(1981) 05 DEL CK 0055

In the Delhi High Court

Case No : I.A. No. 1204 of 1980 in Suit No. 166 of 1977

Bharat Nidhi Ltd., Delhi APPELLANT

Vs

Shital Prasad Jain RESPONDENT

Date of Decision : 01-05-1981

Acts Referred:

Citation : AIR 1981 Delhi 251

Hon'ble Judges : Charanjit Talwar, J

Bench : Single Bench

Advocate : M. Chandrasekharan, for the Appellant; R. Vasudevan, for the Respondent

Final Decision : Dismissed

Judgement

Charanjit Talwar, J.—This is an application by the defendant, Shital Prasad Jain, seeking direction that the Suit No. 166 of 1977 be tried along with two other suits, viz., Nos. 906 and 907 of 1976, pending in this Court, and that this defendant be permitted to lead evidence only in one case which should be treated as his evidence in all the three suits.

2. To appreciate the plea taken in the application, averments made by the plaintiff in each of these cases may briefly be noticed.

3. Suit No. 166 of 1977 has been filed by Bharat Nidhi Limited a Public Limited Company having its registered office at 7, Bahadur Shah Zafar Marg, New Delhi, for the recovery of Rs. 2,85,557-35 with interest pendente lite and future interest at the rate of 17 per cent per annum with monthly rests up to date of payment. The case of the plaintiff is that it carries on the business of investment. It lends and advances moneys. On the request of the defendant the Board of Directors of the plaintiff-company passed a resolution at a meeting held on 21st December, 1974, to the effect that a loan of Rs. 2,00,000/- repayable on demand be sanctioned to the defendant, carrying interest at the rate of 17 per cent. In accordance with this resolution loan of Rs. 2,00,000/- was given to the defendant

on 24th December, 1974, in token of payment of which the defendant issued a receipt and also gave a promissory note dated 23rd December, 1974, in favour of the plaintiff. The grievance of the plaintiff is that in spite of several reminders and legal notices the defendant has not paid the outstanding amount and hence this suit.

4. PNB Finance Limited has filed Suit No. 906 of 1976, inter alia, for declaration, rescission of the contract, cancellation of documents, recovery of possession of flat No. 1-A, Manek, 11-Napean Road, Bombay, and in the alternative for a decree of Rs. 4,08,772.88. The defendants in this suit are Shital Prasad Jain (applicant herein), his wife, Smt. Pramod Jain, his son, Mukul Jain and The Great Eastern Co-operative Housing Society Ltd., ''Manek'' 11-Napean Road, Bombay. Plaintiff''s case is that the defendant No. 1 was its Financial Adviser from 1-2-1972 to 11-6-1975 and that he had negotiated the purchase of an ownership flat in the building known as Manek situate at Napean Road, Bombay, which had been put up by defendant No. 4, Great Eastern Co-operative Housing Society Ltd., Bombay He had asked the plaintiff to directly purchase the said flat while giving him an option to repurchase the same from it. The plaintiff-company purchased the said flat and also bought ten shares in the said Society for Rs. 3,15,000/- and furniture and fittings in the flat for Rs. 75,000/- with an option given to the defendant No. 1 to re-purchase the same, at its purchase price latest by 31st December, 1974. The plaintiff Company did not require the said flat and as the said defendant had already the option to re-purchase the same, he persuaded the Chairman of the plaintiff to advance him loan of Rupees 3,00,000/- so as to enable him to have the conveyance of the said flat in the name of the Hindu undivided family of which he was the Karta. He promised to pay the loan within one year of the transfer of the said flat. He further promised, it is alleged, to pay interest at the rate of 9 per cent payable quarterly on the last day of each quarter. All these representations, it is averred, were contained in various letters written by defendant No. 1 to the plaintiff. Believing the representations of defendant No. 1 that the loan would be repaid within one year of the transfer of the said flat, the plaintiff-company entered into agreement dated ''28th Mar. 1974. executed at New Delhi between it and defendants 1 to 3 on behalf of Shital Prasad Jain Hindu undivided family, whereby it conveyed its right, title and interest in the said flat and its ten shares in the Society in favour of defendants 1 to 3. Earlier on 27th March, 1974, the plaintiff had advanced a loan of Rs. 3,00,000/- to enable the defendants 1 to 3 to obtain the plaintiff''s right, title and interest in the flat in question. Defendant No. l executed a promissory note on that very day in respect of that loan and had also given a receipt in acknowledgment of the loan. The plaintiff''s allegation is that defendants 1 to 3 have failed to pay the principal amount and the interest at the agreed rate in spite of notices.

5. The case of the plaintiff is that defendants 1 to 3 have obtained conveyance of the right, title and interest in the said flat and took possession thereof along with ten shares in the Society and loan of Rs. 3,00,000/- from the plaintiff-company

through mis-representation and fraud. Hence this suit.

