

(2006) 12 BOM CK 0017

In the Bombay High Court

Case No : Writ Petition No. 6940 of 2005

Maharashtra State Electricity Board

APPELLANT

Vs

Niranjan Alloys Steels Pvt. Ltd., Aurangabad

RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 148, 149, 151, 2(2)
Constitution of India, 1950 — Article 227

Citation : (2007) 2 ALLMR 563 : (2007) 2 BomCR 76 : (2007) 2 CivCC 71 :
(2007) 5 RCR(Civil) 527

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : A.S. Bajaj, for the Appellant; S.V. Gangapurwala, for the Respondent

Final Decision : Dismissed

Judgement

V.R. Kingaonkar, J.—Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. This petition involves question whether inherent powers available u/s 151 of the CPC could be invoked by the trial Court for allowing extension of time to deposit deficit Court fees and restoration of suit when the plaint was rejected under Order VII, Rule 11 of the CPC due to non-payment of the required Court fees.

3. A resume of few facts may be set out in order to gather the dimensions of the disputed questions. A Special Civil Suit was filed by the respondent for recovery of damages and compensation to the tune of Rs. 853.50 lacs against the petitioner-M.S.E.B. There was deficit Court fees when the plaint was filed. An application was filed for grant of one month's time to deposit the remaining Court fees. After lapse of one month, again extension of time was sought which was rejected by the trial Court. The respondent filed yet another application dated 9-8-2002 seeking one week's time by way of last chance to make up the deficit Court fees or alternatively to allow him to deposit a cheque of Rs.

3,00,000/-. The alternative prayer was granted by the trial Court. The respondent deposited the cheque in the office of the trial Court. The cheque bounced and hence a notice dated 22-8-2002 was served on the respondent. On the same day i.e. 22-8-2002 the trial Court passed an order whereby, the plaint was rejected under provisions of Order VII, Rule 11 of the Civil Procedure Code. The respondent submitted an application dated 6-9-2002, whereby he sought permission to deposit the requisite Court fees (Rs. 3,00,000/-) alleging that there were sufficient funds in his bank account but due to mistake the Bank had failed to honour the cheque in question. The application of the respondent was registered as MARJI No. 906/2002. The petitioner appeared in the proceedings before the trial Court and resisted the application. The petitioner contended that the respondent had given a dud cheque only with a view to gain some time. The petitioner also contended that remedy of appeal is provided under the CPC since the order of rejection of the plaint would amount to "decree" within the meaning of section 2(2) of the Code. The in-charge Civil Judge considered arguments of both the parties and allowed the application of the respondent by the impugned order dated 3-9-2005. The respondent deposited the Court fees of Rs. 3,00,000/- along with the exemplary costs of Rs. 10,000/- as imposed by the trial Court for restoration of the suit by recalling the order of rejection of the plaint. The petitioner challenges the said order on the ground that there was erroneous and illegal exercise of power u/s 151 of the Code, particularly, when there is specific provision of appeal against such order of rejection of the plaint.

4. Mr. Bajaj, learned counsel appearing for the petitioner would submit that the dismissal of the plaint under Order VII, Rule 11 is an appealable order and, therefore, section 151 of the CPC could not be invoked. He contended that inherent powers ought to be exercised very sparingly and are not to be exercised when there is alternative remedy available under specific provisions of the Civil Procedure Code. He contended that the inherent powers cannot be exercised so as to nullify effect of the statutory provisions contained in the Civil Procedure Code. He seeks to rely on various authorities to which I shall refer later on. Per contra, learned counsel Mr. Gangapurwala, would submit that the impugned order is legal and proper. He argued that the respondent was not at fault but it was the Bank which committed the mistake when the cheque was presented for encashment. He argued that intention of the respondent was explicit from his act of seeking time and also the conduct of issuing the cheque in question. He would submit that filing of the appeal by the respondent would be more expensive because same Court fees will have to be paid and that is why the objection is raised by the petitioner. He too seeks to rely on some authorities which I shall refer in due course.

