

(2000) 10 PAT CK 0008

In the Patna High Court

Case No : Civil Revision No's. 278 and 356 of 2000 (R)

Hiralal Gupta and Another

APPELLANT

Vs

Jagdish Kumar Seth and Others

RESPONDENT

Date of Decision : 31-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
COMPANIES ACT, 1956 — Section 303
Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (2001) 1 BLJR 191

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Judgement

Anil Kumar Sinha, J.—This order will govern C.R. No. 278 of 2000 (R) and C.R. No. 356 of 2000 (R) as both the civil revision applications have been filed against the order dated 5.6.2000 passed by Sub-Judge-I, Bokaro at Chas in T.S. No. 17 of 1999, whereby and whereunder the learned sub-ordinate Judge rejected the petitions filed on behalf of the petitioners under Order XIV, Rule 2 of the CPC read with Section 151 of the Code of Civil Procedure, wherein it was prayed that the question of maintainability of the suit may be decided as a preliminary issue.

2. Briefly stated the relevant facts concerning the above-mentioned civil revision application are that the plaintiff, namely, Jagdish Kumar Seth, opposite party No. 1 filed a declaratory suit against the defendant being Title Suit No. 17 of 1999 praying for the following reliefs:

(a) To hold and declare that with effect from the date of resignation i.e. 5th April, 1997 and/or the date of acceptance of resignation by the Board of Directors of Defendant No. 1 the plaintiff ceased to be a Director of the company-defendant No. 1.

(b) To hold and declare that the plaintiff is not liable for any action or inaction, omission or commission in respect of business affairs of defendant No. 1 and any other relationship with defendant No. 4 as Director of defendant No. 1 or

otherwise.

(c) To hold and declare that defendant No. 4 or its officers have no authority of law or in fact, to grant or not to grant approval of acceptance of resignation of plaintiff dated 5.4.1997 as Director of defendant No. 1.

(d) To hold and declare that the plaintiff had executed instruments and documents for the purposes of advancement of loan to defendant No. 1 in the capacity of a Director of defendant No. 1 and has no personal liability whatsoever in respect of the affairs of defendant No. 1 and defendant No. 4 inter-se.

(e) To hold and declare that after sanction of enhancement of credit facilities at the instance of defendant Nos. 2 and 3 by defendant No. 4 on or after 27.3.1998 earlier executed hypothecation deed, promissory note, undertakings and such other documents in relation to and in connection with the advancement of the loan executed in the capacity of a Director of defendant No. 1, will be deemed to have been superseded, modified and annulled and are not enforceable against the plaintiff.

(f) To hold and declare that use of nay instrument or cheques signed as Director used after 5.4.1997 in any manner by and on behalf of the defendant No. 4 are not binding on the plaintiff.

(g) To restrain by a temporary or permanent injunction the defendants, their men and agents from taking any action or treating the plaintiff as Director of defendant No. 1 or otherwise.

(h) To grant other relief or reliefs to which the plaintiff is found to be entitled to.

(i) To decree the suit with costs.

3. The plaintiff made out a case that he resigned from the Board of Directors on 5.4.1997 and his resignation was accepted by the Board of Directors of the Company unconditionally on 7.4.1997 and on 15.4.1997 Form No. 32 are prescribed u/s 303 of the Companies Act, 1956 was signed by the respective Directors indicating therein that the defendant No. 3 was inducted as Director with effect from 5.4.1997 and the plaintiff's resignation was accepted by the Board of Directors of the Company on 7.4.1997. The resolution dated 7.4.1997 of the Board of Directors and Form No. 32 was filed before the Registrar of the Company, of which the defendant No. 4, i.e., Allahabad Bank had the knowledge. It was, therefore, stated that after 5.4.1997, the plaintiff had ceased to be the Director of the Company and severed his all business, relationship for all purposes from defendant Nos. 1,2 and 3. Therefore, he is not liable for any inaction, omission or commission in respect of the business affairs of the Company and he has no personal liability whatsoever in respect of the affairs of the Company.

4. The defendants appeared in the suit and contested the suit by filing their respective written statements, in which they took the plea that the suit is not

maintainable and the Court's fee paid is insufficient and unless the plaintiff pays ad valorem Court's fee the reliefs prayed for by him cannot be granted. The learned Court below framed issues in the suit and also examined 3 witnesses, after which the defendant No. 4 Allahabad Bank and defendant No. 5, Senior Manager of Allahabad Bank, B.S. City Branch filed a petition under Order XIV, Rule 2 and under Order XV, Rule 3 read with Section 151 of the CPC raising the question of maintainability of the suit. On behalf of the Bank, it was specifically stated in the petition that the liability of the plaintiff as guarantor of the loan to the tune of Rs. 4.85 crore, for which a recovery suit has been filed before the Depts Recovery Tribunal Patna, being O.A. No. 133 of 1999 and the extent of liability of the plaintiff in respect of credit facility given to the Company can only be decided by the Depts. Recovery Tribunal, Patna, and this Court has no jurisdiction to decide such matter. It was, therefore, alleged that the suit has been filed with a mala fide motive to wriggle out of the contractual obligation of the plaintiff with the defendant No. 4. It was, therefore, prayed that the question regarding the maintainability of the suit should be decided as a preliminary issue of law.

