
(1991) 03 MP CK 0028
In the Madhya Pradesh High Court
Case No : F.A. 52/85

Jagdambe Niwad Co.

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 26-03-1991

Acts Referred:

Constitution of India, 1950 — Article 15(4), 39A
Court Fees Act, 1870 — Section 35

Citation : AIR 1992 MP 35 : (1992) JLJ 10

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : A.M. Naik, for the Appellant; N.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

T.N. Singh, J.—This appeal was admitted on 22-2-1986, On that date, the question of court-fees was left open. Indeed, from order dated 2-1-1986, it appears, exemption was claimed in respect of court-fees.

2. Accordingly, the left-over question has to be decided first. In the memorandum of appeal, at para 5, it is stated that the appellant Banwarilal, carrying on business under the name and style M/s. Jagdame Niwad Company, is an ex-serviceman, drawing monthly pension of Rs. 300/- and his annual income from all sources did not exceed Rs. 6000/-. It is also stated that he was a member of a weaker section of society. He accordingly claimed exemption from payment of court-fees, invoking Government Notification No. F.9.83-B-XXI, dated 1-4-1983. An affidavit also he filed in that regard at the time of presentation of the appeal along with copy of the Notification. Subsequently, on 14-2-1986, he filed two certificates -- one by Tahsildar himself certifying appellant being a member of a backward class (Soni) recognised as such by the State Government in the Schedule, published in 1982; the other by a Municipal Councilor which the Tahsildar endorsed; certifying appellant's monthly income as Rs. 400/-.

3. A few words are to be said only on the construction of the Notification as appellant's entitlement is contested, though not by the Collector, who has not been noticed in this matter. As a question of law is to be decided only at this late stage, I find it unnecessary to notice Collector to contest appellant's claim that his annual income was not over Rs. 6,000/-. That apart, having taken the view, after hearing parties on merit, that the appeal is liable to be dismissed, further protraction I found unnecessary and unwarranted. In any case, the appeal having been admitted, hearing on merit could not be denied.

4. Of the Notification, relevant portion is extracted:

"In exercise of the powers conferred by Section 35 of the Court-fees Act, 1870 (No. 7 of 1870), the State Government hereby remits in the whole of the State of Madhya Pradesh, the Court-fees mentioned in Articles 1-A and 2 of the first schedule and Articles 5, 17 and 21 of the Second Schedule to the said Act payable on plaint by the following categories of persons whose annual income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand, namely:

(Items i to vii) not relevant and hence omitted.

(viii) person belonging to the weaker section of society."

In Laxmi Narayan Vs. Madan Mohan and Another, I had an occasion to construe the term "weaker section of society" and entitlement of the plaintiff/petitioner of that case under the Notification and I took the view that the Notification applied also to any person belonging to the "backward classes" notified as such pursuant to the provisions of Articles 15(4) and 16(4) of the Constitution and such a person would be regarded as a person "belonging to the weaker section of the society" as contemplated under Clause 8 of the Notification. I have seen no reason to depart from that view which is founded on the premises that object of the Notification is to grant exemption from payment of court-fees to persons suffering social, economical and socio-economical oppression and to encourage them individually to seek recourse of law to enforce their legal right and fight otherwise exploitation. This view, a Division Bench of this Court has endorsed in Ramji Sharma Vs. High Court of M.P., Jabalpur and Others, holding that "in respect of small claims of the small men of the weaker sections of the Society" quickest decision on merit of claims relating to them would fulfil only the Constitutional requirements of Article 39-A.

5. However, one question is res integra still. It is submitted that in the Notification, reference being made to the word "plaint" only, when such a person who claims to be beneficiary of the Notification is a plaintiff only, he would be exempted from payment of court-fees on the "plaint" filed. It is submitted, if he is not a plaintiff, but he loses when claim is made against him and he appeals, he cannot claim exemption. In other words, the exemption is only a one-time affair, but that the Notification also fixes the locus; in the trial Court only and in his capacity of a plaintiff only, he can avail the benefit contemplated under the

Notification. That argument has not appealed to me despite its charm and attraction derived from borrowed chambers. I do not think if reliance on norms of literal construction is acceptable in construing the Notification. That hold, I see bare and lightless. Evidently, the Notification is a benevolent provision and, in my opinion, the only legitimate and permissible norm of interpretation to be applied is not literal, but liberal and purposive. As held in Ramji Sharma (supra), the Notification subserves, inter alia, the Constitutional imperative underlined in Article 39-A by which the legal system is required to promote justice "on a basis of equal opportunity". Thus, though "free legal aid" the State is not able to provide fully to a person of a weaker section as contemplated thereunder, as and when he is required to pay court-fee for redressal of any grievance, that is not to be denied to him to ensure that he is not denied reasonable and due opportunity of getting justice.

