(1998) 03 KL CK 0018

In the High Court Of Kerala

Case No : C.R.P. No. 383 of 1998 B

Christopher, J. APPELLANT

Vs

The State Bank of Travancore RESPONDENT

Date of Decision : 03-03-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 6, Order 8 Rule 6A, Order 8 Rule 6C
Constitution of India, 1950 — Article 227

Citation : (1998) 03 KL CK 0018

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : S. James Vincent and R. Gopan, for the Appellant; M. Pathrose Mathai, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—Defendant is the revision Petitioner. The suit is filed by the Plaintiff bank for recovery of a loan of Rs. 33,300 given to the Petitioner on 17th June 1991 for the purpose of digging a well, construction of a tank and pump house. For the failure to repay the amount, the Respondent filed the suit. Issues have been framed. At that stage of trial, Defendant filed 3 I.As. for the following reliefs:

(i) I.A. 4264/97. For raising an additional issue on the basis of a counter-claim.

(ii) I.A. 3994/97. For appointment of a Commission to value the damages suffered by the Defendant.

(iii) I. A. 229/98. To allow the Defendant to pay the court fee.

2. The learned Judge dismissed all these applications. The revision is against these independent orders.

3. In order to appreciate the contention of the Petitioner, it is necessary to extract paragraph 11 of his written statement dated 7th April 1997 which has

made a counter-claim and set off. It reads as follows:

The Defendant firmly believed that the Plaintiff bank which is a public corporation having enormous funds would certainly extend the necessary credit to complete the project and make it highly profitable. If the credit had been adequately extended in lumpsum and at the right time this property would have produced Rs. 15,000 per year with a repayment capacity of Rs. 75,000 per year. The allegation in para 12 of the plaint is emphatically denied. The Defendant never violated the terms and conditions of the contract, while it was the Plaintiff bank who violated the terms and conditions of the solemn contract by withholding credits and not reimbursing the balance amount of Rs. one lakh which the Defendant had raised from different sources at high interest and remain unpaid till date. By the malfeasance of the contract by this Plaintiff bank the Defendant is put into a debt trap and the project could not be completed till now. For completing the project after cost over runs for the last six years Anr. amount of Rs. 50,000 will be needed. The Plaintiff bank may be directed to reimburse Rs. one lakh as advance and advance Anr. amount of Rs. 50,000 as further advance to complete the project under the supervision of this Hon. Court. If the Plaintiff Bank is not inclined to advance'' the amount of Rs. 1,50,000 under the usual conditions and rate of interest of agricultural development loans the above amount may be awarded as damages for the breach of contract and the total amount due to the Bank as per para 13 and 14 of this plaint may be set off and the balance amount paid as damages. The averments in paras 13 and 14 are admitted.

4. The claim of set off is in the form of an implied contract and a failure to comply with the terms of the implied contract and the resultant damage to the Petitioner. The provision for allowing a set off is Order 8 Rule 6 Code of Civil Procedure. The main requirement of such a claim are: (a) It must be ascertained sum of money; (b) such sum must be legally recoverable. In addition to set off, the Defendant can also raise a counter-claim under Rule 6A of Order 8. But it must be in reference to the same cause of action. It is seen that the subject matter of the suit is a claim of recover of money given in the form of a loan to the Defendant, where as the claim of the Petitioner is an implied contract to pay a further advance and the resultant damage for the non-payment of the accounts. Therefore, I find that the cause of action put up by the Petitioner is a different one, not directly connected with the recovery of the money. Ultimately assuming for the sake of argument that the Petitioner can enforce the terms of the implied agreement, it will be barred by limitation since, according to him, the original loan was disbursed in the year 1991 whereas the present claim is on 7th April 1997. According to the Petitioner, term loan of Rs. 33,000 was sanctioned in the year 1991 for digging well. The Petitioner dug the well up to 30 feet and has abundant supply of water. But this project had cost him more than the loan sanctioned. The Petitioner is raising cash crops, like bananas, pepper, etc., which came up very well and has remitted a portion of the loan. Now a new case is put against the Bank for completing a new project costing Rs. 1,50,000. Even though

