

(1975) 03 CAL CK 0014
In the Calcutta High Court
Case No : Matter No. 6 of 1975

Oriental Bank of Commerce Ltd.

APPELLANT

Vs

Pashok Tea Co. Ltd. and Others

RESPONDENT

Date of Decision : 12-03-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : AIR 1975 Cal 476

Hon'ble Judges : Bimal Chandra Basak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bimal Chandra Basak, J.—This is an application for transfer of O. C Suit No. 48 of 1974 (Oriental Bank of Commerce Limited v. Pashok Tea Co. Ltd. and Ors.) now pending in Court of Subordinate Judge at Darjeeling. The plaintiff's case as made out in the said application is as follows : The plaintiff is a banking company. The defendant No. 1 is a public limited company owning tea estates, one known as Pashok Tea Estate in the District of Darjeeling and the other known as Lukan Tea Estate (also known as Mohara Tea Estate) in the District of Jalpaiguri, West Bengal. The defendant company was a constituent of the plaintiff. The defendant company was allowed to open an overdraft account with the plaintiff with effect from January, 1965 which was secured by hypothecation of the first defendant's entire tea crop already produced and to be produced in future in the aforesaid two tea estates including plant, machineries as well as stocks and stores. Initially the overdraft limit was fixed at Rs. 20,00,000 which was increased from time to time and ultimately fixed at Rs. 43,00,000. Thereafter in January, 1969 several title deeds were deposited with the plaintiff Bank to secure due repayment of the money which might be advanced by the plaintiff bank to the defendant company and might be standing in the plaintiff's credit. The defendants Nos. 2 to 4 are the Directors of the defendant Company. The defendant No. 5 has now ceased to be a director. The defendants Nos. 2 to 5

executed several deeds of guarantee and/or indemnity in favour of the plaintiff in respect of the amount or amounts which might be found due and payable by the first defendant to the plaintiff. By an agreement in writing dated 28th February, 1973 the plaintiff bank agreed to grant to defendant Bank loan overdraft and/or cash credit facilities to the extent of Rs. 43,00,000 for the purpose of cultivation, manufacture and despatch of tea during the season 1973-74 and subsequent seasons for Pashok Tea Estate and Lukan Tea Estate under certain terms and conditions. In February, 1973 by mutual agreement the said overdraft loan account was split into two accounts, namely. Fixed Loans Account and Overdraft Account. The limit in the first case was set at Rs. 16.00,000 and that in the other Rs. 21,29,000. In or about May, 1974 the defendant No, 3 deposited several title deeds with intent to create security and for due repayment of the loans advanced by the plaintiff to the defendant company. Pursuant to above from tune to time the defendant company borrowed various sums of moneys from the plaintiff and repaid divers sums to it. After giving credit to the first defendant for receipt of such payments and after taking into account all moneys lent and advanced or paid by the plaintiff to the defendant company or for or on behalf of or on account of the defendant company a sum of Rs. 35,71,047.91 paise became due and payable as on August 7, 1974. By a resolution duly passed by the Board of Directors of the defendant company in its meeting held on 16th May, 1974 the defendant company admitted and/or acknowledged that a sum of Rs. 16.00,000 in the Fixed Loan Account and a sum of Rupees 18,91,269,44 p. in the overdraft account was due and payable by the defendant company to the plaintiff bank as on 15th May, 1974. In view of the failure of the defendant company to repay the loan and in view of further breaches of said obligations, the plaintiff bank appointed one Sri Dugal, an officer of the plaintiff bank to supervise the working of the defendant company in terms of the agreement between the parties. It is alleged that the defendant company failed and neglected to give the sales figures and failed to act in terms of the said agreement. The defendant company in breach of the provisions of the said agreement sold various quantities of tea locally at an inordinate low price to the detriment of the plaintiff Bank without any consent from the plaintiff Bank and caused wrongful loss to the Bank. Difficulties were also created in the way of Sri Dugal in discharging his duties and by creating an atmosphere of terror and intimidation. Accordingly Sri Dugal was compelled to leave the garden. It is also alleged that the company has also failed and neglected to pay various statutory dues, like Employees' State Insurance dues, Provident Fund dues, etc-Under these circumstances this suit was instituted by the plaintiff Bank at District Court on 11th of September, 1974 for a decree for Rs. 35,71,647.91 p. with interest, a decree in form 5 (a) or 5 of the Appendix "D" of the CPC as prescribed under Order XXXIV in Rule 4 of the Code of Civil Procedure; for declaration that the properties and assets referred to in the schedules to in the plaint are charged for dues of the petitioner and a decree for sale of the properties referred to in the schedules to the said plaint and for various other reliefs. After the institution of the suit the plaintiff made various applications including an application for appointment of a Receiver. On

the 7th of October, 1974 a consent petition was filed pursuant to which in order was made regarding the sale of tea manufactured in the Estate.

