(1976) 02 CAL CK 0018

In the Calcutta High Court

Case No : Matter No. Nil of 1976

Satyanarayan Jhunjhunwala APPELLANT

Vs

Punjab National Bank Ltd. RESPONDENT

Date of Decision : 24-02-1976

Acts Referred:

Bankers Books Evidence Act, 1891 — Section 6

Citation : AIR 1977 Cal 280

Hon'ble Judges : Ramendra Mohan Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramendra Mohan Datta, J.—This is an application under the Bankers'' Books Evidence Act, 1891, for an order upon the Punjab National Bank Ltd., Lilooah Branch at Howrah to supply a certified copy of the entries in respect of the account of Messrs. Thakurdas Sureka of 172, J. N. Mukherjee Road, Howrah, for a particular period so that the same might be utilised as a piece of evidence in the trial of this suit which is continuing before this Court now.

2. Messrs. Thakurdas Sureka is a firm but neither this firm nor any of the partners hereof are parties to this proceeding. In course of this proceeding on or about 12th January, 1976 a similar application was moved ex parte for the production of the very same statement of account of this firm of Thakurdas Sureka and for the very same period as is being asked for now from the above bank. The said application was rejected by this Court because it asked for the production of the certified copy of the statement of account of a constituent who was neither a party to this proceeding nor any of its partners having been called as witnesses in this case.

3. Since then further evidence has been taken. The defendants have called a witness by the name of Mahabir Prosad Keshan who happens to be a clerk of the joint receivers appointed over the said firm of Thakurdas Sureka. The said

witness produced a copy of the statement of the bank but the same could not be tendered in evidence because the witness had no knowledge in respect thereto nor was the said document a certified copy of the bank. It is now contended that the certified copy should be caused to be produced by making an order in this fresh application so that the said statement of account might be tendered in evidence.

4. The present application has been moved after the examination of the main witnesses both on behalf of the plaintiff and on behalf of the defendants had already been concluded. Even the examinations of the defendants Nos. 2 and 3 are also over. Accordingly, I directed the applicant to serve a copy of the petition to all the parties concerned including upon the partners of Thakurdas Sureka. It appears that Ratanlal Sureka a partner of Thakurdas Sureka has refused to accept service because the receiver is already in possession of the firm and on the plea that without the instructions of the learned receivers he could not accept such service. Be that as it may, I heard the petitioner''s counsel as also the plaintiff''s counsel.

5. Mr. Sen appearing on behalf of the plaintiff strongly objects to any order being passed in this application on several grounds. First, it is contended that on principle a third party''s banking account should not be caused to be produced in without calling such a party in the witness box. Secondly, that at this stage if such a document is allowed to be produced and tendered in evidence his client would suffer serious prejudice because he would not be in a position to cross-examine any of the defendants or the witnesses called on behalf of the defendants on this document and thirdly, that the document is quite irrelevant for the purpose of this case.

6. Mr. Sen has referred to me the case of The Central Bank of India Limited Vs. P.D. Shamdasani, in which Beaumont C. J. observed at page 36 as follows :--

"There is no doubt truth in the contention that it may be difficult, or even impossible for the complainant to prove his case without inspection of the Bank''s books, but the Court has to have regard to other aspects of the matter. The Legislature has endowed the Courts with wide powers of ordering production of documents necessary for the determination of matters before the Court, and for directing inspection of those documents but it must always be borne in mind that an order directing a person to produce or give inspection of his books in a dispute to which he is not a party involves a serious inroad upon his normal rights as a citizen and the Courts have always set their faces against giving anything in the nature of a roving or fishing commission to inspect documents. The Court does not allow a man to say. "I make such and such a charge against my opponent, and now if you will let me look into his books I will see whether I can find some evidence to support it." If the Courts were to make orders for inspection of books merely on an allegation that certain facts are true, the practice would be open to very serious abuse, and the Court might easily become something of a menace to a mercantile community. It would be open to an unscrupulous person to make a false charge, possibly against a business rival, and then get inspection of that business rival''s books."

7. To my mind, at this stage this application ought not to be allowed because the witnesses have all been examined and the plaintiff will not get any opportunity to cross-examine any of the defendant''s witnesses on this document. Furthermore, the more fundamental objection is that this is a third party''s document and in the ends of justice the same ought not to be allowed to be produced by this process unless very special circumstances would be shown in the petition as grounds thereof. No such special circumstances having been made out in the petition, the petitioner is not entitled to any order.

8. The application is also barred by the principles of res judicata in view of the same being considered at an earlier stage and dismissed by this Court on 12th February, 1976 last.

9. Lastly, to my mind, the said document, if produced, would not in any way help in deciding this case. It is in evidence before me by the witness called from the bank that the cheque for Rupees 1,78,400/- drawn by Thakurdas has been credited to the second payee''s account and the said cheque being already in the records of this case, the said statement of account cannot throw any extra light on the topic. How it could be credited by the bank when the balance in credit was not sufficient to cover it cannot be relevant. Under those circumstances, it would matter little for the court to know what was the balance amount lying in the account of Thakurdas Sureka on such date by causing the statement of account to be produced.

10. Under those circumstances, the application is bound to be and is dismissed with costs. Certified for counsel.

