

(2007) 12 CAL CK 0009
In the Calcutta High Court
Case No : A.S.T. No. 1799 of 2007

Pabitra Construction and Co.

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 19-12-2007

Acts Referred:

Citation : AIR 2008 Cal 103 : (2008) 1 CHN 937

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Ashoke Banerjee and Subhasish Ghosh, for the Appellant; Dilip Kumar Kumdu, Soumya Ghosh, Aniruddha Roy, Ayan Kumar Boral, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of the writ petitioner and is directed against order dated 1st October, 2007 passed by a learned single Judge of this Court by which His Lordship refused to grant any ad interim order of injunction at the time of passing direction for filing affidavit by the respondents. Being dissatisfied, the writ petitioner has come up with the present mandamus appeal.

2. The writ petitioner is a partnership firm consisting of three partners, namely, Amal Kumar Kayal, Kamal Kayal and Smt. Kakali Parui. In the writ application, the writ petitioner, represented by the first two above named partners, prayed for the following relief:

(a) A writ of mandamus directing the respondents to forbear from acting beyond their capacity and power conferred under the banking rules and norms;

(b) A writ of mandamus directing the respondents to pass the cheques as referred to in paragraphs hereinabove upon further presentation without any further delay or default;

(c) A writ of mandamus directing the respondents to withdraw, cancel the remarks issued while dealing with those cheques and also not to charge for such illegal imposition of return charges;

(d) A writ of certiorari commanding the respondents to transmit and certify the records of the case before this Hon"ble Court so that conscionable justice may be made to the petitioner by quashing the order for return of the said cheques being annexure "P-3" and "P-6" to this application;

(e) Rule NISI in terms of prayers (a), (b), (c) and (d) as above;

(f) Interim order directing the respondents to clear the cheques being annexure "P-3" and "P-6" to this application upon further presentation;

(g) Ad-interim order in terms of prayer (f) as above;

(h) Any other further or other order or orders and/or direction or directions on Your Lordship may deem fit and proper;

(i) Costs and incidentals to this application.

3. The grievance of the writ petitioner may be summed up thus:

(a) The writ petitioner/firm opened a current account with the respondent bank having its branch at Thakurpukur and at the time of opening of such account, it was agreed by the parties that any of the two partners of the firm would be entitled to operate the bank account. The writ petitioner obtained cash credit facility from the respondent-bank with overall limit of Rs. 20 lakh.

(b) In course of business transactions, disputes arose between Sm. Kakali Parui, one of the partners and the remaining two partners viz. Amal Kumar Kayal and Kamal Kaya,, as a result, Sm. Kakali Parui gave a written instruction to the bank not to clear any cheque unless all the three partners jointly operate the account in deviation from the earlier instructive given by the firm of operation of the Account by any two of the partners.

(c) In view of such instruction given by Sm. Kakali Parui, one of the partners, the bank refused to clear two cheques being annexure "P-3" and "P-6" to the writ application jointly issued by Amal and Kamal and such action on the part of the bank gave rise to the filing of the writ application.

4. As indicated earlier, after moving the writ application, the writ petitioner being represented by the aforesaid two partners prayed for mandatory injunction directing the respondent bank to clear the two cheques being annexure "P-3" and "P-6" to the writ application upon further presentation but the learned single Judge refused to pass any interim order to that effect.

5. Mr. Banerjee, the learned senior advocate appearing on behalf of the appellant, by referring to the various provisions of the Partnership Act, tried to impress upon us that all the partners having agreed with the bank that the said account would be operated by any two of the partners, the respondent bank

acted illegally in refusing to clear the two cheques on the basis of a separate instruction given by the third partner which is at variance with the initial instruction given by her at the time of opening of account. Mr. Banerjee contends that the husband of Kakali is an employee of the bank and the bank in connivance with the said husband of the private respondent has not cleared those two cheques. According to Mr. Banerjee, the business of the firm will be seriously jeopardized if the cheques are not cleared at the sweet will of the one of the partners and according to him, if the respondent partner is in any way dissatisfied with the conduct of the business by the other partners, she was free to proceed against the partnership firm or the partners for dissolution or other relief available under law. He, therefore, prays for passing an interim order directing the bank to clear those two cheques by complying with the initial instruction given by all the partners of the firm at the time of opening of the account.

6. Mr. Kundu, the learned advocate appearing on behalf of the bank, has opposed the aforesaid contention advanced by Mr. Banerjee and has contended that his client is not bound by the agreement between the partners of the partnership firm and if one of the joint account-holders asks the bank not to operate the Account in accordance with the agreement earlier entered into by the parties, the bank cannot ignore such instruction given by one of the joint account-holders so long the dispute is not resolved among the partners.

7. Mr. Kundu further contends that the learned single Judge in the facts of the present case has rightly refused to pass any interim mandatory order by which the writ petitioner virtually prayed for the final relief claimed in the writ application and, therefore, this Court should not interfere with the order passed by the learned single Judge.

8. Mr. Roy, the learned advocate appearing on behalf of the private respondent No. 5, the third partner, has supported Mr. Kundu and has contended that his client has the right to change the mode of operation of the Account and if such change is not agreed to by the other partners, to stop the operation of the Account at any point of time as according to him, the other two partners were depriving his client of her legitimate dues.

9. Therefore, the question that arises for determination in this appeal is whether the learned single Judge was justified in refusing the prayer for mandatory injunction claimed by the writ petitioner at the initial stage of the proceedings.

10. After hearing the learned Counsel for the parties and after going through the materials on record, we are of the opinion that if a joint account is opened by three individuals and specific instruction is given at the time of opening of such account that the same should be operated on the signature of any two of the partners, such fact cannot preclude any of the joint account-holders from giving fresh instruction to the bank to stop further transaction unless all the three partners operate such account conjointly and if such instruction is given to the

bank, the bank should immediately stop the operation of the Account and ask the parties to resolve their disputes among themselves.

11. We do not find any substance in the contention of Mr. Banerjee, the learned senior advocate appearing on behalf of the appellant, that once three partners have opened a joint account with Bank with specific instruction to operate the account in a particular way, one of such joint account-holders can decide to close such account or stop transaction in view of subsequent dispute. The position of partners in a partnership business is well known. All the partners are equally interested in case of profit and loss arising out of business and if all the three partners jointly open an account, one of them can subsequently decide not to continue with the said bank account and even give instruction to stop further transaction unless the dispute among them is resolved.

12. In case of a joint account opened by more than one person, one of the joint account-holders can definitely ask the bank even not to operate the account any further and in such a case, the bank cannot ignore the instruction of the aggrieved account-holder simply because he or she is merely one of the joint account-holders and that all the joint account-holders have not given such instruction. Similarly, if one of the joint account-holders decides to change the mode of operating the account, which was initially agreed to by the parties, the bank should not continue with the account based on the instruction initially given to it so long the dispute is not settled by the parties.

13. We, therefore, find that in the case before us, the action taken by the bank based on instruction of the one of the joint account-holders was quite justified.

14. In view of our above observations, there is no reason to interfere with the order passed by the learned single Judge and consequently, nothing remains to be decided in the writ application and accordingly, we dispose of the writ application itself in terms of the present order. The appeal, thus, is, dismissed.

15. In the facts and circumstances, there will be however, no order as to costs.

It is needless to mention that the two of the partners will be entitled to open a new account in their names and similarly, all the three partners are entitled to close the account in question on their joint request after settling their liability, if any, to the bank.

Rudrendra Nath Banerjee, J.

16. I agree.