he had claimed Rs. 1,50,000 he has limited to the claim of Rs. 49,000 so as to come within the jurisdiction of the Munsiff''s court. It is not clear as to how the amount has been worked out and ascertained. Further no legal basis for the recovery of the said sum has been clearly set out. In the above circumstances, it is clear that the claim of set off do not satisfy the requirement of Rule 6 and 6A of Order 8 CPC Consequently, the refusal of the other applications cannot be held to be illegal.

5. Learned Counsel for the Petitioner referred to a decision of the Supreme Court in Smt. Shanti Rani Das Dewanjee Vs. Dinesh Chandra Day (dead) by LRs., wherein the Supreme Court held that the cause of action for the suit or counter-claim was ex facie barred by limitation under the Limitation Act, cannot be raised for the first time before the Supreme Court since the question of limitation has to be raised and has to be decided after ascertaining the date of accrual of the cause of action on the basis of relevant materials to be placed on record. The ratio laid down will not apply to the Petitioner''s case. The only argument is that the question will not arise at this stage. However, when the court is concerned with the legality of the order passed by the learned Munsiff prima tacie it has to be looked into whether the counter-claim is within the time or within the limitation. From the averment contained in the requirement it is clear that this claim is ex facie barred by limitation.

6. Another decision relied upon by the Counsel for the Petitioner is Sukhalal v. Munsiff, Cherthalla 1997 (1) KLT 247. This is an O.P. filed under Article 227 of the Constitution of India. Learned Judge held that the counter-claim should be made within the time for delivering his defence has expired. In this case, already a written statement has been filed and issues have been framed. Petitioner has not raised any issue for the counter-claim at the relevant time. Even though he had raised the question of set off and the counter-claim, Petitioner had not chosen to seek for an issue on that, at the time of framing of issues. Therefore, this judgment also will not apply to the facts of the case on hand.

7. Learned Counsel appearing on behalf of the Bank submitted that there is no bona fides for the claim made by the Petitioner and that the court should not come to the aid of a person who is trying to misuse the facilities offered by the Bank. He further submits that under Rule 6C of Order 8 CPC the Plaintiff is now prevented from raising his objection regarding the counter-claim. Therefore, that is yet Anr. ground for refusing the relief sought for by the Petitioner. In support of his first contention, he relied on the decision in Kerala Solvent Extractions Ltd. v. Unnikrishnan 1994 (1) KLT 651 wherein the Supreme Court held that the relief granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. The Supreme Court observed as follows:

In recent times, there is an increasing evidence of this, perhaps well meant but wholly unsustainable tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconciliable situations and denude the judicial process of its dignity, authority, predictability and respectability.

Learned Counsel referred to Anr. decision of the Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, wherein the Supreme Court held as follows:

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that ''there is no legal duty cast upon the Plaintiff to come to court with a true case and prove it by true evidence''. The principle of ''finality of litigation'' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Propertygrabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains in definitely. We have no hesitation to say that a person, who''s case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

In this case, it is seen that the Petitioner having obtained a loan from the bank, is only trying to avoid the payment of the loan in the form of a counter-claim. The observations made by the Supreme Court in the above case cited, squarely applies to the facts of the case. If such a stand of the Petitioner who borrowed the loan is to be countenanced, it will lead to a serious anomalous situation. The blame is now put on the doors of the bank. Because they have lent the money, the Defendants are forced to incur damages. This can hardly be accepted to be a defence or set off that can be taken note of, apart from the legal infirmities in raising of the counter-claim and the set off.

For all these reasons, I do not find any grounds to interfere with the order of the learned District Judge. However, the trial court will dispose of the suit uninfluenced by any of the observations contained in this order.

C.R.P. is dismissed with the above observation.