

(1987) 09 BOM CK 0083

In the Bombay High Court

Case No : Chamber Summon No. 373 of 1987 in Suit No. 3479 of 1986

Indian Overseas Bank

APPELLANT

Vs

Shreekrishna Woollen Mills Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 24-09-1987

Acts Referred:

Civil Procedure Code, 1882 — Section 130

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, Order 11 Rule 15

Citation : AIR 1988 Bom 343 : (1987) 89 BOMLR 510

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : J.I. Mehta, Virendra Tulzapurkar and Anand Desai, instructed by Crawford Bayley and Co, for the Appellant; I.M. Chagla, F.E. Devitre and J.D. Dwarkadas, Federal and instructed by Rashmikan, for the Respondent

Judgement

1. This is a Chamber Summons taken out by the defendants for an order that the plaintiffs should be directed to produce on oath the documents, correspondence and papers as set out in prayer (a) to the Chamber Summons and for an order and direction that the plaintiffs should give inspection of these documents to the defendants on production.

2. The plaintiffs are Indian Overseas Bank while the defendants are Shreekrishna Woollen Mills Pvt. Ltd. and other persons.

3. The plaintiff-Bank has filed the suit on or about 12th Dec. 1986 to recover from the defendants various amounts totalling approximately Rs. 16 crores which were advanced by the plaintiff-Bank to the defendants, together with interest. No written Statement has been filed so far. The defendants had taken out an earlier Chamber Summons being Chamber Summons No. 35 of 1987, inter alia, for inspection of these very documents. In that Chambers Summons an order was passed on 4th Mar. 1987 by a learned single Judge of this Court under which the plaintiffs were directed to give inspection of certain documents as set out in that

order. The inspection, however, of the documents, which are the subject-matter of the present Chamber Summons, was not granted. The defendants filed an Appeal from this order. The Appeal Court by its order dt. 25th Mar. 1987 summarily dismissed the appeal. The Appeal Court, however, observed that under Order 11 Rule 14 of the Civil P.C. and order for inspection cannot be made because an order for inspection does not fall within the four corners of Order 11 Rule 14 of the Civil P.C. In view of these observations, the defendants have taken out the present Chamber Summons under Order 11 Rule 14 of the Civil P.C. for production of documents as set out in the Chamber Summons and also for inspection of these documents.

4. The documents of which production and inspection are sought are : (i) the documents, correspondence and paper's pertaining to the plaintiffs' nursing of and rehabilitation of defendant 1 by way of concessions for reduced rate of interest, waiver of interest and funding of interest, including resolution/resolutions of the Board of Directors of the plaintiffs, the recommendations of the plaintiffs' Branch Office at Bombay, the plaintiffs' Zonal office at Bombay to the plaintiffs' Central Office, the data put up for the consideration of the Board of Directors in respect thereof; (ii) the documents, applications and correspondence exchanged by the plaintiffs with the Reserve Bank of India for the purpose of the transfer of the concessions granted by the plaintiffs to defendant 1, including the approval of the Reserve Bank of India in respect thereof. Inspection of these very documents was asked for and refused in Chamber Summons No. 35 of 1987.

5. Mr. Chagla, learned Counsel for the defendants, in the course of his arguments stated that although several documents are included in the prayer to this Chamber Summons, the defendants are asking for production and inspection of only the following : (i) Resolution of Board of Directors of the plaintiff-Bank relating to nursing the 1st defendant as a sick unit, (ii) the application of the 1st defendants to the Reserve Bank of India for sanction for granting concession to the 1st defendants for the purpose of nursing the 1st defendants as a sick unit, (iii) clarification, if any, sought by the Reserve Bank of India in connection with this application, and the reply, if any, of the plaintiff-bank, (iv) sanction granted by the Reserve Bank of India to the plaintiffs for granting concessions to the 1st defendants for the purpose of nursing the 1st defendants as a sick unit.

