

(2018) 02 GAU CK 0044
In the Gauhati High Court
Case No : MFA 49 of 2007

CANARA BANK

APPELLANT

Vs

KIRTEE KISHORE BHATTACHARJEE & ORS

RESPONDENT

Date of Decision : 02-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Section 151](#), [Order 43 Rule 1\(r\)](#), [Order 39 Rules1](#), [Order 39 Rules2](#) - Saving of Inher

Citation : (2018) 02 GAU CK 0044

Hon'ble Judges : Kalyan Rai Surana

Bench : Single Bench

Advocate : S. Dutta, M. Choudhury, R. Kaur, K.K. Dey, A. Sarma G.N. Sahewalla, S. Murarka

Final Decision : Dispsod

Judgement

1. Heard Mr. S. Dutta, the learned Senior counsel, assisted by Ms. M. Saikia, the learned counsel for the appellant as well as Mr. A. Sarma, the learned counsel appearing for the respondents No. 1 and 5 and Mr. S. Murarka, the learned counsel appearing for the respondent No. 2. None appears on call for the other respondents.

2. By this appeal under Section Order 43 Rule 1(r) CPC, the appellant i.e. the Canara Bank has challenged the order dated 26.06.2007 passed by the learned Civil Judge (Senior Division) No. 1, Guwahati in Misc.(J) Case No. 114/2007 arising out of M.S. No. 54/2007.

3. Alleging that the respondent No.1, who at relevant time was working with the appellant bank, had misappropriated bank's money and had also committed certain irregularities, the appellant bank had filed a money suit which

was numbered as M. S. No. 54/2007 and the same was transferred to the Court of the learned Civil Judge (Senior Division) No. 1, Guwahati for disposal. In connection with the said suit, the appellant had also filed a separate application under Order 39 Rules 1 and 2 read with Section 151 CPC, thereby praying for an ad-interim injunction restraining the respondent No. 2 from making any payment against the shares and debentures lying with them in the name of respondent No. 1 and 5 and also to restrain the respondent No. 2, namely, Motilal Oswal Security Pvt. Ltd. and respondent No. 3 i.e. HDFC Bank from making any payment out of money lying with them in the account of respondent No. 1, 4 and 5. It is stated that the respondent No. 5 is the wife of the respondent No. 1. Owing to the nature of the order proposed to be passed, this Court has not burdened in this order with the allegations made in the plaint.

4. The learned Civil Judge (Senior Division) No. 1 by order dated 26.06.2007 passed in Misc. (J) Case No. 114/2007, before granting of injunction, ordered issuance of notice on the opposite parties therein to show cause as to why temporary injunction as prayed for should not be granted and the case was posted on 26.07.2007. Aggrieved by the non-granting of ex-parte ad-interim injunction, the present appeal was filed by the appellant. Along with this application, the appellant had also filed an application under Order 39 Rules 1 and 2, praying for grant of ad-interim injunction pending of the disposal of the appeal. The Hon'ble Division Bench of this Court, by an order dated 29.06.2007 passed in Misc Case No. 2525/2007, granted ad-interim injunction restraining the opposite parties/respondents No. 1, 2 and 5 not to transfer any debenture and share standing in their names without leave of this Court and restraining the respondent No. 3 for not allowing any withdrawal/transfer for any amount from the bank accounts of respondent No. 1, 2 and 5. It may be mentioned that the respondent No. 3 i.e. the HDFC Bank, filed an application for modification of the said order. The Division Bench of this Court by order dated 11.09.2007 passed in Misc. Case No. 3340/2007, inter-alia, modified the earlier referred order dated 29.06.2007 passed in Misc. Case No. 2525/2007 and directed that the said order be now read as "the opposite party No. 3, HDFC Bank, Bhangagarh, 126 G.S. Road, Guwahati-5 is

directed not to allow any withdrawal/transfer of any amount from the bank accounts of opposite party Nos. 1, 4 and 5".

5. In course of the submissions made by the learned counsel for the appearing parties, it transpires that while transmitting the record of Misc. (J)

Case No. 114/2007, the learned trial court had also transmitted the record of M.S. No. 54/2007. At the stage of transfer of the suit, the suit was

at the stage of service report and for filing of written statement. Therefore, in the process, the proceedings of the suit was stalled for about 11 years

now although the records of the said suit was not at all required to be sent as the appeal was not against any order passed in the suit but the

present appeal was filed against the order issuing notices to the Opp. Parties in Misc.(J) Case No. 114/2007.

6. Although the learned Senior counsel for the appellant as well as the learned counsels appearing for respondents have proposed to argue the

entire matter on merit, but this Court is of the view that as only a notice was issued by the learned trial court in the injunction matter, if the appellate

court decides the matter on merit, the parties are likely to miss one forum.

7. Having noticed the nature of the pleadings made in the plaint as well as in the injunction petition whereby serious allegation have been made,

instead of adjudicating the matter on merit, but however, finding that the proceedings of the suit itself had been stalled for about 11 years and the

ad-interim injunction which was passed by this Court on 26.06.2007 is continue till today, in the considered opinion of this Court, this is a fit case

for remanding the matter back to the learned Civil Judge (Senior Division) No. 1, now renamed as the learned Court of "Civil Judge No. 1,

Kamrup (M), Guwahati", who on receipt of the records would hear the injunction matter on merit and dispose of the said application. In view of

the inordinate delay, it is directed that the appearing respondents No. 1, 2 and 5 who have entered appearance in this appeal would file their

written objection in Misc. (J) Case No. 114/2007 and written statement in M.S. No. 54/2007 within a period of one month from today, subject to

some reasonable extension of time if sufficient cause is shown. The said respondents are permitted to take any defence as they may desire. Insofar

as the other respondents are concerned, the learned trial court shall issue notice for their appearance. However, their appearance shall not be a bar

for the learned trial court to decide the injunction application, where the main affected parties are respondents No. 1 and 5 only so that there is no

further delay in the disposal of the injunction application. Subject to the convenience of the learned trial court, the hearing of this Misc. (J) Case

No. 114/2007 may be expedited.

8. As by way of interim orders passed by this Court as referred above, whereby the respondents No. 1, 4 and 5 have been restrained from

transferring any fund, the said interim shall continue for a period of one month from today as the respondents herein are directed to file the written

statement by that period of one month. Hence, on appearance of the parties, the learned trial court shall be empowered to pass such ad-interim

and/or final order, as it may deem fit and proper, without being influenced by the interim order passed by this Court.

9. By the impugned order, only notice upon the respondents was issued, so there is no order touching upon the merit of the matter. Therefore, this

Court, at this stage, is not inclined to make any observation on the merit of the matter as there is every likely that any one of the parties may be

prejudiced by this order by any observations made by this Court on merit. So that the learned trial court may proceed with the hearing without

being influenced by any observation made by this Court.

10. Accordingly, on the matter arising out of this Misc. (J) Case No. 114/2007 is remanded back to the learned Civil Judge No. 1, Kamrup (M),

Guwahati in terms of the aforesaid order.

11. The parties, who are duly represented by their learned counsel herein, is directed to appear before the learned Civil Judge No. 1, Kamrup

(M), Guwahati on 26.02.2018 and by producing the certified copy of this order, shall seek further instruction from the said learned Court.

12. This appeal stands disposed of accordingly.

13. In view of the 11 years" delay already occasioned in the disposal of the suit, let the LCR [T.S. No. 54/2007 and Misc. (J) Case No.

114/2017] be returned forthwith.