

(2015) 01 KAR CK 0458
In the Karnataka High Court
Case No : MFA No. 9591 of 2012 (SFC)

Karnataka State Financial Corporation	APPELLANT
Vs	
Yantra Udyog and Others	RESPONDENT

Date of Decision : 21-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 24
State Financial Corporations Act, 1951 — Section 31, 31(1)(aa), 32(1)

Citation : (2015) 2 AKR 258 : (2015) 3 KCCR 2199

Hon'ble Judges : S. Sujatha, J.; K.L. Manjunath, J.

Bench : Division Bench

Advocate : Bipin Hegde, for the Appellant; S.S. Haveri, Advocates for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.

1. Though the matter is listed for admission by consent of both the parties it is heard on merits. The facts of the case, in brief, are as follows:

"(a) The appellant-Karnataka State Financial Corporation had advanced loan to the respondents. For recovery of dues the appellant filed a petition under Sections 31(1)(aa) and 32(1) of the State Financial Corporation Act, 1951 [Central Act No. LXII of 1951] (in short "the Act").

(b) At the first instance the petition was filed before the City Civil Court, Bangalore in Misc. No. 130/200/7 and the same was filed on 15.02.2007. Thereafter, the appellant having noticed that the City Civil Court, Bangalore has no territorial jurisdiction to entertain the petition filed an application under Order VII, Rule 10 of the Code of Civil Procedure, 1908, requesting the court to return the petition papers to represent the same before the competent Court. Accordingly, the order came to be passed on 19.09.2007. Operative portion of the said order reads thus:

"The petition filed by the petitioner is allowed.

The petitioner is at liberty to take back the original petition and he is at liberty to present it before the proper jurisdictional Court.

Acting under Order 7, Rule 10 of CPC, office is directed to return the original petition to the petitioner directing him to present it before the proper jurisdictional court within 30 days from the date of receipt of the petition."

(c) The Registrar of City Civil Court, Bangalore had returned the petition papers filed by the appellant on 01.01.2010. Thereafter, the appellant represented the petition papers before the District Judge, Bangalore Rural District, Bangalore on 13.01.2010 within 13 days from the date of return of the petition papers from the City Civil Court, Bangalore. The objections were raised in regard to maintainability of the petition on the question of limitation. The Principal District Judge, Bangalore Rural District, Bangalore by the order dated 22.06.2012 dismissed the said petition on the ground that as on the date of filing of the petition before the said Court, i.e., on 13.01.2010, the petition was barred by limitation. Aggrieved by the said order the present appeal is filed."

2. We have heard the learned counsel Mr. Bipin Hegde appearing for the appellant and learned counsel Mr. S.S. Haveri, for respondents.

3. The contentions of Mr. Bipin Hegde are as hereunder:

"(i) According to him, the Court below has committed an error in not noticing the fact that on 15.02.2007 the petition was filed before the City Civil Court, Bangalore under Section 31 of the Act was well within time. Since the said court had no territorial jurisdiction to entertain the petition the appellant had filed an application under Order VII, Rule 10 of CPC seeking return of the papers to re-present the same before the competent Court. The same was allowed reserving liberty to the appellant to re-present the petition before the jurisdictional court within 30 days from the date of return of the petition.

(ii) According to him, the papers were returned to him on 01.01.2010 and the same was represented before the Principal District and Sessions Judge, Bangalore Rural District, Bangalore on 13.01.2010. Therefore, it cannot be held that as on the date of re-presentation of the petition on 13.01.2010 the same was barred by limitation.

(iii) According to him, the learned District Judge has committed an error in dismissing the petition by considering the date of presentation of the petition as 13.01.2010 without appreciating the provisions of Order VII, Rule 10 of CPC. Further, the Court below has also committed an error in holding that if the case had been transferred from City Civil Court, Bangalore to Principal District and Sessions Judge, Bangalore Rural Court, Bangalore under Section 24 of CPC the limitation could have been saved. According to him, provisions of Section 24 of CPC cannot be made applicable to the facts and circumstances of the case. In the circumstances, he requests the court to allow the appeal and set aside the order

passed by the trial Court."