6. Suit No. 907 of 1976 has also been filed by PNB Finance Limited. It is for the recovery of Rs. 19,55,890.37. Defendants 1 and 2 in this case are Shital Prasad Jain (applicant herein) and his son Mukul Jain. Defendant No. 3 is Rajdhani Vimjya Ltd. Himalaya House, Kasturba Gandhi Marg, New Delhi; defendant No. 4 is Poorvanchal Projects Ltd.. Panchsheel Marg, New Delhi and defendant No. 5 is another company, Emjay Overseas Private Ltd., of Bombay.

7. It is stated that the three companies, defendants 3, 4 and 5 have been floated by defendants 1 and 2 and are controlled by them; majority of shares in these companies are held by defendants 1 and 2 and their family members. It is alleged that defendant No. 1 was Financial Adviser of the plaintiff company, He made a request for a loan of Rupees 5,00,000/- on usual interest and proposed that the amount would be repaid gradually in instalments over a period of about one and a half years and that a demand promissory note would be given of repayment of the same. This loan was granted on the usual interest at the rate of 16 per cent per annum. The defendant executed promissory note dated 23rd December, 1974, in consideration of having obtained the said loan. The case of the plaintiff further is that thereafter the defendant applied to the plaintiff company for another loan of Rs. 10,00,000/- which was advanced on 29th January, 1975, Defendant No. 1 executed a promissory note on the same date in respect of the said loan. It is alleged that the defendant No. 1 had made a representation that the said loan of Rs. 10,00,000/- was to be utilized for purchase of immovable property in Delhi. The averment of the plaintiff is that this amount was diverted by defendant No, 1 to others including defendants 3 to 5, who have purchased immovable property at New Delhi. As the principal amount and the interest, in spite of notices, have not been paid, hence this suit.

8. Defence of defendant No. 1-appli-cant, in all these suits is common. His plea is that in fact no loans were advanced by the plaintiffs as alleged in these suits nor were those received by the defendants. In a nutshell the case of the defendant is that the amounts being claimed were not loans but payments to him in consideration of his interest in the companies under or controlled by Sahu-Jain Group and for services rendered by him. The execution of receipts and promissory notes is, however, admitted.

9. For deciding this application, it is not necessary to deal with the merits of each case. According to the applicant his defence is common in all these three suits. The witnesses proposed to be produced by him are very large in number and, therefore, it is in the interest of justice that instead of producing those witnesses in each of the three cases, the suits be consolidated and the evidence recorded in one suit be treated as evidence in all the three suits. This is the only ground which has been urged by Mr. Vasudevan, learned counsel for defendant No. 1, for consolidation of the suits.

10. The plaintiffs in these suits are resisting the consolidation. Except the

applicant-defendant, his wife and son, all the other defendants are also opposing this application. Mr. Y. P. Narula, learned counsel for defendant No. 4 in Suit No. 906 of 1976, categorically stated so at the bar.

11. Mr. Vasudevan in support of his contention, cited a decision of the Patna High Court in Bokaro and Ramgur Ltd. Vs. The State of Bihar and Others, , wherein it has been held that the Courts have inherent jurisdiction to consolidate two suits if it is expeditious and advantageous to all concerned. The principles which have been laid down for consolidation of two or more suits in the said decision are that where it appears that there is sufficient unity or similarity in the matter in issue in the suits, or that the determination of the suits rests mainly on a common question, it is convenient to try them as analogous cases. It has been further observed that "the question to be considered should also be as to whether or not the non-consolidation of the two or more suits is likely to lead, apart from multiplicity of suits, to leaving the door open for conflicting decisions on the same issue which may be common to the two or more suits sought to be consolidated. The convenience of the parties and the expenses in the two suits are subsidiary to the more important consideration, viz., whether it will avoid multiplicity of suits and eliminate chances of conflicting decisions on the same point."

12. These principles are well-settled. However, the ratio of the above-cited case is not applicable to the facts of the present case. Summary of the allegations in the three suits, as noticed above, clearly shows that the claims therein are entirely distinct and independent of each other. The plaintiff in Suit No. 166 of 1977 is Bharat Nidhi Ltd., whereas in the other two suits it is PNB Finance Ltd. Defendants in the three suits are also different. In Suit No. 166 of 1977 only the applicant is a defendant whereas in the other two suits apart from him there are other defendants as well. On the facts of these cases where the defendants are not common and the claims are different it cannot be said that there is similarity in the matter in issue in all the three suits. Defendants other than the applicant, his wife and son, are entitled to withhold their consent for consolidation of the suits. It is true that in those cases where parties are common and the matter is absolutely similar, without their consent, to avoid multiplicity of suits and to eliminate chances of conflicting decisions on the same point, consolidation of the two or more suits can be ordered. The three suits brought by the plaintiffs prima facie are based on different transactions of moneys allegedly given to the applicant-defendant. Apart from the defence of the applicant it cannot be said that the matters in issue are common in all these cases. The parties are also not common and as such even if they consent to consolidation of the suits the same cannot be done.

13. The application is misconceived and is dismissed as such.

