

(2002) 11 AP CK 0061
In the Andhra Pradesh High Court
Case No : CRP No. 741 of 2000

P. Savitha Krishna Reddy

APPELLANT

Vs

Andhra Bank

RESPONDENT

Date of Decision : 06-11-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (2002) 6 ALD 675 : (2002) 3 APLJ 293

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Vilas V. Afzulpurkar, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This civil revision petition is directed against the order dated 29.11.1999 in IA No. 856 of 1999 in OS No. 1211 of 1991 on the file of the Court of the II Senior Civil Judge, City Civil Court at Hyderabad.

2. The revision petitioner is the plaintiff in OS No. 1211 of 1991. The respondent herein is the 1st defendant in the said suit. For the sake of convenience the revision petitioner and the respondent are hereinafter referred to as the plaintiff and the 1st defendant respectively as they are arrayed in the original suit.

3. OS No. 1211 of 1991 is filed against the respondent herein and M/s. Uniloids Limited, a Public Limited Company, seeking a declaration that the liability of the plaintiff as surety for the credit facilities extended by the 1st defendant-Bank to the 2nd defendant-Company stands discharged and consequently the 1st defendant-Bank is liable to pay a sum of Rs. 12.86 lakhs with interest thereon to the plaintiff towards the amount covered by Fixed Deposit Receipts deposited by the plaintiff as security.

4. Pending the said suit, the 1st defendant-Bank filed IA No. 856 of 1999 u/s 10 of the CPC seeking stay of trial of OS No. 1211 of 1991, pending disposal of the

Transfer OA No. 1117 of 1996 on the file of the Debt Recovery Tribunal at Bangalore. In the affidavit filed in support of the said petition, it has been pleaded that M/s. Uniloids Limited which is the 2nd defendant in the suit availed a loan from the 1st defendant- Bank and since the said loan amount was not repaid, the 1st defendant-Bank was constrained to file OS No. 475 of 1991 on the file of the II Additional Judge, City Civil Court at Hyderabad, to which the plaintiff is made a party as 4th defendant. According to the 1st defendant-Bank, the plaintiff deposited title deeds of her house property with the 1st defendant-Bank as security for the loan availed by the 2nd defendant-company and subsequently she wanted to sell away her immovable property given as security for which the Bank agreed on condition of depositing the entire sale proceeds with the 1st defendant-Bank with option to the Bank to appropriate the deposited amount towards the loan account. The plaintiff agreed for the same and having sold the immovable property given as security deposited the entire sale proceeds with the 1st defendant-Bank by way of fixed deposit. Subsequently the amount covered by the said fixed deposit was appropriated by the 1st defendant-Bank towards the loan account. Thereafter the 1st defendant-Bank filed OS No. 475 of 1991 for recovery of amounts due under the loan availed by the 2nd defendant-Company and the same is being contested by the defendants. After the constitution of Debt Recovery Tribunals under Act 51 of 1993, OS No. 475 of 1991 was transferred to the Debt Recovery Tribunal at Bangalore and re-numbered as OA No. 1117 of 1996. Even before the transfer of the said suit to the Debt Recovery Tribunal, the fourth defendant therein filed OS No. 1211 of 1991 seeking recovery of amounts covered by Fixed Deposit Receipts furnished to the 1st defendant-Bank.

5. According to the 1st defendant-Bank the issues involved in both the said suits are common and the parties to both the suits are also common and since the subject-matter of OS No. 1211 of 1991 which is a later suit forms part of the subject-matter of OA No. 1117 of 1996 on the file of the Debt Recovery Tribunal, it is necessary to stay the trial of OS No. 1211 of 1991. Accordingly IA No. 856 of 1999 has been filed u/s 10 of the CPC seeking stay of trial in OS No. 1211 of 1991, pending disposal of the transfer of OA No. 1117/1996 on the file of the Debt Recovery Tribunal, Bangalore.

6. The plaintiff contested the said petition by filing a detailed counter stating that the issue involved in OS No. 1211 of 1991 is not the subject-matter of OA No. 1117 of 1996 since the 1st defendant-Bank itself admitted that they have already appropriated the amount covered by "FDR", which is the subject-matter of OS No. 1211 of 1991. It is further contended that OS No. 1211 of 1991 has to be independently tried since the Debt Recovery Tribunal has no jurisdiction to try the said suit. It is also pleaded that the said application having been filed at a belated stage cannot be entertained.