4. The learned counsel Mr. S.S. Haveri for respondents submit that the trial Court has not committed any error in dismissing the petition because the order was passed only for return of petition papers on 19.09.2009 and that the appellant was required to re-present the same within 30 days from the date of the order. Since the petition papers were re-presented on 13.01.2010 the petition filed by the appellant was time barred. He alternatively contends that even if we consider the date of presentation of the petition before the City Civil Court, Bangalore the case filed by the appellant was time barred. In the circumstances, he requests the court to dismiss the appeal.

5. Having heard the learned counsel for parties the only point to be considered by this Court in this Appeal is:

"Whether the trial Court is justified in dismissing the petition as time barred taking into consideration the date of representation of the petition by the appellant as 13.01.2010 without considering the time spent before the City Civil Court, Bangalore in view of the order passed under Order VII, Rule 10 of CPC?"

6. Admittedly, the petition was presented on 15.02.2007. Appellant having realized the mistake committed in presenting the petition before a wrong court had filed an application under Order VII, Rule 10 of CPC, which application came to be allowed on 19.09.2009 granting liberty to the appellant to represent the papers before proper court within 30 days from the date of return of the papers from the City Civil Court, Bangalore. The papers were returned by the City Civil Court, Bangalore on 01.01.2010 and the same is re-presented before the Principal District and Sessions Court, Bangalore Rural District, Bangalore on 13.01.2010. If we consider the date of return of the papers by the City Civil Court, Bangalore as 01.01.2010 and that the papers were re-presented before the Principal District and Sessions Court, Bangalore Rural District, Bangalore on 13.01.2010, no court can hold that the same was barred by limitation.

7. According to us, as rightly pointed out by the learned counsel Mr. Bipin Hegde, the trial Court has mis-understood the provisions of Section 24 of CPC and Order VII, Rule 10 of CPC. In this case the order has been passed under Order VII, Rule 10 of CPC by the learned Judge of City Civil Court, Bangalore taking into consideration that the petition was filed before the wrong court. In such case, Section 24 of CPC has no application. Section 24 of CPC could be pressed into service if any application is filed by the parties to transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or withdraw any suit, appeal or other proceedings pending in any Court subordinate to it, and try or dispose of the same; or transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or re-transfer the same for trial or disposal to the Court from which it was withdrawn."

8. In the instant case, application has not been filed under Section 24 of CPC

because the parties do not contend that City Civil Court, Bangalore has territorial jurisdiction or pecuniary jurisdiction to entertain the petition, since City Civil Court, Bangalore had no territorial jurisdiction the application was filed under Order VII, Rule 10 of CPC.

9. In order to appreciate the contentions, it is proper for us to refer Section 24 of CPC as also Order VII, Rule 10 of CPC, which reads thus:

"Section 24: General power to transfer and withdrawal.-

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceedings pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceedings pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn."

ORDER VII, RULE 10. RETURN OF PLAINT.--(1) Subject to the provisions of Rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation.--For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule."

10. Considering the provisions as aforesaid, we are of the view that the learned trial Judge has committed an error in holding that the representation of papers by the appellant on 13.01.2010 is barred by time. Accordingly, we set aside the said finding.

11. So far as the other finding on the point that whether the petition filed by the appellant before the City Civil Judge, Bangalore on 15.02.2007 was barred by limitation or not has to be considered separately by framing point for consideration. We keep open the said contention granting liberty for the respondents to agitate the same before the trial Court. In the result, the appeal is allowed. The order passed in Misc. No. 9/2010 on 22.06.2012 by the Principal District and Sessions Judge, Bangalore Rural District, Bangalore, is set aside, directing the Court below to dispose of the petition on merits including question of limitation to find out whether on the date of presentation of the petition before

the City Civil Judge, Bangalore was barred by limitation or not.

Both the parties shall appear before the trial Court on 09.03.2015 without any further notice.