5. It may be pertinent to mention here that defendant No. 4, Allahabad Bank, had filed title suit No. 8 of 1999 before the Sub-Judge, Bokard at Chas, on 11.2.1999 against the plaintiff of Title Suit No. 17 of 1999 and other defendants for appointing a Receiver with regard to the goods which were hypothecated in favour of the Bank, but the learned subordinate Judge, by his order dated 15.5.1999 held that in view of the provisions of the Recovery of Debts, due to the Banks and Financial Institutions Act, 1993 (hereinafter referred to as the R.D.B. Act), he had no jurisdiction to entertain the suit and so, he ordered to return the plaint to the plaintiff-Bank for proper presentation before the tribunal concerned and, thereafter, Allahabad Bank (defendant No. 4) initiated a proceeding before the Debts Recovery Tribunal, Patna, being C.A. No. 133 of 1999, in which the plaintiff and other defendants have appeared and are contesting the matter because the said Tribunal. After filing of C.A. Case No. 133 of 1999 by the Bank/defendant No. 4, the plaintiff filed Title Suit No. 17 of 1999 seeking the aforesaid reliefs.

6. The learned Subordinate Judge heard the parties on the petition under Order XIV, Rule 2 and under Order XV, Rule 3 read with Section 151 of the CPC on 5.6.2000 and rejected the petitions filed on behalf of the defendants holding that there is no merit in the petitions and directed the parties to proceed with the suit and fixed the matter on 14.6.2000 for further evidence of the plaintiff-witness.

7. It appears that after passing the order of rejection on the petitions filed by the defendants under Order XIV, Rule 2 and under Order XV, Rule 3 read with Section 151 of the C.P.C., the learned subordinate Judge passed an order on the same day under the caption (later on), which is reproduced below:

Later on

5.6.2000. As the order on the petitions of maintainability were being written and the order was almost going to be completed by me in the chamber the Bench Clerk placed before me an application filed on behalf of defendant Nos. 1, 2 and 3 for staying the passing of any order in this suit as they want to file a transfer-petition in the Court of D.J. Bokaro. Let this petition be kept with the record as the order passed is already kept with the record.

Sd-Ilegible S.J. 1st Bokaro 5.6.2000

The aforesaid order under caption "later on" appears to be self-contradictory, inasmuch, as from the first part of the order, it appears that the order was not completed nor signed by P.O. and while it was in process of completion, the transfer-petition was placed before P.O. by his Bench Clerk, wherein it was prayed that the order should not be passed as they want to file transfer-petition before the D.J., Bokaro, but to my utter surprise, I find that in the latter part of the order P.O. has written that the order has already been passed.

8. The learned Counsel appearing on behalf of the petitioner/Bank strongly argued before me that as a matter of fact when argument on the petitions filed under Order XIV, 14 rule and under Order XV, Rule 3 read with Section 151 of the C.P.C. was going on, the defendant-Bank had filed a petition before the Court praying therein not to pass any order as the Bank wants to file a transfer petition before the District Judge, but ignoring that the learned subordinate Judge passed the impugned order against the Bank, which affects the bona fide of the order. It was next submitted that the learned Court below failed to consider that the same Court has returned the plaint to Title suit No. 8 of 1999 filed by the Bank/Plaintiff for presentation before the Debts Recovery Tribunals and, accordingly, the Bank filed O.A. No. 133 of 1999 before the Debts Recovery Tribunal, Patna, and all the parties including the plaintiff have appeared before the said Tribunal, which has been established under the Special Act, which will over ride the provisions of general law but overlooking this important aspect, the learned Court below rejected the petitions filed by the defendant under Order XIV, Rule 2 and under Order XV, Rule 3 read with Section 151 of the C.P.C. It was also contended that the matter relates to the recovery of the loan amounting to the tune of Rs. 4 crore 41 lakh including interest thereon and the loan was advanced by the Bank on execution of guarantee by the plaintiff and under the provisions of the R.D.B. Act, it is the Debts Recovery Tribunal, which has not exclusive jurisdiction to decide such matters and the plaintiff can very well raise all the issues which he has raised in T.S. No. 17 of 1999 before the said Tribunal, which is competent to decide those issues concerning the liability of the persons in respect of the loan advanced by the Bank, but the plaintiff who has already appeared before the Tribunal has filed the T.S. No. 17 of 1999 with sole intention to avoid any action by the Debts Recovery Tribunal against him and has resorted to baseless allegation with view to wriggling out from his liability as a guarantor to repay the Bank's dues. It was further contended that if the suit filed by the plaintiff is allowed to continue then there is every chance of conflicting decision because the Debts

