
(1991) 01 DEL CK 0028

In the Delhi High Court

Case No : I.As. No. 5403, 10685, 11264 of 1990 in Suit No. 1934 of 1990

Rajendra Sethia

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 28-01-1991

Acts Referred:

Citation : AIR 1991 Delhi 285 : (1991) RLR 179

Hon'ble Judges : D.P Wadhwa, J

Bench : Single Bench

Advocate : P.N. Lekhi, with Lalit Bhasin and Atul Sharma, for the Appellant; S.K. Khanna, with Sandeep Aggarwal, for the Respondent

Judgement

1. These are three applications in a suit filed on 25-6-1990 seeking perpetual injunction. When the suit was filed there was only one defendant being the Punjab National Bank ("PNB" for short). First application is u/s 80(2) of the CPC and is by the plaintiff. Second application is under Order 6, Rule 17 and Section 151 of the Code and is again by the plaintiff. Third application is by the defendant and is under Order 14, Rule 2 and Section 151 of the Code. In the application seeking amendment of the plaint filed on 8-11-1990 the plaintiff also seeks to add six more defendants, namely (1) Reserve Bank of India, (2) Union of India through the Secretary, Ministry of Finance, (3) Essal Commodities Limited (In liquidation), (4) Frenzial Limited, (5) Shadreed Limited (also in liquidation), and (6) Jokai Tea Holdings Limited. Except for Reserve Bank of India and the Union of India, the defendants sought to be added, the other defendants are all based in London incorporated under English companies laws there. First application was filed by the plaintiff on 18-7-1990 along with another application (I.A. 5402/90) under Order 6, Rule 17 and Section 151 of the Code. In fact, the plaintiff filed as many as four applications under Order 6, Rule 17 and Section 151 of the Code including the present one. The other three applications were I.A. 4756/90, I.A. 5402/90 and I.A. 7372/90. All these three applications were dismissed on a statement made that the present application was comprehensive

in nature. The plaintiff also filed applications seeking interim relief under O. 39, Rules I and 2 and Section 151 of the Code and these were I.As. 4732/90 and 7371/90. Both these applications were disposed of without any orders being passed thereon on a statement made by learned counsel for the plaintiff that these would stand disposed of in view of an order made by the Supreme Court on 23-10-1990 in SLP (Civil) No. 1374 of 1990. In this order, the Supreme Court had said that "the transaction, if it took place, shall be subject to the order of the Court", while at the same time directing the High Court to finish the matter expeditiously.

2. In the third application, the defendant wants that before the other two applications of the plaintiff are decided, the questions of the locus standi of the plaintiff and jurisdiction of the Court shall be considered. It is stated that the suit itself is liable to be dismissed on the preliminary objection that this Court has no inherent or territorial jurisdiction to entertain the present suit as the plaintiff has been declared bankrupt in England and is not a discharged insolvent as per the bankruptcy laws in England and as such was incompetent to maintain the suit and further that all the parties had submitted to the jurisdiction of the English Courts.

3. In the plaint originally filed, the plaintiff stated that he and his relatives floated a company Essal Commodities in 1977 in England and was having dealings with various banks including the P.N.B. in England and was having business mainly with Nigeria. This company suffered on account of revolt in Nigeria where a civilian government was overthrown by military coup. On this account various payments due to Essal Commodities were held up. All the transactions between the plaintiff and the Essal Commodities and the P.N.B. were fully secured by the plaintiff as P.N.B. had taken various securities from the plaintiff against the advances and the remittances made by Essal Commodities. The plaintiff further stated that it was in December 1983 that there was a revolt in Nigeria and though Essal Commodities ceased business operations in January 1984, P.N.B. was fully secured. P.N.B. it is stated, did not take any step for Realizing the dues under the securities for certain extraneous reasons and in the meanwhile bankruptcy proceedings were initiated against the plaintiff by creditors in England and as the plaintiff was not in a position to defend those proceedings having been confined in jail in India on certain criminal charges, he was declared bankrupt there. Essal Commodities was also ordered to be wound up and liquidator appointed. It is then stated that the single largest security held by P.N.B. was in the form of Jokai Tea Company's shares value of which exceeded US\$ 25 million. P.N.B. was negotiating with the liquidators of Essal Commodities for sale of this security and then the plaint refers to various discussions and proceedings and objections of the plaintiff to the sale of the security or of entering into any agreement by P.N.B. with the liquidators of Essal Commodities for that purpose. The contention of the plaintiff now is that the shares of Jokai Tea Company's are being sold at a throw away price when these could be sold at much higher value and, thus, reduce the liability of the plaintiff

as a guarantor, and it is also contended that in the circumstances of the case, the plaintiff would stand discharged from any guarantee.