7. The Court below by order dated 29.11.1999 allowed IA No. 856 of 1991 holding that the issue in OS No. 475 of 1991 which is now renumbered as OA No.

1117 of 1996 and pending before the Debt Recovery Tribunal at Bangalore is directly and substantially in issue in OS No. 1211 of 1991 which is instituted subsequently, and therefore, the proceedings in OS No. 1211 of 1991 are liable to be stayed. Challenging the said order, the present civil revision petition has been filed.

8. Heard Sri Vilas V. Afzulpurkar, learned Counsel for the petitioner as well as Sri T. Veerabhadrayya, learned Counsel for the respondent.

9. Learned Counsel for the revision petitioner submitted that it is clear from a reading of the averments of the plaint in OS No. 475 of 1991 and OS No. 1211 of 1991 that the reliefs sought in both the suits are entirely different. Though the plaintiff in OS No. 1211 of 1991 was added as the fourth defendant in OS No. 475 of 1991, no relief was claimed against her and as a matter of fact it is stated in the plaint that the fourth defendant is made a party to the suit only for better appreciation of all the circumstances of the case. The learned Counsel also pointed out that the 1st defendant-Bank had already appropriated the amount covered by the FDR belonging to the plaintiff towards the loan account of the 2nd defendant-Company and OS No. 475 of 1991 was filed only for the balance of amounts due under the loan account. Since the said fact has been admitted by the 1st defendant-Bank in their plaint in OS No. 475 of 1991, the learned Counsel contends that the finding of the Court below that the issue in the previously instituted suit is directly and substantially in issue in OS No. 1211 of 1991, which is instituted subsequently is erroneous.

10. Sri T. Veerabhadmyya, the learned Counsel for the respondent-Bank submitted that appropriation of amount covered by the FDR belonging to the plaintiff is part of the loan transaction, availed by 2nd defendant-Company and since OS No. 475 of 1991 is filed for recovery of the amount due under the loan availed by the 2nd defendant-Company, the Court below rightly held that the issue in OS No. 475 of 1991 now pending before the Debt Recovery Tribunal at Bangalore as OA No. 1177 of 1996 is directly and substantially in issue in OS No. 1211 of 1991, and therefore, the impugned order staying the proceedings in O.No. 1211 of 1991 is in accordance with law and does not warrant any interference by this Court.

11. Before appreciating the rival contentions of the parties, it is necessary to note the admitted facts as can be seen from the pleadings in both the suits.

12. The plaintiff is the wife of the former Director of M/s. Uniloids Limited, the 2nd defendant-Company, which availed a loan from the 1st defendant-Bank. The plaintiff gave her house property as additional security for repayment of the loan amount due to the 1st defendant-Bank, but later with the permission of the Bank, she sold her house property and the sale proceeds were kept in fixed deposit with the 1st defendant-Bank. Subsequently the 1st defendant-Bank appropriated the amounts covered by the said FDR and credited the same to the loan account of the 2nd defendant-Company. Thereafter the 1st defendant- Bank

filed OS No. 475 of 1991 in the Court of the II Senior Civil Judge, City Civil Court at Hyderabad seeking a decree for recovery of the amount due under the loan account of the 1st defendant after appropriation of the amount covered by the FDR of the plaintiff. The said fact has been stated in para-5 of the plaint in OS No. 475 of 1991. In para-13 of the said plaint it has also been stated that the fourth defendant is made as a party to the suit for better appreciation of all the circumstances of the case. From the prayer in the suit it is clear that no specific relief is sought against the fourth defendant.

13. Subsequently the plaintiff (the 4th defendant in OS No. 475/1991) filed OS No. 1211 of 1991 against the 1st defendant-Bank as well as M/s. Uniloids Limited seeking a declaration that the liability of the plaintiff as surety stands discharged and consequently the 1st defendant-Bank is liable to pay her Rs. 12.86 lakhs towards the amount covered by the fixed deposit with interest thereon amounting to Rs. 84,978.80 Ps and also the future interest at 10% per annum. The contention of the plaintiff in the said suit is that her husband, who was the Executive Director of the 2nd defendant-Company was made to resign and there is a change in the Management of the Company at the instance of the 1st defendant-Bank, which was without her consent and therefore her liability as surety to the loan transaction stood discharged and the Bank is not entitled to appropriate the amount covered by the FDR belonging to her.