Recovery Tribunal is also in seizing of the case having jurisdiction to determine the liabilities of the debtors/parties. So, in order to avoid the conflicting decision, the learned subordinate Judge should have held that the suit filed before him was not maintainable and it was triable by the Debts Recovery Tribunal, but the learned subordinate Judge rejected the petitions filed by the defendants-petitioners under Order XIV, Rule 2 and under Order XV, Rule 3 read with Section 151 of the C.P.C. in a most illegal and arbitrary manner.

9. The learned Counsel appearing for the petitioner-Bank further argued that the main question involved in the suit is the determination of the liability of the plaintiff, who has taken a ground that he is not liable for the liability of the companies since he resigned from Directorship of the Company on 5.4.1997 and this matter can very well be determined by the Tribunal, which has got exclusive jurisdiction to deal with such matter. It was submitted that the alleged resignation made by the plaintiff from the Board of Directors of the Company is the unilateral action of the plaintiff or other members of the Board of Directors, which has got no blinding effect on the Bank because no prior consent of the Bank had been obtained before resigning from the Directorship of the Company and besides that, the plaintiff is not absolved from the liability of the Bank even in case of his resignation from the Board of Directors and the question of resignation from the Directorship of the Company is a matter of determination of the liability of the plaintiff which he incurred while he was Director of the Company and had obtained a loan of Rs. 4.41 crore from the Bank and had executed a guarantee against that loan and he is bound by the terms and condition of the guarantee executed by him. It was, therefore, submitted that the main question regarding the determination of the liability in respect of the loan advanced by the Bank, for which the plaintiff has filed the suit and has disputed his liability are matters to be determined by the Debts Tribunal, hence, in this view of the matter also the learned Court below ought to have held that the suit filed by the plaintiff is not maintainable and the Debts Tribunal has got exclusive jurisdiction to decide the issues raised by the plaintiff in the suit filed by him.

10. In reply to the aforesaid arguments, the learned Counsel for the plaintiff-opposite party No. 1 of both the civil revision applications has submitted that the plaintiff has filed the suit for declaration that he ceased to be the Director of the Company from 5.4.1997 when he resigned from the Directorship of the Company and, as such, Such declaration cannot be made by the Tribunal and it is only the Civil Court, which is competent to give such reliefs to the plaintiff. Hence, the suit filed by the plaintiff before the Sub-ordinate Judge, is maintainable. It was further submitted that there is no question of res-judicata, in view of the fact that the I earlier suit filed by the Bank was only for the relief for the appointment of the Receiver and the learned sub-ordinate Judge had not decided the issues between the parties in T.S. No. 8 of 1999 but simply returned the plaint on the ground that the suit is not maintainable, so, the plaint should be returned to the plaintiff for presentation before the proper Forum.

11. After hearing the rival contentions of both the parties and in view of the fact that the petitioner/Bank has already filed the case being O.A. No. 133 of 1999 before the Debts Recovery Tribunal, Patna, for recovery of its dues and the plaintiff as well as other defendants have already appeared before the Tribunal and have filed their respective show causes resisting the claim of the Bank, the impugned order dated 5.6.2000 passed by the learned subordinate Judge, Bokaro at Chas, is hereby set aside. I feel it expedient in the interest of justice, specially in view of the doubts raised by the petitioner-Bank regarding propriety and fairness in passing the order by the subordinate Judge, that the matter should be heard by some other Subordinate Judge other than Sri A.A. Gouri, who passed the impugned order on the question of maintainability of the suit as a preliminary issue of law, since it is a question affecting the jurisdiction of the Court. That apart, the question regarding the maintainability of the suit without paying ad valorem Court-fee is also involved which should be decided at the threshold. Accordingly, the impugned order dated 5.6.2000 passed by the Court below is hereby set aside and the matter is remitted back to lower Court for passing a fresh order in accordance with law after giving reasonable opportunity of being heard, to the parties. Let a copy of this order be communicated to the District Judge, Bokaro, for withdrawing the suit from the file of Sri A.A. Gouri, Sub-Judge, 1st Court, Bokaro at Chas, if the same is pending in his file and for transferring the suit to the file of some other Sub-Judge, posted at the station for the compliance of the direction given above. It is, however, made clear that this order will not affect the rights of the parties to raise their claims and counter-claims before the Debts Recovery Tribunal, Patna. where the matter is pending for adjudication.

12. In the result, therefore, both the civil revision applications are disposed of.