(1998) 11 GAU CK 0037

In the Gauhati High Court

Case No : Civil Revision No. 362 of 1995

Gobind Prasad Agarwalla — APPELLANT

Vs

Purbanchal Bank Ltd. and Others — RESPONDENT

Date of Decision : 10-11-1998

Acts Referred:

Banking Regulation Act, 1949 — Section 45(2)
Civil Procedure Code, 1908 (CPC) — Order 22 Rule 10(1), Order 6 Rule 17, 115, 151

Citation : (1999) 1 GLT 222

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami, B. Goyal and P. Bora, for the Appellant; None, for the Respondent

Judgement

D. Biswas, J.—This petition u/s 115 of the CPC is directed against the order dated 21.3.95 passed by the Assistant District Judge (No. 1), Guwahati in Money Suit No. 49/85 allowing a petition filed by the Plaintiff under Order 6 Rule 17 read with Section 151 of the Code. Being aggrieved, the Defendant has preferred this revision petition on the ground, that the said petition was not maintainable in law.

2. It would appear that the money suit was instituted by the Purbanchal Bank Limited for recovery of a sum of Rs. 4,04,910.61 paise. During the pendency of the suit, the Central Government in exercise of powers conferred on it by Sub-section (2) of Section 45 of the Banking Regulation Act, 1949, imposed moratorium on the Plaintiff Bank and eventually the said Bank was amalgamated with the Central Bank of India with effect from 29.8.90 with consequent devolution of all assets and liabilities of the Purbanchal Bank Ltd. to the Central Bank of India. Thereafter on 9.3.92, the Plaintiff namely, the Purbanchal Bank Ltd. filed a petition for amendment of the plaint for substitution of the Central Bank of India as Plaintiff. The learned Assistant District Judge, after hearing both the parties, allowed the petition for substitution holding, inter alia, that such amendment does not mean change of the nature and character of the suit or the

subject matter involved therein. Aggrieved thereby, the Defendant No. 1 has preferred this revision petition.

3. Shri G.N. Sahewalla, learned Counsel for the Petitioner has assailed the order on the ground that the learned court below committed error of law invoking provisions of Order 6 Rule 17 of the Code which was not applicable in the instant case. According to him the Purbanchal Bank Ltd. lost its identity due to amalgamation and for non-substitution of the transferee bank i.e. Central Bank of India within the statutory period of 90 days, the suit stood abated. Therefore, the situation cannot be salvaged by way of substitution invoking the provisions of Order 6, Rule 17 of the Code.

4. After careful consideration of the argument advanced by the learned counsel, this Court is of the opinion that the provisions of Order 6 Rule 17 of the Code has been wrongly invoked. The object of this Rule is that the Courts should try the cases on their respective merits and as such allow amendment that may be necessary for determining the real question in controversy between the parties provided such amendment does not occasion injustice or cause prejudice to the other party. In principle, all amendments are generally permissible when such amendments appear to be necessary for determination of the real controversy in the suit. However, substitution of one cause of action by another and the nature of claim or change of the subject matter are exceptions to the above principle. The scope of Order 6 Rule 17 is not all-pervasive and does not cover an eventuality where the right, title and interest of the Plaintiff have devolved on another. There is no doubt that both the learned Counsel as well as the learned court below committed an error in misquoting the provisions of law.

5. Situation like devolution of right, title and interest on amalgamation of a bank with another can be dealt with by obtaining an order of leave of the Court to continue with the suit after such amalgamation as per provisions of Order 22, Rule 10(1) of the Code. We may, therefore, refer to the provisions incorporated therein:

Order 22, Rule 10(1) - In other cases of an assignment, creation or devolution of any interest during the pendency of a suit. The suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

6. It would appear from the aforesaid provision that on devolution of right, title and interest during the pendency of a suit, the Court may grant leave to such person upon whom the interest has developed to continue with the suit. This provisions perhaps escaped the notice of the learned Court.

7. Now the question arises whether a misquotation of law as in the instant case, will vitiate an order passed by a Court which is otherwise conducive to the cause of justice. A mistake committed by an Advocate in quoting the correct provisions of law or by the Court in not correcting such mistake will not ordinarily render an order impeachable unless such mis-quotation has occasioned failure of justice. In

the instant case, the Central Bank of India stepped in the shoes of the Purbanchal Bank and, as such, the right to continue with the suit vested in it. To facilitate an order of leave the above provisions would have been appropriate. But the Plaintiff filed the said petition under O 6, R. 17 read with Section 151 of the Code of Civil Procedure. In my opinion, an order of substitution under Order 6, Rule 17 or an order for leave to continue under Order 22, Rule 10(1) have the same consequence and, therefore, cannot be objected to.

8. The learned Counsel for the Petitioner also raised the question of limitation. According to him, it is a case where the suit abated as the petition for substitution was filed long after the expiry of the statutory period of 90 days. The learned trial Court, it is urged, was not competent to allow the petition under Order 6, Rule 17 of the Code of Civil Procedure. But, in my opinion, the provisions of limitation by way of defence is not available to a Defendant to resist a petition under Order 22, Rule 10(1) of the Code. The limitation of 90 days will apply only when a suit abates in various situations dealt with in Order 22 of the Code. Devolution of interest on amalgamation of the Plaintiff bank with the Central Bank of India is not covered by any of the grounds so specified. Therefore, the argument that the law of limitation of 90 days will apply in this case is a proposition unsustainable in law. It is pertinent to reiterate here that a petition under Order 22, Rule 10(1) of the Code is competent at any time during the pendency of the suit.

9. Section 115 of the Code permits interference with an order of a subordinate Court only when it has exercised a jurisdiction not vested in it, or failed to exercise a jurisdiction so vested or has acted in exercise of such jurisdiction illegally and with material irregularity. In the instant case, we find that the learned Court below had the jurisdiction to pass the impugned order permitting the Central Bank of India to continue with the suit under the provision of Order 22, Rule 10(1) of the Code. But this power has been exercised misquoting the provisions of law in a different manner allowing substitution of the Central Bank of India as Plaintiff. The effect of the order being the same as that of ''leave to continue with the suit'' and there being nothing available on record to show that this order, if allowed to stand, is likely to occasion failure of justice or cause irreparable injury to the Defendant, cannot be interfered with. An error of law or fact, howsoever grave it may be, does not permit interference in exercise of the revisional powers unless one of the three contingencies specified in Section 115 of the Code is established. Therefore, in my opinion, this revision petition deserves to be dismissed.

In the result, the revision petition stands dismissed. Considering the circumstances, parties are directed to bear their respective costs.

The learned trial Court is directed to make an endeavour to dispose of this suit within a period of three months from the date of receipt of this order.

