
(2011) 04 PAT CK 0202
In the Patna High Court
Case No : First Appeal No. 205 of 2000

Lachhman Das Nirmal Kumar Pvt. Ltd.	APPELLANT
Vs	
Central Bank of India and Others	RESPONDENT

Date of Decision : 15-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0202

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—The Plaintiff has filed this first appeal against the judgment and decree dated 10.5.2000 passed by Sri S.M. Nasimuddin, Sub Judge XV, Patna in Title Suit No. 106 of 2000 rejecting the plaint of the Plaintiff-Appellant under Order 7 Rule 11 of the Code of Civil Procedure.

2. It appears that Title Suit No. 119 of 1978 was filed by the Defendant No. 1 against the Plaintiff and Defendant No. 2 which was transferred to Debt Recovery Tribunal and it was registered as P.T. Case No. 241 of 1998. The said case was instituted by the Bank for recovery of loan advanced to Defendant No. 2. The Plaintiff executed equitable mortgage in favour of the bank. The said suit was decided by the Tribunal on 23.7.1999. A certificate was also issued which is pending before the Defendant No. 3-Respondent for execution of the same. The appeal filed by the Plaintiff was dismissed. Therefore, the Plaintiff filed suit praying therein for declaration that the Plaintiff's liability stands discharged because the property of Defendant No. 2 has already been attached by the Defendant No. 3.

3. The Respondents filed an application under Order 7 Rule 11 read with Section 151 CPC on 10.4.2000 and prayed for rejection of the plaint on the ground that suit is not maintainable because of bar u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act and also the suit is barred by law of limitation.

4. After hearing the parties, by the impugned judgment and order the learned

court below held that the suit is barred u/s 18 and 30 of the Recovery of Debts Due to Banks and Financial Institutions Act and, therefore, the suit is not maintainable and rejected the plaint under Order 7 Rule 11.

5. The learned Counsel appearing on behalf of the Appellant submitted that the loan was advanced to Respondent No. 2 and the Appellant is the guarantor. The Respondent No. 2 also filed Title Suit No. 49 of 2000. In that case also the point was raised by the Central Bank that the suit is not maintainable and application filed before this Court under Order 7 Rule 11 CPC was rejected then the Bank filed another application under Order 41 Rule 2 CPC for deciding the maintainability of the suit as preliminary issue which too was rejected by the trial court. Against the said rejection order the Central Bank filed Civil Revision before the Hon'ble High Court. The decision of the Hon'ble High Court is reported in Central Bank of India and Another Vs. Laxman Wire Industries Ltd. and Others . All the questions involved in this present suit have been decided by the High Court and, therefore, this first appeal is covered by the said decision. The learned Counsel further submitted that before Debt Recovery Tribunal, the Defendant No. 2 raised a counter-claim but the same was not adjudicated upon by the Tribunal as it was powerless in the said matter. It was pleaded that they had entered into financial accommodation with the Bank on executing equitable mortgage by deposit of title deed. Due to devastating floods in August, 1975, the debtor incurred serious loss. The said claim was not adjudicated and, therefore, aforesaid suit was filed. The learned Counsel further submitted that the Bank has already attached the property of the Defendant No. 2 and, therefore, the present Appellant filed the suit praying for declaration that the Plaintiff stands discharged from its liability which is never barred u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act. On these grounds, the learned Counsel submitted that the impugned judgment and decree are liable to be set aside.

6. On the other hand, the learned Counsel appearing for the Bank submitted that even if it is held that the suit is not barred u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, then also the plaint is liable to be rejected on the ground that the plaint does not disclose cause of action for the suit and in fact, the suit has been filed for circumventing the orders of the Debt Recovery Tribunal. The learned Counsel further submitted that for finding out as to whether the plaint discloses a cause of action, the whole plaint is to be looked into and in this case, from perusal of the plaint, it appears that no such cause of action has been disclosed.

7. In view of the above contentions of the parties, the point arises for consideration is as to "whether the impugned judgment/order is sustainable in the eye of law" or "whether the plaint is liable to be rejected under order 7 Rule 11"?

8. It appears that this question has already decided by this Court in a suit filed by the Defendant No. 2 who is the borrower. The borrower has filed suit wherein this Appellant was also party. The decision has been reported in Central Bank of

India and Another Vs. Laxman Wire Industries Ltd. and Others . This Court after considering various provisions of the Act held that the suit is maintainable. It appears that in that case, the trial court has rejected the application under Order 7 Rule 11 CPC but in the instant case, the said application filed by the Central Bank, Respondent has been allowed by the trial court and the plaint has been rejected. So far this decision is concerned, the learned Counsel appearing on behalf of the Respondent did not raise any objection but according to the learned Counsel, the plaint does not disclose cause of action and, therefore, the plaint is liable to be rejected under Order 7 Rule 11(A) CPC In support of his contention, the learned Counsel relied upon a decision reported in I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, .

9. From perusal of the decision, it appears that in that case, the application was filed by the Defendant praying for rejection of the plaint under Order 7 Rule 11(A) CPC on the ground that the plaint does not disclose cause of action. That question was gone into and by the Courts below, the said application was rejected. The Apex Court held that mere repeated use of word "fraud" in the plaint is not sufficient to disclose cause of action and allowed the appeal and the plaint was rejected so far the I.T.C. Ltd. is concerned. In the present case, it may be mentioned here that the Central Bank of India never prayed for rejection of the plaint on the ground that it do not disclose a cause of action. The only contention raised by the Respondent Bank is that it is barred u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act. From perusal of the impugned judgment also, it appears that no such question was raised and the learned Court below has also not examined the fact in that light. From perusal of the plaint, the allegation has been made that the Bank failed to preserve the pledged materials as well as the seized hypothecated materials nor did take any steps to make proper claim before the Insurance Company and, therefore, the Plaintiff security stood discharged and this cause of action arose when the Plaintiff learnt that the Bank is not in a position to return the pledged and seized hypothecated materials kept as securities against the said sanctioned loan and the Bank got the properties mentioned in the suit attached. Therefore, in the present case, a cause of action has been disclosed. Whether after full trial, the Plaintiff will be entitled to get the relief claim or not is not a ground for consideration while deciding the question as to whether the plaint is liable to be rejected under Order 7 Rule 11. In other words, the correctness or otherwise of the claim is not required to be gone into at this stage, as has been held by the Apex Court in the decision referred by the Respondent, Bank. From the statement made in the plaint if it does not disclose a cause of action then only the plaint can be rejected and for that purpose, the whole plaint is required to be gone into. As stated above, in the present case, this point was neither raised nor decided by the Court below. Further, from perusal of the plaint, it appears that cause of action has been shown by the Plaintiff. So far the bar u/s 18 of the Recovery of Debts Due to Banks and Financial Institutions Act is concerned, the same has already been decided by this Court in the suit filed by the borrower. It

is fully applicable in the present case also.

10. Considering the above facts and circumstances of the case, I find that the impugned judgment and order are unsustainable in the eye of law. Accordingly, it is held that the plaint filed by the Plaintiff could not have been rejected under Order 7 Rule 11 on the ground that it is barred u/s 18 and 30 of the Recovery of Debts Due to Banks and Financial Institutions Act.

11. In the result, this appeal is allowed and the impugned judgment and order are set aside. The matter is remanded back to the Court below for decision according to law.