4. Leaving the allegations in the plaint at this stage, I note that Essal Commodities floated another company Shadreed Limited in England having 100% equity shares which in turn floated Frendial Limited having 100% shares which again in turn floated Jokai Tea Holdings Limited holding 100% shares. As noted above, all these companies are registered in London. Jokai Tea Holdings Limited owned 74% shares in an Indian Company called Jokai (India) Limited. Both Essal Commodities and Shadreed Limited went into liquidation.

5. P.N.B. was having office in London where it was conducting banking business. Essal (Essal Commodities) enjoyed various facilities from P.N.B. For that plaintiff gave personal guarantee, and Shadreed Limited also gave guarantee for the purpose of guaranteeing the loan or amounts due to the P.N.B. from Essal. Frendial Limited also pledged by depositing as security all the shares of Jokai (London) (Jokai Tea Holdings Limited (London)). All the shares of Jokai Tea Holdings Limited (London) were, thus, pledged with P.N.B. It is not that shares of Jokai Tea Holdings Limited (India) were pledged.

During the period 1981 to 1984 P.N.B. made various advances to Essal Commodities and on 31-12-1984 it is stated, Essal Commodities owed US\$ 75.948 million equivalent to about Rs. 133.62 crores to P.N.B. Mr. Khanna said on this amount interest has not been computed from 1-1-1985. As noted above, plaintiff was also declared bankrupt in proceedings filed in London. By order dated 5-11-1984 High Court at London made a receiving order and on 18-1-1985 plaintiff was adjudicated as insolvent. On 4-2-1985 Trustee in bankruptcy was appointed by the Court there. Those proceedings are still pending as the plaintiff is not a discharged insolvent.

6. P.N.B. filed claim against Essal Commodities and also against the plaintiff being the guarantor for an amount of US\$ 90 million equivalent to 68.8 million pounds (approximately). Efforts to sell the shares of Jokai (London) which were pledged with P.N.B. were made. On 8-6-1988 the plaintiff at Delhi gave a letter to P.N.B. in effect agreeing to the sale of the shares for a price not lower than Rs. 36 crores. At the same time the plaintiff in his letter said that out of the sale proceeds of the shares of Jokai (London) amounts due to Jokai (India) and Assam brook Limited be paid. Net amount receivable by P.N.B. was around Rs. 25 crores.

On 22-6-1988 an M.O.U. was entered into by P.N.B. with Pharaoh Holdings Limited through A.N.Z. Merchant Bank, London, whereby bargain was struck for US\$ 21.5 million equivalent to Rs. 32 crores (approximately). The amounts payable to Jokai (India) and Assam brook were to be separately paid. Thus, the total consideration agreed to for sale of Jokai (London)'s shares was about Rs. 54 crores. P.N.B. being a nationalised bank under the laws in India had to take various steps before the deal could be finalised. There were checks and

counterchecks. It is stated Reserve Bank of India also held inquiry and ultimately permission was given to go ahead with the transaction.

On 19-2-1990 shares purchase agreement was entered into at London between Frenial Limited and Rossal Estates Limited, a company registered at Gibraltar. Other signatories to the agreement were Essal, Jokai (London), Shadreed Limited and the defendant P.N.B. P.N.B. was only a consenting party as a pledgee. A sum of US \$ 21.5 million was to be paid to P.N.B.

7. On 7-3-1990 deed of settlement regarding all global disputes between the Official Liquidator of Essal and P.N.B. was entered into by which P.N.B. agreed to pay US \$ 8.5 million to official liquidator Essal from the proceeds of shares of Jokai (London). It may be noted that there were various disputes raised by the Official Liquidator of Essal, which have been set out in paras 10, 11 and 12 of the written statement. It may also be noted that on 28-3-1984 when P.N.B. applied for transfer of shares of Jokai (London) in its name it was refused. The plaintiff was a Director of Jokai (London) at that time. On 12-10-1990 money as per settlement was passed in an Island called Jersey. Mr. Khanna, during the course of arguments, said that this was so because of some pending litigation in London, which could have affected the transaction and ultimate payment of amount to P.N.B. He said still some undertakings have been given by P.N.B. in London Courts but I do not think I am concerned with them.