2. The reasons given in the petition for the transfer of this suit to this Court and which was repeated during submissions made before me are as follows :--

3. It is stated that inasmuch as the defendant had filed an application in this Court under Article 227 of the Constitution of India and u/s 115 of the CPC against an order passed by the Darjeeling Court on the 24th of December, 1974, the defendants had submitted to the jurisdiction of this Court. All the defendants in the suit reside and/or carry on business within the Original Jurisdiction of this Court. The defendant company has its registered office at Calcutta and as such it maintains all its relevant records relating to the dispute in respect of which the present suit has been filed, within the jurisdiction of this Court. The suit is for money lent and advanced and all transactions for lending such money have taken place from Calcutta within the Original Jurisdiction of this Court. The respondents will not be required to produce any evidence from its tea gardens inasmuch as the transactions on which the cause of action is based took place entirely within the original jurisdiction of this Court and the petitioner had no transaction or dealing with the tea estates which are situate outside the original jurisdiction of this Court. The branch office of the petitioner is situate in Calcutta from which all moneys were advanced. Accordingly, the petitioner, like the respondents, will be saved from taking its records and employees to Darjeeling Court if the suit is allowed to proceed at the said place. It was further stated that the transaction in respect of which the suit has been filed is really a transaction appertaining to the commercial work which can be conducted more efficiently and effectively in this Court than elsewhere in the State. It is stated that the defendants should also be benefited if the suit is transferred. They would not be liable to take their employees and records to Darjeeling.

4. This application is strongly opposed on behalf of the defendants. The main ground for objection is that no ground for transfer has really been made out and on the other hand the facts stated in the petition cannot be the grounds for such transfer. It is stated that at the dictation and pressure of the plaintiff Bank the company had to agree to hand over the management of the said Tea Estates to the petitioner's agents Messrs. J. Thomas & Co. (P.) Ltd. and M/s. Tea Consultancy & Plantation Services (India) Private Ltd. who took over the management on 6th May, 1972 and managed the said two tea estates up till 15th May, 1974. During such management the said agents of the petitioner had mismanaged the affairs of the business, resulting in huge loss of income and deterioration of the value of the properties of the said tea estates. The petitioner company is liable to reimburse respondent for loss and damages sustained due to the dishonest and negligent acts of misfeasance and non-feasance of its agents. It is stated that the plaintiff Bank had instituted a suit in the City Civil Court at Calcutta against the said two agents and the company for a preliminary decree for taking accounts between the plaintiff and the said agents on the

allegation that the plaintiff appointed the said agents for management of the said company for the relevant period. It was submitted the true nature of such "management" and the total sale during the said period are very much relevant for the disposal of the suit, it is stated that the relevant witnesses with the regard would be the employees in the tea estates and that the records of the tea estates would also be very material for the purpose of the same. It is denied that by moving this Court in its Revisional Jurisdiction, the defendant company had submitted to the Extraordinary Civil Jurisdiction of this Court. On the other hand it is stated that having filed the suit the petitioner Bank had voluntarily submitted to the Darjeeling Court. It is denied that the present suit is a suit relating to commercial work.

5. The principles regarding transfer of a suit to the High Court has been well settled by the three decisions of this Court, namely, Kalidas Roy and Others Vs. University of Calcutta and Others, ; Baburam Agarwalla Vs. Jamunadas Ramji and Co., , Rupendra Deb Raikut Vs. Ashrumati Debi and Others, . Applying the test laid down in these three cases, I am of the opinion that this is not a fit and proper case where an order should be passed transferring the said suit to this Court. In my opinion, the grounds put forward for such transfer are neither sufficient nor cogent. The question of submitting to the jurisdiction of this Court by proceeding under Article 227 of the Constitution of India and u/s 115 of the CPC cannot arise. The fact that the defendant company has made an application in this Court in its revisional jurisdiction cannot be a ground for transfer of the suit to this Court. The fact that all the defendants in the suit reside and carry on business within the original jurisdiction of this Court by itself cannot decide the matter. The records of the borrower may be within the jurisdiction of this Court but that by itself is not sufficient. It has got to be remembered that the suit has been filed by the plaintiff Bank itself in Darjeeling Court. It has chosen a forum. It has not merely relied on a personal decree but has asked for a mortgage decree. Further it may not be necessary to carry all the records from the Bank's Calcutta Office to Darjeeling Court in view of the provisions of Bankers' Books Evidence Act. This is also not a pure simple suit for money lent and advance. From the nature of the defence sought to be set up, it is quite clear that it cannot be said that the respondents will not be required to produce any evidence from its tea gardens. The manner in which the agents of the plaintiff ran the tea estates, what sales were effected by them, what amount should have been credited to the account of the defendant company would be very much relevant and for this reason the evidence of the employees of the tea estates and the records of the said tea estates would be very much relevant during the hearing of the suit. It is also to be remembered that the plaintiff is also relying on the activities of its agent. According to the plaintiff bank the defendant company prevented the said agent from performing his duties and thereby committed breach of the contractual obligations. This is also not a "Commercial Suit" as it is known in this Court,

6. This case does not involve difficult points of English law. The matters in

dispute are not pure questions of law. There is no allegation that the Darjeeling Court has dealt with any party with harshness and/or want of discretion or has been unfair to any party.

7. Having regard to the facts and circumstances of the case I am unable to hold that this suit cannot be efficiently or effectively heard or decided by the Darjeeling Court.

8. For all these reasons I dismiss this application with costs.