

(2003) 10 DEL CK 0075

In the Delhi High Court

Case No : CM (M) 294 of 2003 and CM 597 of 2003

R.B. Sharma

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2003) 7 AD 338 : (2003) 108 DLT 140 : (2004) 2 LLJ 605

Hon'ble Judges : R.S. Sodhi, J

Bench : Single Bench

Advocate : Party in perso, for the Appellant; Rajeev Kapoor, for the Respondent

Judgement

R.S. Sodhi, J.—This petition is directed against the judgment and order dated 2nd November, 2002, in MCA No. 85/97, of the Senior Civil Judge, whereby the learned Judge allowed the appeal arising out of the order of the trial Court, whereby an application under Rule 39 Rules 1 and 2 r/w Section 151 CPC along with the main suit was allowed.

2. The brief facts of the case as noted by the Appellate Court are as under :

"The brief facts of the case as made out in the plaint are that the plaintiff joined the defendant No. 1-Bank on 15-6-1979 as Technical Officer Grade-II in the basic scale of Rs. 500/- - Rs1330/-. On confirmation, the basic salary of the plaintiff was to be fixed at Rs. 620/-. Vide letter dated 11-6-1992 the salary of the plaintiff was fixed in the pay scale of Rs. 1200/- which was equivalent to the earlier basic pay of Rs. 620/-. However, vide letter dated 4-8-1992 the plaintiff was asked to pay back the arrears as the letter dated 11-6-1992 was not properly issued. The plaintiff represented against this to the defendant-Bank but to no use and ultimately filed a civil suit against the defendant-Bank for restraining it from recovering the arrears from the plaintiff. On account of this, legal action taken by the plaintiff, the Bank and its officials were annoyed with the plaintiff and they conspired to harm the plaintiff in conspiracy with each

other. Accordingly they wrote a letter to the Crime Branch of Delhi Police levelling serious charges against the plaintiff. On this letter, FIR No. 178/94 was registered against the plaintiff by the Crime Branch. It is alleged that on 25-2-1995, the defendant-Bank asked the plaintiff to give his Explanation against the charges leveled against him. The plaintiff represented to the Bank that since the matter was pending in the court of law, he would submit his Explanation at an appropriate stage. However, the plaintiff received letter dated 9-6-1996 from the defendant and he was required to submit his written statement of defense within 15 days from the receipt of the said letter. Vide letter dated 27-7-96, the plaintiff replied that since the matter was pending in the court, he would not give his Explanation as the same may disclose his defense."

3. Since the department by an order dated 8th November, 1996 appointed an enquiry officer to enquire into the charges leveled against the petitioner, he filed a suit restraining the defendants from proceedings with the departmental enquiry in respect of the charges which were subject matter of the criminal proceedings. The trial court vide its judgment and order dated 20th January, 1997, in an application under Order 39 Rule 1 and 2 stayed the proceedings. Aggrieved thereof, the respondent herein filed an appeal being MCA No. 87/1997. The Appellate Court vide its judgment and order dated 2nd November, 2002 reversed the same.

4. The issue that has been raised before this Court is whether in case where the subject matter of the criminal proceedings and the departmental enquiry is substantially the same is it permissible to stay the departmental enquiry pending conclusion of the criminal case.

5. In the present case, the petitioner has been able to show substantially that the entire matter in the departmental proceedings and before the Criminal Court is the same. In view thereof the present case would be covered by the judgment of the Supreme Court in Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, wherein it is held that where the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employees is of a grave nature which involves complicated question of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. The Appellate Court has tried to distinguish this judgment which in my opinion is incorrect. In view of the discussions above, I set aside the judgment and order under challenge while restoring the order of the Trial Court dated

6. With this CMM 294/2003 is allowed. CM 597/2003 stands disposed of.