8. When the plaint was originally filed the plaintiff asked for the following reliefs:

"(a) direct the defendant bank to furnish detailed information with regard to agreement arrived at between the defendant and the liquidators with regard to global settlement of the plaintiff and his company's assets and in particular with regard to sale of the shares of Jokai Tea Company;

(b) that a decree for permanent injunction be granted in favor of plaintiff restraining the defendant, its servants, agents, employees, assigns and representatives from implementing any settlement with the liquidators of Essal Commodities in respect of the outstanding dues of the defendant against the said company liquidation or in any manner giving effect to any agreement or otherwise or any undertaking already reached between them in this behalf till the disposal of this suit;

(c) no settlement should be implemented without concurrence of the petitioner, as e is the guarantor, with regard to the global settlement;

(d) stay operation of the agreement, if any, signed between the defendant and the liquidators with regard to sale of the plaintiff's and the company's (Essal Commodities - under liquidation) assets;

(e) pass ad interim ex parte orders in terms of prayer (a) to (d) above; and

(f) pass any other order or orders as may be deemed just and proper in the facts and circumstances of the case."

9. Now by seeking amendment the plaintiff wants to add one more relief and which is as under:

" declare that the sale and transfer of shares of Jokai Tea Holdings Limited held as security by Punjab National Bank to third party is against public interest and also against the interest of banking policy and the defendants have conducted themselves in relation to the transaction in suit in a manner detrimental and prejudicial to the interest of the plaintiff and the said sale is under the circumstances void and further that the plaintiff in the peculiar circumstances of this case is no longer bound by the no objection given by him to the defendant Bank for going ahead with the impugned sale transaction is no longer in any manner bound by guarantee agreement executed and signed on 16th September, 1981 between him and Punjab National Bank and stands fully discharged as a guarantor."

And for that purpose as well plaintiff has made various other allegations, which he seeks to incorporate by amending the plaint and to add more parties as defendants to the suit.

10. Mr. Lekhi, learned counsel for the plaintiff, submitted that all the amendments he was seeking were necessary for the proper conduct of the suit and to avoid multiplicity of proceedings. He said, since during the pendency of the suit circumstances changed, present application for amendment had per force to be filed. He said all the parties particularly the companies based in England were necessary parties to these proceedings inasmuch as they were parties to the settlement regarding sale of shares as mentioned aforesaid. In any case, he said, they were proper parties. As regards Union of India, he said the Finance Minister made a statement in Parliament wherein he informed the Parliament respecting settlement between P.N.B. and Essal and the fact that R.B.I. had been asked to investigate into the matter including the sale price of the shares. Mr. Lekhi said a great deal of harm had been done to the plaintiff as the shares have been undervalued and he had a right to challenge the settlement, and hence the necessary amendments. On these submissions, I fail to appreciate as to how Union of India or Reserve Bank of India could be even necessary or proper parties to these proceedings. No relief is sought against any of them regarding the settlement. As to why Union of India and Reserve Bank of India are sought to be added, it will be best to refer to para 4 of the application and it is as under:

"4. plaintiff states that on 16th March, 1990 the Finance Minister of India made a statement in Parliament wherein the Parliament was informed that with regard to the settlement proposed between Punjab National Bank and the liquidators of Essal Commodities, the Reserve Bank of India has been asked to investigate into the matter including the sale price of Jokai shares. In the said statement the Hon"ble Minister had also informed the House that the report of the Reserve Bank of India would be placed on the table of the house. Even under the Banking Companies Regulation Act the Reserve Bank of India is conferred with powers to

regulate the working and functioning of the scheduled banks. Thus it was appropriate for the Reserve Bank of India to carry out such investigation and it was necessary for the Government of India to place the report of such investigation on the table of the House of Parliament whose members were given an assurance by the Finance Minister in this regard. The said report has not been placed on the table of Parliament despite such assurance. It is, Therefore, necessary that the Reserve Bank of India and the Union of India be also made parties to the present suit."