14. It is to be noted that though the said two suits were pending in the same Court and were being posted together for trial, on constitution of the Debt Recovery Tribunals, the suit filed by the 1st defendant OS No. 475 of 1991 was transferred to the Debt Recovery Tribunal at Bangalore and renumbered as OA No. 1117 of 1996 by virtue of Section 31 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

15. In the background of the above said facts, the question that arises for consideration is whether the proceedings in OS No. 1211 of 1991, which is a latter suit are liable to be stayed u/s 10 of CPC.

16. Section 10 of CPC runs as follows:

"70. Stay of suit :--No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court."

17. Obviously the object of Section 10 is to avoid parallel litigation and possibility of contradictory decisions in respect of same cause of action. The principle of Section 10 is attracted where the matter in issue in a suit is directly and substantially in issue in a previously instituted suit between the same parties. In such circumstances the Court in which the latter suit is filed is prohibited from

proceeding with the trial of that suit. One of the tests for determining the applicability of Section 10 is whether the final decision in the previously instituted suit operates as res judicata in the subsequent suit.

18. In the instant case, OS No. 1211 of 1991 is an independent suit in which a decree has been sought only against the 1st defendant-Bank for recovery of amounts which, according to the plaintiff/revision petitioner, are wrongly appropriated by the Bank towards the loan due from the 2nd defendant-Company. Admittedly, the 1st defendant-Bank has already appropriated the amounts covered by the fixed deposit belonging to the plaintiff and filed OS No. 475 of 1991 only for the balance alleged to be due from the 2nd defendant-Company. Though the parties are common to both the suits, as can be seen from the plaint in OS No. 475 of 1991 no relief is sought against the revision petitioner. In the plaint itself it is stated that the revision petitioner is made a party only for better appreciation of the facts. The fact that the suit claim in O.A.No. 1117 of 1996 (OS No. 475 of 1991) does not cover the fixed deposit belonging to the plaintiff/revision petitioner is not in dispute. The correctness of the appropriation of the amount covered by the FDR by the 1st defendant-Bank is not an issue in question in OA No. 1117 of 1996 (OS No. 475 of 1991), which is a previously instituted suit. Hence the final decision in OA No. 1117 of 1996 cannot be said to be in any way affecting the determination of issues involved in OS No. 1211 of 1991. The subject-matter of controversy between the parties in OS No. 1211 of 1991, which is a latter suit cannot be said to be directly and substantially in issue in the previously instituted suit. Hence, in my considered opinion the provisions of Section 10 of the CPC are not attracted and there is no reason to grant stay of trial in OS No. 1211 of 1991. The conclusion of the Court below that the issue in the previously instituted suit is directly and substantially in issue in the present suit is erroneous and therefore, the order under revision cannot be sustained.

19. However, the learned Counsel for the respondent while drawing my attention to the amended provisions of Recovery of Debts due to Banks and Financial Institutions (Act 51 of 1993), submitted that by virtue of the Amendment Act 1/2000 Section 19 of the Act has been amended empowering the Debt Recovery Tribunal to determine the counter-claim made by the defendants. The learned Counsel contended that OS No. 1211 of 1991 which is a cross suit can be treated as a counter-claim and therefore, the Debt Recovery Tribunal is competent to decide the issues involved in OS No. 1211 of 1991 also. The learned Counsel placed reliance upon the judgment of the Supreme Court in United Bank of India, Calcutta Vs. Abhijit Tea Co. Pvt. Ltd. and Others, , support of his contention and submitted that since the Debt Recovery Tribunal has jurisdiction to try and grant the relief sought in OS No. 1211 of 1991, it is appropriate to stay the proceedings in OS No. 1211 of 1991 u/s 10 of Code of Civil Procedure.

20. In view of the conclusion reached by me that the issue in OS No. 1211 of 1991 is not directly and substantially in issue in the previously instituted suit, I

am of the view that it is not necessary to go into the question regarding the jurisdiction of the Debt Recovery Tribunal to try OS No. 1211 of 1991.

21. Therefore, the impugned order is set aside and IA No. 856/1999 stands dismissed. Accordingly, the civil revision petition is allowed. There shall be no order as to costs.