(1996) 07 DEL CK 0012

In the Delhi High Court

Case No : Interim Application No. 7135 of 1995 and Suit No. 284 of 1987

Central Bank of India APPELLANT

Vs

Seth Brothers RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1996) 4 AD 225 : (1996) 2 BC 385 : (1996) 64 DLT 131 : (1996) 39 DRJ 269

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Vivek Sharma, R.P. Bansal and S. Poddar, for the Appellant;

Judgement

Manmohan Sarin, J.

(1) This is an application moved by the defendants 1I to 3 u/s 151 Cpc wherein they have prayed for the recalling of the order dated 22-5-1995, transferring the present suit to the Debt Recovery Tribunal in view of the valuation being more than Rs.10 lacs.

(2) The plaintiff. Central Bank of India has filed the present suit for the recovery of Rs.27,99,396.00 on account of credit facilities, overdraft limits and open loan availed of by defendants. The amount includes claim for interest also. Defendant No.1 is the partnership firm. Defendant Nos.2 and 3 are the partners, while the defendant No.4 is the guarantor. Pleadings and admission/ denial of documents has been completed. 3.Defendants denied their liability alleging several acts of omission and commission by the bank officials. The defendants questioned the action of the plaintiff'' bank in recalling of the loan, freezing of account, when it had hypothecated stocks of over Rs.30 lacs apart from other securities, fixed deposits receipts and L.I.C. policies of over Rs.30 lacs, against a debit balance of only Rs. 20 lacs. Apart from the 270 foregoing, the defendant Nos.1 to 3 have specifically raised a counter claim claiming Rs.5 lacs as damages inter alias on the failure of the plaintiff to obtain necessary insurance cover, which was stated

to be the obligation of the plaintiff. The defendant Nos. 1 to 3 had alleged that the plaintiff bank committed various acts of omission and commission and failed to release the stock that had reached the date of expiry. Replication as well as. reply to the counter claim has been filed. Pleadings have been completed and admission/denial of documents has also been completed.

(3) Learned counsel for the plaintiff argued that the defendants have contended in the written statement and counter claim that nothing is payable and due to the plaintiff bank. On the other hand, the defendants/applicants are entitled to get and recover more than Rs.5 lacs from the bank. Mr. Bansal, learned counsel argued that the question whether anything is due to the plaintiff bank from the defendants or not? and whether anything is due from the plaintiff bank by way of counter claim should be determined by this Court by trying the suit and counter claim. It was urged that the documents filed by the parties are common to the suit and the counter claim. The suit as well''s the counter claim of the defendant should be tried, heard and determined together. Mr. Bansal further argued that since the .Debt Recovery Tribunal did not have any jurisdiction to adjudicate any claim made against the bank, the suit as well as counter claim cannot be transferred. In the alternative, Mr. Bansal argued if the suit is to be transferred, then the counter claim ought to be segregated. He relied on the provision of Order Viii Rule 6 A (2) CPC to urge that the counter claim is to have the same effect as a cross suit and governed by the rules applicable to a plaint. He also referred to Order Viii Rule 6C CPC . and Clause 10 of Chapter Vi or Original Side Rules, which permit the segregation of the counter claim to be tried separately though on the application of plaintiff.

(4) Mr. Vivek Sharma, learned counsel for the plaintiff submitted that the suit was liable to be .transferred Along with the counter claim and he relied on the order of N.G. Nandi, J in Suit No. 3183/92 titled Canara Bank Vs. Coffee Export Limited and Others.

(5) I have vide separate order passed in Suit No. 2806/93 held that the counter claim made in a suit is liable to be tried by this Court, while the suit filed by the bank can be transferred to the Debt Recovery Tribunal. In the present case, I find that the defendants'' counter claim is based on an independent cause of action for damages on account of failure of the plaintiff bank to take up the requisite insurance policies. The defendants has alleged that there was a theft resulting in a loss of over Rs.l3 lacs of goods and it is the failure of the plaintiff bank to take appropriate policy which has caused the loss to the defendants. The counter claim is essentially founded on a separate cause of action for damages as well as others alleged breaches as set out in the counter claim. The Debt Recovery Tribunal would not have any jurisdiction to try and entertain the counter claim. As regards the suit is concerned, the same is liable to be transferred to the Debt Recovery Tribunal and the factum of counter claim cannot result in the same being retained by this Court, which has no jurisdiction to try and entertain the same. Accordingly, I direct that the counter claim filed by the

defendants be separately registered as a suit and segregated from the suit.'' Copy of the order sheet as well as all the documents filed in the suit be placed in the file of the counter claim to be separately registered. The suit is accordingly transferred to the Debt Recovery Tribunal, while the counter claim would be tried by this Court.

(6) I.A. stands disposed of with the above direction.

