3 is decided against the defendant.

10. Issue No. 4 : It has been conceded by learned counsel for the plaintiff that even though one single suit can be filed by the plaintiff in respect of all the three accounts, the court fee is payable separately on each of the counts and, accordingly, in view thereof, I hold that the plaintiff has failed to pay full court fee in this suit and this issue is decided in favor of the defendant and the plaintiff is, accordingly, directed to make good the deficiency in court fee within four weeks her of .No other point has been raised.

11. This disposes of preliminary issues Nos. 3 and 4.

12. Let the suit be now listed for trial on other issues. For fixation of dates of trial to be listed before the Deputy Ragistrar, on October 19, 1987.

