

(1980) 04 CAL CK 0011
In the Calcutta High Court
Case No : Appeal No. 19 of 1980

Chemopulp Tissues Ltd.

APPELLANT

Vs

Electrosteel Castings Limited and Others

RESPONDENT

Date of Decision : 25-04-1980

Acts Referred:

Citation : (1980) 04 CAL CK 0011

Hon'ble Judges : A.N. Sen, C.J;M.M. Dutt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.N. Sen, C.J.—In view of our judgment in the other appeal being Appeal No. 455 of 1979 (the Punjab & Sind Bank Ltd. vs. Electrosteel Castings Limited) this appeal has indeed become infructuous. We should, however, note that two main contentions were raised by Mr. Deb appearing on behalf of the appellant in this appeal. The first contention urged by Mr. Deb was that it is a fit case where the learned Trial Judge should have ordered that the appellant, who happens to be the principal debtor and whose debt has been guaranteed by the bank, should have been added as a party to this proceeding as the appellant seriously disputes its liability to the plaintiff. The other contention that was raised was with regard to the jurisdiction of this Court. We may note that the appellant in the instant case has already filed a suit in the Delhi High Court and there the appellant in the first instance obtained an order of injunction against the bank from making any payment in terms of the guarantee. The said order of injunction was subsequently vacated by the Delhi High Court. It is said that an appeal has been preferred against the said order of the Delhi High Court and the said appeal is still pending. No order of injunction has been passed by the Delhi High Court.

2. In the instant case the suit was filed by the plaintiff against the bank on the basis of the guarantee. The claim of the plaintiff is against the bank on the basis of the guarantee only. Though the guarantee might have been given by the bank to secure the debt of the appellant, the plaintiff was perfectly competent to

institute the suit only against the bank on the basis of the guarantee. The learned Trial Judge was therefore clearly right in not making any order for adding the appellant as party-defendant to the suit. So far as the other question with regard to jurisdiction is concerned, we hold for reasons recorded in the judgment we have just delivered that there is no force in this contention. This appeal is, therefore, dismissed with costs.

3. The operation of the order will remain stayed for four weeks.

M.M. Dutt, J.

4. I agree.