6. If the word "plaint" is strictly construed, there would be a total frustration of the Constitutional objective and of the purpose of the Notification. Where would be the equal opportunity if a person of the weaker section is charged by way of an exploitative design liability under a pronote which he denies, but the suit is decreed against him and he is not allowed to prefer appeal without payment of court-fees to challenge that decision? In my view, the word is used in denominative sense, to denote the entire class of documents to which reference is made in the specified articles of the Court-fees Act. In the first Schedule, Article 1-A, entry is as follows :

"1-A. Plaint, written statement pleading a set-off or counter claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in Section 3".

True, in Article 2 of the First Schedule, reference is to only, "plaint in a suit for possession u/s 9, Specific Relief Act." However, in Articles 5, 17 and 21 of Second Schedule, reference is to both, "plaint" or "memorandum of appeal."

7. A conjoint reading of the several Articles is necessary and is obvious if a true effort is to be made to divine the intent of the Notification and of the object behind it. It is an established canon of interpretation that a statute has to be read as a whole, section by section, word by word and no word is to be construed in isolation. No part of it and no word of it. (See, Reserve Bank of India v. Peerless General Finance AIR 1987 SC 1023). It has been recently held by their Lordships of the Apex Court that the safest guide to the interpretation of the statute is to seek the reason for the particular statute and that the words of a statute take colour from reason for it see, Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, Indeed, in this context, relevance of the maxim : *noscitur a sociis* deserves also to be stressed and, therefore, the word "plaint" has to be construed liberally to give it meaning in the context of the other words with which it keeps company in the specified Articles. Recall I must, however, in this context Apex Court's dictum in Skandia Insurance Co. AIR 1987 SC 1184 that the object of a benevolent provision must not be nullified by

looking at it with "non-benevolent eyes and minds". Courts must try to avoid, their Lordships said, "patent injustice, anomaly or absurdity" so as to "permit and advance the object and purpose of the enactment". See, also *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, I reiterate that the word "plaint" has not been used to denote any choice made purposely and deliberately to deny exemption in respect of a memorandum of appeal. In due compliance with the Constitutional imperative of Articles 15(4) and 39A, exemption is contemplated under the Notification from payment of court-fees in respect of all pleadings included in the various specified Articles of the Court-fees Act to provide partial "legal aid" to the needy. It is the case simply of draftman's use of a particular technique of using the word "plaint" in denominative sense to eschew prolixity and promote brevity. In any case, it is also to be noted that the word "plaint" is defined neither in C.P.C. nor in the Court-fees Act. Had that been the case, there was scope for controversy. On the other hand, the established principle that appeal is an extension of the suit also supports the proposition which I found acceptable that "plaint" and "memorandum of appeal" are to be treated as pleadings of the same genera, and to both, the Notification applies.

8. In my view, for reasons aforesaid, both contentions pressed to oppose appellant's entitlement to exemption from court-fees are meritless. Saying so, however, I would still make it clear that appellant's entitlement has to be satisfied on another ground which I have not examined. True, prima facie, he has established that his annual income is less than Rs. 6,000/- but the Collector not being heard in that regard, final decision on that point cannot be pronounced.

9. For recovery of cash-credit loan of Rs. 20,000/- with interest, plaintiff/respondent had instituted the suit, Trial Court's decree is challenged mainly on three grounds. Firstly, the plaint was not verified and filed by a competent person. Secondly, the equitable mortgage was not enforceable because loan was drawn from Morar Branch of the Bank while the mortgage was created at Hazira Branch of the Bank and there was no nexus of that mortgage to the loan. Thirdly, only simple interest could be decreed because there was no pleading that compound had been contracted for.