This is entirely a new cause of action unconnected with the suit. If any record is, however, sought from either Union of India or Reserve Bank of India, it can be summoned during the course of trial, if permissible in law. The impugned transaction is a commercial transaction, which the plaintiff seeks to challenge in the suit. No questions of "public interest" or "banking policy" are involved which I have to consider in the suit. Except for the Union of India or Reserve Bank of India, no other party sought to be added can be least interested in these questions. I will not allow widening of the base of the suit by adding Union of India and Reserve Bank of India, otherwise there is going to be misguide of causes of action and parties and the suit had for multifariousness. Moreover, service of notice u/s 80 of the Code on the Union of India is mandatory and the application, I.A. No. 5403 of 1990, does not specify any ground for me to exercise discretion under subsection (2) of Section 80. No urgent or immediate relief is sought against the Central Government. This application (I.A. 5403 of 1990) is, Therefore, to be dismissed. Prayer of the plaintiff to add Union of India and Reserve Bank of India as parties to the suit is declined.

11. There is no cause of action against other defendants sought to be added arising in India. None of these defendants carries on business in Delhi, or, for that matter, any place in India. No leave of the Court has been obtained to sue them in these proceedings as required under Clause (b) of Section 20 of the Code of Civil Procedure. Admittedly, whole of the transaction sought to be challenged took place outside India. English Courts are seized of the matter to which jurisdiction all the parties have submitted. Addition of these defendants in these proceedings will cause them a great deal of harassment, hardship and unnecessary expense. Even in the application no grounds have been given as to why these defendants are sought to be added as parties, though, in the proposed amendments, some indication is discernible. I see no ground in law or even in equity to add them as parties in this suit. This is apart from the submission of Mr. Khanna that this Court lacks inherent and territorial jurisdiction to try this suit as well. 1, Therefore, decline the request of the plaintiff to add any one of these defendants as party to the suit.

12. Mr. Khanna contended with reference to the prayers made in the suit that these had since become infructuous. One of his arguments was that since this Court lacked jurisdiction to try the suit itself, it could not allow any one to be added as a party in the suit or allow amendments to the plaint and, thus,

assume jurisdiction indirectly. In support of his submission he referred to a decision of the Calcutta High Court in *Mst. Zohra Khatoon Vs. Janab Mohammad Jane Alam and Others*, .

13. At this stage, I am only concerned with the application seeking amendment of the plaint as originally laid and I do not think I should go into the question of my jurisdiction to try this suit on the question of jurisdiction as submitted by Mr. Khanna and for which I.A. 11264 of 1990 was filed. If I look at Section 20 of the Code again I find I have territorial jurisdiction to try this suit filed against P.N.B., as it is not disputed that P.N.B. voluntarily resides and carries on business in Delhi where it has its principal office. Whether I should proceed with the suit in view of the proceedings in London Courts is a different matter altogether. In support of his submission Mr. Khanna referred to a bench decision of Andhra Pradesh High Court in *The Black Sea Steamship U.L. Lastochkina Odessa, Union of Soviet Socialist Republic and Another Vs. The Union of India*, , which was rendered on Section 28 of the Contract Act, 1872. In this case condition 26 in the agreement between the parties was as under:

"All claims and disputes arising under and in connection with this bill of lading shall be judged in the U.S.S.R."

14. It was common ground that but for this condition Courts both in the U.S.S.R. and Visakhapatnam would have jurisdiction to entertain this suit. But, the petitioner before the Court contended that Visakhapatnam Court's jurisdiction stood excluded because of condition 26. The Court, after considering various submissions, held as under:

"The above discussion yields the firm conclusion that it is perfectly open to the Court to consider the balance of convenience, the interest of justice and like circumstances, when it decides the question of jurisdiction of a Court, in the light of a clause in the agreement between the parties choosing one of several Courts or forums which were available to them. Indeed, such a consideration is essential in the interests of international trade and commerce of the better relations between the countries and the people of the world."

15. It will, thus, be seen that the Court at no stage held that the jurisdiction of Visakhapatnam Court was excluded altogether on account of condition 26 aforesaid. Reference is also made by Mr. Khanna to three decisions of the Calcutta High Court, namely, *Messrs Lloyds Triestino Societa Per Azinni di Navigazione Sede in Lloyds Triestino Societa Per Azinni di Navigazione Sede in Triesta and Others Vs. Lakshminarayan Ramniwas*, , *Lakshminarain Ramniwas Vs. N.V. Vereenigde Nederlandsche Scheepvaartmaatschappij and Others*, , and *B.R. Herman and Mohatto (India) Pr. Ltd. Vs. Swedish East Asia Co. Ltd.*, .