5. Before I proceed to consider the legal position and applicability of section 151 in the peculiar facts of this case, let it be noted that the copy of Memorandum issued by H.D.F.C. Bank (Exh. C) is placed on record. The Memorandum purports to show that the cheque was returned without encashment with endorsement "funds expected, please present again." The cheque was not returned due to

total absence of the funds or any instructions of the respondent to withhold the payment. The respondent made a categorical statement in his application (Exh. A) to the effect that the funds were with the bank and he has the extract of his account to show that more balance than the amount of cheque was lying with the H.D.F.C. Bank. He categorically stated that in spite of sufficient balance in the account, by mistake, the bank did not honour the cheque. He urged to allow him to deposit the Court fees amount of Rs. 3,00,000/- on the ground that he had issued the cheque in good faith when there was necessary balance in his account. He alleged that there was no mistake on his part and he could not be blamed for the error committed by the H.D.F.C. Bank while returning the cheque in question. The petitioner did not specifically deny the fact that the cheque was dishonoured due to mistake of the H.D.F.C. Bank. What is stated in the reply (Exh.B) is that the cheque has been dishonoured and the respondent made the application for gaining an unfair advantage by invoking section 151 of the CPC though he is guilty of an abuse of the process of Court. It is in this backdrop that the legality of the impugned order needs to be examined.

6. Mr. Bajaj, learned counsel seeks to rely on Shipping Corporation of India Ltd. Vs. Machado Brothers and Others, . The Apex Court in the given case held that if there is no specific provision which prohibits the grant of relief sought in the application u/s 151 of Civil Procedure Code, the Courts have all the necessary powers u/s 151 to make a suitable order to prevent the abuse of process of Court. It is further held that the Court exercising the power u/s 151, CPC first has to consider whether exercise of such power is expressly prohibited by any other provisions of the Code and if there is no such prohibition then the Court will consider whether such power should be exercised or not on the basis of facts mentioned in the application. Mr. Bajaj, further seeks to rely on Ram Chand and Sons Sugar Mills Pvt. Ltd. Vs. Kanhaya Lal Bhargava and Others, . The Apex Court, while discussing the scope of section 151 of Civil Procedure Code, held :

"The inherent power of a Court is in addition to and complementary to the powers expressly conferred under the Civil Procedure Code. But that power will not be exercised if its exercise is inconsistent with, or comes into conflict with, any of the powers expressly or by necessary implication conferred by the other provisions of the Code. If there are express provisions exhaustively covering a particular topic, they give rise to a necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed by the said provisions. Whatever limitations are imposed by construction on the provisions of S. 151 of the Code, they do not control the undoubted power of the Court conferred under S. 151 of the Code to make a suitable order to prevent the abuse of the process of the Court."

7. Mr. Bajaj, further seeks to rely on Shamsheer Singh Vs. Rajinder Prasad and Others, It is held by the Apex Court that an order rejecting a plaint under Order 7, Rule 11, CPC for non-payment of the additional court-fee demanded is appealable as a decree and when the order is reversed in appeal by the High

Court a second appeal would lie u/s 100, CPC on the ground that the decision of the first appellate Court on the interpretation of section 7(iv)(c) is a question of law. Mr. Bajaj, further seeks to rely on *G. Christudas and Another Vs. Anbiah (Dead) and Others*, The Apex Court has held that the power exercised u/s 151 of CPC is *ex debitojustitiae*. He also seeks to rely on *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal*, . The Apex Court, in the given case held :

".. that inherent jurisdiction of the Court to make orders *ex debito justitiae* is undoubtedly affirmed by S. 151. of the Code, but that jurisdiction cannot be exercised so as to nullify the provisions of the Code. It is further held that where the Code deals expressly with a particular matter the provision should normally be regarded as exhaustive."

8. Mr. Bajaj, learned counsel for the petitioner contended that the trial Court did not bother to discuss the ratio of authorities which were relied upon by the respondent/plaintiff. He would submit that the observations in *Suraj Bhan Gupta Vs. Union of India and Others*, *Padmalaya Panda Vs. Masinath Mohanty*, and *Bahadur Pradhani Vs. Gopal Patel*, are not in keeping with consistent view of the Apex Court. He would further submit that in view of specific provision regarding remedy of appeal under the Civil Procedure Code, the prayer of the respondent/plaintiff, that too at a belated stage, should not have been considered by the trial Court. According to Mr. Bajaj, the impugned order is perverse and liable to be quashed due to improper exercise of the inherent powers. He also seeks to rely on *Abdul Rahim B. Attar, Javed Abdul Rahim Attar, Zakir Hussein Abdul Rahim Attar and Maroof Abdul Rahim Attar Vs. Atul Ambalal Barot and Rajendra Ambalal Barot (Heirs and Legal Representatives of late Smt. Shantaben Ambalal Barot)*, and *Vishwanath Satwaji Gaikwad Vs. Laxman Abaji Kawale and Others*, So far as the view expressed in *Vishwanath Satwaji Gaikwad vs. Laxman Abaji Kawale and others (supra)* is concerned, it appears that the same may not be sustainable in view of observations of the Apex Court in *Salem Advocate Bar Association, T. N. vs. Union of India*, (2003) 3 SCC 49. In the given case, Single Bench of this Court held that when suit is dismissed on ground of plaintiff's failure to take proper steps for service of summons to defendants, remedy is provided under Order 9, Rule 5(1)(2) of the CPC and hence, it prohibits the Court from exercising inherent jurisdiction. The Single Bench held that the inherent power of the Court cannot override the express provision of the law. In the context the Apex Court in para 16 of *Salem Advocate Bar Association (supra)* has observed:

"16. Our attention has been drawn to Order 7, Rule 11 to which clauses (e) and (f) have been added which enable the court to reject the plaint where it is not filed in duplicate or where the plaintiff fails to comply with the provisions of Rule 9 of Order 7. It appears to us that the said clauses being procedural would not require the automatic rejection of the plaint at the first instance. If there is any defect as contemplated by Rule 11(e) or non-compliance as referred to in Rule 11(f), the court should ordinarily give an opportunity for rectifying the defects and in the event of the same not being done the court will have the liberty or the

right to reject the plaint."

Needless to say, case of Vishwanath Satwaji Gaikwad vs. Laxman Abaji Kawale and others (supra), with due respect, is not of much help to the petitioner.

9. In Abdul Rahim B. Attar and others vs. Atul Ambalal Barot and another (supra), it was a case pertaining to provisions contained in the Maharashtra Housing and Area Development Act. The Single Bench of this Court held that order to stay suit in the exercise of inherent powers was arbitrary and liable to be quashed. The Court, however, considered the question of exercising powers u/s 151 of CPC in the peculiar facts of that case. It is held that filing of the suit for eviction of a tenant on the ground specified under the Rent Control Legislation in force in the State cannot be said to be the abuse of process of the Court nor it was the case of the respondents that by filing the suits in question there had been any abuse of the process of the Court by the petitioners. It was under the given circumstances that the Single Bench held that section 151 of the CPC would not be attracted.

10. It appears that there is diversion of opinion between Patna High Court and Orissa High Court regarding availability of inherent powers u/s 151 of the Civil Procedure Code, in the cases where appellate remedy is provided for.

11. There cannot be any duality of opinion that an order rejecting a plaint under Order 7, Rule 11 of Civil Procedure Code, for non-payment of the additional court-fees demanded is appealable as a decree. The Apex Court held in Shamsheer Singh vs. Rajinder Prashad and others (supra) that it is appealable as a decree and even a second appeal would lie u/s 100 of CPC on the ground that the decision of the first appellate Court on the interpretation of section 7(iv)(c) is a question of law. It cannot be, however, overlooked that such rejection of plaint would be appealable when there is a controversy raised regarding correctness of the demand for court-fees under any particular provisions of the law. Where, there is controversy regarding interpretation of the provisions of the Court fees Act or Suits Valuation Act then the plaintiff is required to prefer an appeal against adverse finding which entailed dismissal of the suit. In the present case, however, there was no controversy raised by the plaintiff regarding liability to pay the demanded court-fees. Nay, he had applied for payment of such court-fees and was permitted to pay the same. He had deposited the cheque with the Court, although, it could not be encashed. He immediately filed next application, explaining that his bank account was having sufficient funds but due to fault of the Bank, the cheque was returned. This fact was not controverted by the petitioner before the trial Court. It appears, therefore, that there was sufficient substratum before the trial court to reach conclusion that the demand for court-fees was acceptable to the plaintiff/respondent herein.

12. The payment of court-fees is pre-requirement to entertain a suit. It is necessary to secure compliance of the fiscal statute which generates revenue. The provision contained in Order 7, Rule 11 of the CPC is of procedural nature.

Rule 11 of Order 7 was amended w.e.f. 1-2-1977. Then following proviso was Added:-

"Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

13. It is obvious that such proviso is part and parcel of sub-rule (b) of Rule 11 of Order 7, Civil Procedure Code. Therefore, the Court can extend the time fixed by it and condone the lapse even in worst cases when it would come to the conclusion that such refusal may cause grave injustice to the plaintiff.