6. Since the defendants have not so far filed any written statement, the defence of the defendants to the plaintiffs' claim has not been crystallised. In the affidavit in support of the Chamber Summons, however, the defendants have stated in para 5 that defendants 1 have apparently, been declared to be a sick undertaking by the plaintiffs themselves. In item (a) of para 5 it has been mentioned that the plaintiffs had taken defendant 1 under its nursing programme from in or about 1977, in item (b) it is stated that the plaintiffs had agreed to grant reliefs and concessions for rehabilitation of defendant 1, in item (c) it is stated that the aforesaid were approved by the Board of Directors of the plaintiffs in or about Nov. 1982; and in item (d) it is stated that the aforesaid were duly

submitted to the Reserve Bank of India for approval; and in clause (e) it is stated that the Reserve Bank of India had approved the reliefs and concessions agreed to be granted by the plaintiffs to defendant 1. They have stated in the affidavit that from 1977 to June 1982 the plaintiffs had, not charged interest at this concessional rate but had charged interest at the agreed rate. It is the case of the defendants that it was agreed that the 1st defendant would be charged concessional simple rate of interest of 13.5%; that excess interest debited from 1977 to June 1982 would be refunded to the 1st defendant, accumulated interest from 1977 to June 1982 re-calculated at the rate of 13.5% would be funded in a separate account and would be repayable within a period of 8 years with an initial moratorium of 2 years and such funded interest would be free of interest. Admittedly this arrangement was subject to the approval by the Board of Directors of the plaintiff-Bank and it was also subject to sanction being granted by the Reserve Bank of India. The plaintiffs have denied any agreement to give concessions to the defendants as a sick unit. They contend that there was a proposal to grant concessions to the defendants. But it was ultimately dropped because of the various defaults of the defendants.

7. It is not clear from the affidavit in support whether according to the defendants there was any concluded agreement finally arrived at between the plaintiffs and the defendants to the above effect. In fact, after filing of the present suit by the plaintiff-Bank, the defendants filed a writ petition in this Court being Writ Petition No. 8 of 1987 against the present plaintiffs, Reserve Bank of India and the State of Maharashtra praying, inter alia, for a declaration that the 1st defendant is potentially a viable sick unit as defined by the guidelines issued by the Reserve Bank of India. The 1st defendant has also prayed for a writ of mandamus directing the present plaintiffs to prepare a scheme for nursing of 1st defendant in accordance with the guidelines of the Reserve Bank of India and, in the alternative, for a direction that the present plaintiffs should approve and implement the scheme submitted by the 1st defendant to the plaintiffs to give to the 1st defendant an opportunity to work and revive itself. There is also a prayer, inter alia; that the plaintiffs should be directed to implement and grant to the 1st defendant concessions regarding interest and repayment as set out above. In the writ petition the present 1st defendant has taken out a Chamber Summons against the Reserve Bank of India for inspection of documents relating to approval by the Reserve Bank of India of granting of the said concessions to the defendants. This Chamber Summons has been adjourned to the hearing of the writ petition. By the present Chamber Summons the defendants want production and inspection of the documents referred to above before filing their written statement.

8. Order 11 of the Civil P.C. deals with discovery and inspection. Under Order 11 Rule 12 there is a provision for discovery of documents by filing an affidavit of documents. Ordinarily under the scheme of Order 11, affidavits of documents have to be filed after the pleadings are completed. Inspection is granted of documents which are disclosed in the affidavit of documents thereafter. Under

Order 11 Rule 15, however, a party to a suit may obtain production and inspection of documents referred to in the pleadings or affidavits of the other side before the pleadings are complete. Apart from this provision, a party cannot normally ask for production for inspection of documents at a stage prior to the filing of affidavits of documents. (See Halsbury, 4th edn. Vol. 13, para 1). Under Order 11 Rule 14, however, the Court has the discretion to order production of documents at any stage. Order 11 Rule 14 reads thus :

Rule 14. Production of documents.

It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right, and the Court may deal with such documents, when produced, in such manner as shall appear just.

Order 11 Rule 14 does not prescribe any particular stage at which such production of documents can be ordered by the court. It can be done at any time during the pendency of the suit. The production of documents under Order 11 Rule 14, however, is at the discretion of the court. Under the normal scheme of production of documents at the instance of parties, documents are produced and inspection is given after the pleadings are concluded. Under Order 11 Rule 14, however, the court may in its discretion at any stage direct the documents relating to any matter in question in such suit to be produced. It is not mandatory for the court to direct production of such documents whenever asked for.

9. In the case of *Vishnu Yeshawant Wagh v. New York Life Insurance Co.* reported in (1905) 7 Bom LR 709, which was under the old Section 130 of the Civil P.C. of 1882, the Court said that the Court has discretion to order production or not under the provisions of old Section 130 which is in pari materia with Order 11 Rule 14 of the present Civil P.C. The Court observed, "It seems to me pretty clear that although in regard to certain documents, when they are absolutely privileged the court has no discretion whatever, whether it will order production, or not, yet u/s 130 of the Code, in regard to other documents the Court does possess the discretion and the discretion is to be exercised according to the practice of this Court."

