
(1997) 04 BOM CK 0067

In the Bombay High Court

Case No : Chamber Summons No. 964 of 1996 in suit No. 1566 of 1995

Canara Bank

APPELLANT

Vs

M/s. Mettallica Industries Ltd. and Anothers

RESPONDENT

Date of Decision : 02-04-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10(2), Order 1 Rule 3
Companies Act, 1956 — Section 529

Citation : (1997) 4 BomCR 518(1)

Hon'ble Judges : R.M. Lodha, J

Bench : Single Bench

Advocate : Sanjay Singhvi and Umesh Shetty, for the Appellant; Ms. N.V. Parikh, Sanjay Singhvi, for the Respondent

Judgement

1. Heard.

2. The Applicants who are 29 in number apply by way of this chamber summons for direction to the Plaintiff to implead them as Defendants. Canara Bank, the Plaintiff, has filed the suit for recovery of sum of Rs. 47,52,964.33, Rs. 48,70,672.77, Rupees 66,60,785.48, Rs. 12,31,095.09 and Rupees 6,01,154.50 particulars of which have been in the plaint along with further interest @ 23.75% p. a. compounded at quarterly rests from the date of filing of the suit till payment and realisation together with cost against the Defendants viz. M/s. Mettallica Industries Limited, and, Shri, Hari Shankar Jalan. The claim of the Plaintiff bank is for recovery of aforesaid outstanding amount for the cash credit facility granted to the Defendants.

3. The Applicants' case in the chamber summons is that they are permanent workmen of the Defendant No. 1 company for last so many years. The defendant No. 1 company had been very irregular in making payment of wages to them. According to Applicants, the Defendant No. 1 and its management had lawful reason for delaying the payment of earned wages to them, the workmen have not been paid their legitimate annual increments, and they apprehend that in the

even of closure of the company they would not pay any legal dues to them including bonus, provident fund, gratuity. The Applicants have already filed complaints for redressal of their grievance under the Maharashtra Recognition of Trade Unions and Prevention of "Unfair Labour Practices Act, 1971 (for short, "Unfair Labour Practice Act") and the said complaints are pending before Industrial Court.

4. Mr. Singhvi, the learned counsel appearing for Applicants strenuously urged that any decree passed in favour of Plaintiffs ultimately would affect the rights of the Applicants workmen and, therefore, they are proper parties and Plaintiff must be asked to implead the Applicants as party defendants. In support of his contention, Mr. Singhvi relied upon a judgment of learned single judge of this Court in *State Bank of India Vs. The Podar Mills Ltd. and Others*, . *Workers of Rohtas Industries Ltd. Vs. Rohtas Industries Ltd.*, and *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, .

5. Per contra, the learned counsel appearing for the Plaintiff submitted that the judgment of the learned single judge of this Court in *State Bank of India Vs. The Podar Mills Ltd. and Others*, has been reversed by the Division Bench in appeal in *State Bank of India Vs. The Podar Mills Limited and Others*, . According to the learned counsel for the Plaintiff the Applicants are neither necessary nor proper parties and, therefore, the Plaintiff cannot be compelled to implead the Applicants as party defendants.

6. A necessary party is a party to the constitution of the suit in whose absence no decree at all can be passed and suit is liable to be dismissed for want of necessary party. On the other hand a proper party is one whose presence enables the Court to adjudicate the dispute effectually and completely. A person who is not party to the suit may be ordered to be added as party defendant to the suit though no relief is claimed against him provided his presence is necessary for complete and effectual decision of the questions involved in the suit. Many a time a party may not be a necessary party but, he may be proper party for adjudication of questions involved in the suit and if that be so, the Court can always ask the Plaintiff to implead such party. In a suit for recovery of amount by the plaintiff bank against the defendant No. 1 the answerable question is whether the Applicants-workmen are at all necessary or proper parties?