14. There are cases and cases. The principles laid down by the Apex Court in various cases noted above may be culled out as follows :

(a) The inherent power of a court is in addition to and complimentary to the powers expressly conferred under the Code.,

(b) The inherent power available u/s 151, CPC is not controlled by any other provisions of the Civil Procedure Code,

(c) The inherent powers cannot be invoked where there is specific provision which prohibits the grant of relief sought in an application filed u/s 151 of CPC either expressly or by implication.,

(d) If there are express provisions exhaustively covering a particular topic, they give rise to the necessary implication that no power shall be exercised in respect of the said topic otherwise than in the manner prescribed in the said provision.,

(e) The inherent powers may be exercised ex debito justitiae in cases where it is necessary to avoid abuse of judicial process, though the powers are not to be exercised when the exercise thereof may be in conflict with what has been expressly provided in the Code or against the intention of the Legislation.

15. It need not be reiterated that the respondent/plaintiff had not disputed the liability to pay additional court-fees demanded. He had gained time under orders of the Court. The proviso appended to Order 7, Rule 11, CPC does empower the Court to grant adequate time and to allow payment of additional court-fees in order to avoid failure of justice. There was no adverse issue involved regarding interpretation of the Court fees Act. Mr. Gangapurwala for the respondent/plaintiff would submit that the main intention of the petitioner is to push the plaintiff to seek appellate remedy with a view to pay same court-fees on two occasions. For, the plaintiff has already deposited the court-fees of which refund would be quite less. Secondly, even if appeal is allowed then also the plaintiff will be again required to pay the same court-fees about which he had not raised any a dispute. He would also point out that lot of time is already spent on the

intricacies of the procedural aspect. He would submit, therefore, that in all fairness and to avoid abuse of process by the petitioner, the impugned order deserves to be maintained.

16. In Mahanth Ram Das Vs. Ganga Das, the Apex Court held that the Court can extend time under sections 148, 149 and 151 to pay deficit court-fees. The relevant observations may be quoted as below :

"Such procedural orders, though peremptory (conditional decrees apart) are, in essence, in terrorem, so that dilatory litigants might put themselves in order and avoid delay. They do not, however, completely estop a Court from taking note of events and circumstances which happen within the time fixed. For example, it cannot be said that, if the appellant had started with the full money ordered to be paid and came well in time but was set upon and robbed by thieves the day previous, he could not ask for extension of time, or that the Court was powerless to extend it. Such orders are not like the law of the Medes and the Persians."

17. In my opinion, there may be cases wherein the alternative remedy though available to a party may not be necessarily resorted to if there is only a procedural requirement to adopt the same. There may be a gray area where in spite of provision for a separate remedy in the Civil Procedure Code, it can be gathered that such alternative remedy does not necessarily debar the exercise of inherent powers u/s 151 of the Civil Procedure Code. The available remedy may not be so exhaustive. The use of inherent powers in teeth of such separate provision in the Code is a self imposed restriction evolved by the Courts. Ultimately, the inherent powers are available to do justice. In the present case, not only that the litigation is likely to be protracted if the respondent is asked to seek remedy by way of appeal but that there will be unnecessary financial burden on him. The petitioners' main thrust appears to see that the respondent shall suffer the ordeal of yet another round of litigation by seeking appellate remedy as well shall also be put under financial pressure. In the peculiar circumstances of the present case, the exercise of inherent powers by the trial Court cannot be stamped as arbitrary, capricious or perverse.

18. I am inclined to hold that the time could be extended by the trial Court irrespective of the fact that the remedy of appeal was also available. For, it was just a formality to prefer an appeal inasmuch as the plaintiff had not raised any question related to interpretation of the Bombay Court Fees Act or the Suits Valuation Act. Secondly, the plaintiff submitted the application immediately after he came to know about bouncing of the cheque. There was no substratum available to say that the cheque was returned only because cash amount was not at his credit. His statement on affidavit was not controverted in this context and moreover, the plaintiff had expressed willingness to deposit the deficit court-fees immediately without demur. The impugned order has not caused any prejudice to the rights of the petitioner. The rejection of the application would have, on the other hand, caused grave injustice to the plaintiff as he would have been put to excessive financial burden without a very serious lapse on his part. Normally,

when there is express provision in the CPC then the powers u/s 151, CPC may not be invoked. Still, however, such remedy must be of exhaustive character and the relevant provision should be such that there is express or implied prohibition on the exercise of powers u/s 151 of Civil Procedure Code. The intention of the legislature can be gathered from proviso appended to Rule 11 of Order 7. Considering the purport of the proviso and peculiar facts of the instant case, there appears no serious error committed by the trial Court while exercising the inherent powers u/s 151 of the Civil Procedure Code. There is no perversity committed by the trial Court in this behalf. It follows, therefore, that interference by this Court in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India is not called for.

19. In the result, the Petition is dismissed. No costs. Rule discharged.