10. Similarly, in the case of *Ram Hari De v. Niranjan Krishna Das and Co.* reported in (1946) CWN 845 the Court discussed the provisions of Order 11 Rule 14 of the present- Civil P.C. It observed that an order for production of documents under Order 11 Rule 14 is not dependent on a prior order for discovery under Rule 12. The two rules relate to different matters. It has observed that even if a party admits that certain documents are in his possession or power and it appears that they relate to the matters in dispute, and no privilege is claimed, the Court is not bound to make an order for their production under Order 11 Rule 14. It stated that the important words in Order 11 Rule 14

that determine the power of the Court are the words "it shall be lawful". Prima facie these words import discretion and they have been judicially construed as discretionary unless there be anything in the subject-matter to which they are applied or in any other part of the statute to show that they are meant to be imperative.

11. In the case of India Foils Ltd. Vs. The 5th Industrial Tribunal, West Bengal and Others, the provisions of Order 11 Rule 14 were considered and the Court observed that before an order for production of documents can be made the court must satisfy itself and record a finding to the effect that the documents are in possession or power of the party against whom the order is sought and they relate to the matter in question before the Court. See also AIR 1956 Andh Pra 115 Andhra Bank Ltd. v. N.V. Narendranath Bahadur.

12. In the present case there is no reference in the plaint to any of the documents of which production is sought by the defendants. The defendants have not yet filed their written statement. They have not given any satisfactory reason for production and inspection of these documents prior to the completion of pleadings. From the affidavit in support it is not at all clear whether the defendants allege that there was an existing concluded agreement between the plaintiffs and the defendants to grant various concessions to the defendants as set out in the affidavit or not. In fact, from the writ petition which the defendants have filed it would appear that there is no agreement to grant any concession to the defendants and that the defendants are seeking various reliefs in the writ petition as a result of which they would have the benefit of these concessions. In any case, the stand of the defendants in connection with granting of these concessions is not clear in the absence of any written statement. In this context, by asking for prior inspection of these documents before filing their written statement the defendants seem to be embarking on a fishing enquiry in order to ascertain the exact nature of correspondence which has ensued between the plaintiffs and the Reserve Bank of India in order that they may mould their defence on the basis of these documents. In these circumstances, where production of documents is asked for in order that the defendants may mould their defence in the light of documents of which they want production and inspection, the discretion ought not to be exercised in favour of the defendants.

13. In the case of Ram Sewak Yadav Vs. Hussain Kamil Kidwai and Others, the Supreme Court was required to consider an application for discovery and inspection of ballot papers in possession of the Returning Officer in an election petition. This case is not directly relevant to the construction of the provisions of Order 11 Rule 14, But the Supreme Court in that case observed that power to order inspection of ballot papers may be exercised in a proper case. It said that an order for inspection cannot be granted to support a vague claim made in the petition not supported by material facts or to fish out evidence to support such pleas. In the absence of any specific plea relating to ballot papers, inspection cannot be ordered merely so that the petitioner may find out pleas on the basis

of inspection obtained.

14. In the present case, it is not at all clear what the case of the defendants in connection with granting of concessions to them, is. It is necessary, therefore, that they should file a written statement and set out their defence to the suit. Thereafter if these documents are relevant for the purpose of establishing their defence, it will be open to the defendants to take appropriate proceedings for production and inspection of these documents. But it cannot be done prior to filing their written statement because there are no circumstances which require such production prior to the filing of their written statement.

15. It is also pointed out by the plaintiffs that under Order 11 Rule 14 production can be granted of documents only if they relate to any matter in question in such suit. From the present state of the pleadings it cannot be said that these documents relate to any matter in question in the suit because so far only a plaint has been filed and in the plaint there is no reference to these documents.

16. The plaintiffs have also claimed privilege in connection with these documents. This plea has not been pressed at the hearing of the Chamber Summons. Hence I am not examining the plea. Looking to the nature of documents and the state of pleadings, in my view, this is not a fit case where discretion should be exercised in favour of the defendants. In fact, in the earlier Chamber Summons also, inspection was refused. The only reason why the present Chamber Summons is taken out is because in the earlier Chamber Summons the defendants had not asked for production of documents prior to their inspection.

17. Chamber Summons is, therefore, dismissed with costs.