10. While dealing with the first contention and perusing the plaint, what I find is that it is verified by "Manager, Punjab National Bank, Morar" and the signatory has not given his name. However, the main part of the plaint is also signed by the same person describing himself as plaintiff "Punjab National Bank, Head Office, Parliament Street, New Delhi, Branch office, Morar, Gwalior. "In the written statement, at para 15, the only objection raised is that "Branch Manager, Morar" had no right to institute the suit and nothing beyond that is stated to challenge presentation or verification of the plaint.

11. From documents which have come on record, it is clear that account was maintained by the defendant with Punjab National Branch, Morar Branch and he also got loan on that account. He executed Exs, P/1 and P/2, Hypothecation Agreements in favour of "Punjab National Bank" without specifying that any

particular branch of the Bank had the right to enforce those agreements. "Confirmation letter" as regards "balance of security", he also addressed not to any particular branch, but to the Bank. Those are Exts. P/5 and P/6. However, Ex. p/10 is a letter which his lawyer Shri D.K. Katare wrote to Shri S.K. Gupta, Manager, Punjab National Bank, Morar, complaining that the Branch Manager had illegally entered the premises of his client on 14-1-1982 to ask him to dispose of the whole house and factory for Rs. 50,000/- to which his client did not agree. He also complained that the godown of his client had been locked illegally.

12. On behalf of the plaintiff/ Bank, P.W. 3, Surendra Kumar Gupta gave evidence that from Sept. 1981 to Sept. 1983, he was Manager Morar Branch of the Bank. He proved the documents executed in connection with the loan. He also proved that in reply to defendant's lawyer's notice, Ex. P/10, reply as per Ex. P/1 i was given by him. He deposed that the plaint was signed and filed by him and that he held requisite authority from the Bank for taking that action. In his cross-examination, he stated that he had power of attorney which he had brought on the last hearing date. But, that was sent to the State Bank of India, Dhanbad, for registration. It appears, from the date of deposition, he had been posted at Dhanbad and from there he had come to give evidence. He was asked nothing else in his cross-examination in regard to the alleged defect of verification or presentation of the plaint.

13. Provisions regarding signature and verification of pleadings are contained in Order 6, C.P.C. Rule 14 provides that the pleadings shall be signed by the party and his pleader, if any, and that when the party pleading is unable to sign the pleading by reasons of absence or for other good cause, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf. Rule 15 contemplates that every pleading shall be verified at the foot by the party or some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The other requirement contemplated under Sub-section (3) of Rule 15 is that the verification is to be signed by the person making it and he shall state the date and place where it was signed. Order 7, Rule 1(b) contemplates name, description and place of residence of the plaintiff to be given in the plaint. P.W 3 was the person who admittedly name, description was dealing with the defendant on behalf of the Bank and he admittedly was the Manager of Morar Branch of the Bank. He was an Officer of the Bank and represented the plaintiff in filing, signing and verifying the plaint. There is no requirement contemplated in law that when the plaintiff is a juristic person, like a Bank statutorily incorporated, as in the instant case, the person suing on behalf of the plaintiff must expressly state the source of the authority in the plaint for his signing and verifying the same. In the instant case, however, at para 15, a specific statement is made that plaintiff/Bank had a Branch at Morar and the Manager had the general power of attorney and he was authorised to institute the suit on behalf of the Bank and also authorised to verify the plaint. Thus, though at time of hearing, power of attorney could not be produced by P.W. 3, that defect cannot be deemed fatal as at the initial stage itself, averment in that

regard was made which the defendant did not deny in the written statement specifically. The existence of power of attorney not being denied in specified terms, that had not to be proved by production and, in my view, the trial Court exercised its discretion rightly in not framing any issue when defendant did not press for that. plaintiff could be faulted when issue was framed whereunder onus could be laid on the plaintiff to give evidence for issue to be decided in his favour. According to me, Rules 1 and 2 of Order 14, C.P.C., contemplate that a judgment cannot be assailed by any party if any question is not agitated in the pleadings to form an issue requiring decision to be given thereon by the Court. Order 14, Rule 1(2) contemplates clearly that the defendant must allege any proposition of fact or law to constitute his defence in respect of which any particular issue can be framed. I, therefore, find no merit in the first contention which Shri Naik has pressed on behalf of the defendant/ appellant.