6A. I would like to first refer to the judgment of the learned single judge of this Court in *State Bank of India Vs. The Podar Mills Ltd. and Others*, on which strong reliance is placed by the learned counsel for the Applicants. In the said judgment Guttal, J. (as he then was) held that in a suit for recovery of amount by the bank against the defendant company the worker of the company the worker of the company have a direct interest in the subject-matter of the suit, limited though, it is to the sale of the mortgage and hypothecated property and, therefore, such Applicants were necessary parties.

7. This judgment of learned single judge was challenged in appeal by the bank and the Division Bench of this Court comprising of Bharucha, J. (as he then was) and Srikrishna, J. set aside the judgment and order passed by the learned single judge. The Division Bench referred to the judgments of the Apex Court in Workers of M/s. Rohtas Industries Vs. M/s. Rohtas Industries Ltd., , and, National Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, , and, observed that none of the said judgments of the Apex Court can be applied while considering an application made by the workmen for their impleadment in the suit filed by the bank for recovery of amount against the Defendant company.

8. In the suit filed by the plaintiff bank for recovery of outstanding amount against the Defendant No. 1, the present Applicants would be of no help and assistance in the adjudication of the issues involved in the suit nor can the present Applicants oppose the claim of the plaintiff bank on its merits. If the plaintiff bank is able to establish its own case and prove that the defendant No. 1 company is liable to make payment of the dues, the Applicants would not be in position of prevent such decree being passed in favour of plaintiff bank. It is indeed very difficult to comprehend how in the nature of the present suit which is suit for recovery of amount filed by the plaintiff bank against the Defendant No. 1 company, in the absence of the Applicants workmen the Court would not be able to decide the dispute effectually and completely. The Applicants workmen neither would be of any assistance to the Court in adjudication of the dispute between the plaintiff and defendant No. 1 company nor can these workmen be said to have any direct interest in the subject-matter of the suit. The workmen's plea that they have first charge over the properties of the defendant No. 1 company mortgaged and hypothecated with plaintiff bank for recovery of their due wages cannot justify their impleadment in the suit. At best such plea can be raised in appropriate proceedings as and when mortgaged and hypothecated properties are put to sale. The questions involved in the suit only refer and relate to the dispute between the plaintiff and the defendants and the said questions have no bearing so far as the present Applicants workmen are concerned.

9. The judgments of the Apex Court referred by the learned counsel for the Applicants in the Workers of M/s. Rohtas Industries Ltd. (supra). National Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, are not at all relevant to the present question whether in the suit for recovery of amount by the bank against the defendant No. 1 company the Applicants are necessary parties. Firstly, both these decisions by the Apex Court have been rendered in the proceedings arising out of winding up petitions under the Companies Act Companies Act. Secondly, in the workers of M/s. Rohtas Industries Ltd. (supra) the Apex Court under peculiar circumstances obtaining in that case and cannot be construed as a precedent for other matters. So far as National Textiles Workers Union (supra) is concerned, it was conceded in behalf of two unions that they were only claiming right of being heard and to appear in support of winding up of petition. In this view of the matter the judgments of the Apex Court in Workers of Rohtas Industries v. M/s. Rohtas Industries (supra) and National

Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, relied upon by the learned counsel for Applicants are of no help to him.

10. The Applicants' absence in the suit would not result in the dismissal of plaintiff bank's suit and, therefore, Applicants are not necessary parties. Similarly, presence of the Applicants in the suit shall not help the Court in adjudicating the dispute completely and effectually and, therefore, the Applicants are not proper parties as well. The Plaintiff is dominus litis and cannot be compelled and forced to implead unwanted and unnecessary parties who are neither necessary nor proper parties for deciding the dispute in the suit. Moreover the applicants have already filed the complaints for redressal of their grievance against the company under the Unfair Labour Practice Act and are thus prosecuting the remedy available to them under law.

11. The chamber summons accordingly has no force and is dismissed with no order as to costs.

Order accordingly.