16. u/s 28 of the Contract Act, every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract by the usual legal proceedings in the ordinary tribunals or which limits the time within which he may, thus, enforce his rights is void to that extent. There are two

exceptions to this section, which are not relevant for my purpose. Mr. Khanna said that in the guarantee, which the plaintiff executed in favor of Punjab National Bank at London, there was clause 20, which is as under:

"20. This guarantee is to be governed by and construed according to English Law and the Guarantor agrees to submit to the jurisdiction of the English Courts and it is understood and agreed that none of the terms and provisions of this Guarantee may be waived, altered, modified or amended except in writing to be signed for and on your behalf".

17. On the basis of this clause, Mr. Khanna said that this Court will have no jurisdiction in the matter. I am afraid, I cannot agree with Mr. Khan's submission. As noted above, u/s 20 of the Code, this Court has territorial jurisdiction to try the present suit. When Section 28 talks of "usual legal proceedings in the ordinary tribunals" it refers to proceedings in this country. Any agreement that parties will not have recourse to Indian Courts would be void. It is no answer that an aggrieved party could file proceedings in England or in any other foreign country under agreement between the parties. Provisions of Section 20 of the Code cannot be set at naught like this taking shelter under S. 28 of the Contract Act. Further any agreement between the parties which provides that provisions of a statute shall not be applicable unless the statute itself gives such a right; would be opposed to public policy and void u/s 23 of the Contract Act as well. Thus, if the argument is that the agreement between the parties restricts any party absolutely from enforcing his rights made a contract by usual legal proceedings in this country which rights the party otherwise has under the statute, it cannot be sustained as the agreement would itself be void u/s 28 of the Contract Act. Whether the Court should stay a suit either u/s 10 or Section 151 of the Code is other matter, and will depend upon the circumstances of each case. In the judgments referred to the Court did exercise the discretion in staying the proceedings before it when in one case there was a clause in the agreement that disputes would be decided by a foreign Court and where the evidence was readily available within the jurisdiction of the foreign Court. It is also not correct that the plaintiff should be non-suited on the ground that he has already submitted to the jurisdiction of a foreign Court. That may be a consideration for stay of the suit, but, certainly not to reject the plaint when the Court has jurisdiction in the matter. Then, Mr. Khanna submitted that since the plaintiff was an undischarged insolvent, he could not maintain the present proceedings. The plaintiff has not been declared an insolvent under the Provincial Insolvency Act as applicable. It is admitted, however, that he has been declared bankrupt under the Bankruptcy Laws of England (Bankruptcy Act 1914). Mr. Khanna said that Section 13 of the Code would be applicable and a foreign judgment on this account would be conclusive. No judgment declaring the plaintiff as bankrupt has been brought on record. Mr. Lekhi on the other hand submitted with reference to clause (d) of this section that the judgment in such a case would not be conclusive on the question of bankruptcy of the plaintiff inasmuch as the proceedings in which the judgment was obtained were opposed

to natural justice. His submission was that at the time of proceedings of bankruptcy in England, the plaintiff was confined in Jail in India and was unable to defend those proceedings. In the absence of any such judgment on record, it is difficult to say that the provisions of Section 13 would become applicable in the present case. A foreign judgment would have shown if the plaintiff was duly served and if he had an opportunity to defend the proceedings against him there. I have to see the applicability of the Provincial Insolvency Act and I find, the plaintiff has not been declared insolvent by any Court in this country. No rule of International Law as well has been brought to my notice to oust my jurisdiction and this Court. Pleas of Mr. Khanna, Therefore, fail and 1. A. 11264 of 1990 are dismissed.

18. But, since the relief now sought to be added cannot be granted to the plaintiff in the absence of other parties to the sale and transfer of shares of Jokai Tea Holdings Limited, the plaintiff cannot be permitted to add this prayer by way of amendment. The relief sought by way of amendment is also rather too vague and is not at all necessary for the purpose of determining the real question in controversy between the parties as originally laid in the suit. It is bad for multifariousness as well. This cannot be permitted. Request to add the prayer is declined. In this view of the matter the amendments sought would appear to be rather superfluous. If, however, the plaintiff wants any of the amendments by way of additional facts, he will be permitted to do so on a separate application being filed and if the amendments fall within the purview of Order 6, Rule 17 of the Code.

19. The result of the above discussion is that all the three applications, I.As. Nos. 5403 of 1990, 11264 of 1990 and 10685 of 1990 are dismissed. There will be no order as to costs.

20. Applications dismissed.