14. In support of his second contention, Shri Naik cited the *The Delhi Cloth and General Mills Co. Ltd. Vs. Harnam Singh and Others*, and *Syed Hamid Hosain v. Md. Karim* AIR 1970 Calcutta 505 to bolster the proposition that the Morar Branch and the Hazira Branch Were two distinct entities and that the equitable mortgage created in favour of one particular Branch of the same Bank was not enforceable by the other Branch of the Bank. I have failed to comprehend counsel's ingenuous argument that a plaintiffs personality, specially when it is a juristic personality, can be legally split in the manner proposed. In the instant case, the plaintiff is Punjab National Bank which has branches not only in different parts of Gwalior City, but also in different parts of the State of Madhya Pradesh and throughout the country. *Delhi Cloth Mills*" case (supra), in my view, dealt with a different matter and a different branch of law. The suit was not between a Bank and its customer. Indeed, Bank was not a party to the suit. At para (43a), however, some rules of usual banking transaction are indicated. It is stated that the obligation of Bank to pay the cheques of a customer rests "primarily" on the branch at which he keeps his account and the bank can rightly refuse to cash a cheque at any other branch. The customer must make demand for payment at the branch where his account is kept before he has a cause of action against the Bank. At para 44, it is stated, the general rule that a debtor must seek his creditor is relaxed in case of banks to the extent, but there was nothing to prevent party to reach at a contrary agreement. The Calcutta case was in relation to affairs and administration of an Imambarah founded under a Waqfnama and provisions of Religious Endowments Act 1863 and Bengal Waqf Act, 1934 came to be construed there. That decision, in my view, can have no relevance of any manner to the question mooted. Evidently, *Delhi, Cloth Mills*" case (supra) did not deal with the right of a Bank or its different branches to proceed against a debtor of the Bank; converse was the case there of the Banker being creditor holding deposit of the customer.

15. In Companies Act, 1955, Section 2(5) speaks of "banking company" and also of the Banking Companies Act, 1949, being applicable to such a class of Companies. Section 5(cc) of the Banking Regulation Act, 1949 defines the terms

"branch or branch office" to refer, inter alia, "any place of business where any other form of business referred to in Subsection (1) of Section 6 is transacted" and according to Section 6(3)(a), "in addition to the business of banking, a banking company may engage in any one or more of the (specified) forms of business, such as borrowing, raising or taking up money; the lending or advancing of money either upon or without security" etc. etc. Evidently, the Banking Company may carry on the specified business through any of its branches with different customers without its juristic personality being split in any manner. The different branches or branch offices do not have under the said Act, separate or distinct personality and they cannot be considered as a separate entities. All officers of the Banking Company transacting business at any particular branch or branch office act on behalf of the Banking Company and in that regard, accordingly, the Banking Company invests such officers with requisite powers and authorities of which the sole repository is the Banking Company itself.

16. Thus, it has to be regarded merely a matter of convenience (in this case obviously, it was due to statutory compulsion) that equitable mortgage was made in favour of Hazira Branch though loan was advanced by the Morar Branch. It is not disputed that Morar Branch is situated within cantonment area in respect to which the power contemplated u/s 58(f), Transfer of Property Act could not be exercised. Indeed, it is also not denied that the Notification issued by the State Government extends to Gwalior City but not to the cantonment and the Hazira Branch is outside the cantonment area and is in the city, area. The plaintiff/ Bank could legally and validly accept security u/s 6 of the said Banking Act for any loan advanced. Hazira Branch had accepted the security on behalf of the plaintiff Bank of which Morar Branch was equally a part as was Hazira Branch. The second contention of Shri Naik also fails.

17. In so far as counsel's third contention is concerned, the least said about that is best. Counsel's reliance on *Kamarji v. Raghunath* (1983 RN 283) merely establishes the settled law that material facts, not pleaded, could not be proved in evidence. In my opinion, the existence stipulation between parties, namely, the plaintiff Bank and the defendant/appellant in regard to payment of compound interest cannot be said by any stretch of imagination to be a material fact; at the most, that was part of inconsequential "particulars" and if the defendant/appellant was so minded, he could exercise his right to call for better particulars under Order 6, Rule 5, C.P.C. The last contention of Shri Naik is not only insubstantial, but it has no merit at all.

18. For all the aforesaid reasons, the appeal fails and is dismissed. The judgment and decree passed by the trial Court are affirmed. However, I make no order as to costs in this appeal.