

(1986) 10 BOM CK 0029
In the Bombay High Court

Simco Industries and others

APPELLANT

Vs

Indian Overseas Bank and another

RESPONDENT

Date of Decision : 01-10-1986

Acts Referred:

Citation : (1986) 10 BOM CK 0029

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : A. Venkatesan, for the Appellant; S. Ramasubramaniam, for the Respondent

Judgement

1. The defendants in O. S. No. 6574 of 1983 on the file of XVII Assistant Judge City Civil Court, Madras, are the petitioners and the plaintiff and the proposed partly, are the respondents herein.
2. The suit was filed for recovery of a sum of Rs. 85,766.71 with interest thereon. The first defendant was manufacturing optical products, and the second defendant was its sole proprietor. The third defendant, the son of the second defendant, had given a letter of guarantee for one lakh of rupees in favour of the plaintiff bank. The plaintiff bank extended several credit facilities and for amounts which still remain payable, the suit had been laid.
3. The defendants have stated in their written statement that, if proper adjustments are made, nothing would become payable. The third defendant stated that he has never stood as a surety.
4. Pending disposal of the suit, I. A. No. 948 of 1984 was filed by the defendants under Order 8A, Civil Procedure Code, for issue of a third party notice to the Deposit Insurance and Credit Guarantee Corporation of the Reserve Bank of India stating that it had guaranteed the loan extended to them by the plaintiff bank, and that the premium for the insurance taken had been paid out of the funds of the funds of the first defendant by the plaintiff, and that the optical products sent to Andhra Pradesh to the extent of nearly a lakh of rupees could not be delivered

due to Telengana riots, and as the loan had been insured against loss with the proposed defendant, they are entitled to be indemnified to the extend of Rs. 30,000 and interest from October, 1973.

5. The plaintiff opposed this claim by stating that, in a suit for recovery of amounts on a loan transaction, there is no need to implead the proposed party. The proposed party in a detailed affidavit would state that there is no privity of contract between itself and the defendants, and under the scheme it has to protect only the bank for any loss suffered in extending financial assistance to the small scale industries, and they have never acted as a guarantor u/s 126 of Indian Contract Act.

6. The Court below held that the proposed party had already paid its liability to the extend of Rs. 42,120.25 to the extent of Rs. 42,120.25 to the plaintiff, as per the agreed Scheme and that between the said corporation and the defendants, no agreement had been entered into, and, therefore, it is not necessary to implead it under Order 8A, Civil Procedure Code.

7. Mr. Venkatesan, learned counsel for the defendants, submits that, on the claim, made that the corporation had already deposited its liability to the extend of Rs. 41,000 by itself shows that it had acted as an insurer, and, therefore, the defendants having paid premium through the plaintiff bank, it can secure reimbursement from the corporation of whatever amount the plaintiff bank may ultimately recover from the defendants. He submits that the terms and conditions of the Scheme have never been made known, and its own statement about payment of Rs. 41,000 would not absolve its liabilities and obligations, and hence, this is a fit case for invoking Order 8A, Civil Procedure Code.

8. To help small scale industries, the Reserve Bank of India had involved a Scheme to extend guarantees to such of those banks which come forward to help the small scale industries. In 1960, the Government of India formulated this Scheme styled as "Credit Guarantee Scheme for small Scale Industries". Under the scheme, the corporation undertakes to indemnify such of those banks which suffer loss in extending financial assistance to small scale industries. Under clause 6(2) of the Scheme, the liability of the corporation would arise, only if it is satisfied in regard to the conditions pertaining to the guarantee Scheme. A bank could invoke the guarantee in respect of any amount in default, on account of the advances extended by it, as soon as the bank informs the corporation of the default committed by a small scale industry within the time prescribed, and gives a certificate that the amount in default, on account of the default cannot be realised without enforcing the other securities or resorting to legal remedies. These are the contents of clause 6 of the Scheme. There are provisions to apportion the liability between the corporation and the bank. The guarantee extended is to the extend of 75% of the default committed by a small scale industry. Clause 6(4)(b) of the Scheme states that, on recoveries made from the defaulter, it has to be shared between the corporation and the bank in the ratio agreed to, and the balance, if any, of the amount recovered on account of

the advance, shall be paid to the corporation, etc. Hence, the defendants cannot any longer plead that the corporation functions like an insurance company, under taking to discharge the liabilities of a small scale industry under certain contingencies, without any right to recover the amount from the defaulter. The privity of contract is only between the corporation and the bank. At no point of time, any agreement or any document had been taken by the corporation from the defendants. The only link they try to establish is stating that the premium paid by the bank had come out of the funds of the defendants. It may be an arrangement between the bank and the defendants. The liability under the Scheme to pay premium, from the to time, is only on the bank and not on the defendants. Further, under the Scheme, the corporation comes forward to pay 75% of the defaulted payment to the bank, mainly because it has intended to help the bank, which suffers loss for the time being. The amount paid by it under the Scheme is recoverable from the defaulter by the bank, and, thereafter, to be reimbursed to the corporation. Therefore, under the Scheme, there no privity of contract between the corporation and the defendants, Order 8A; Civil Procedure Code, would not apply to the facts and circumstances of this case.

9. It is then contend that, when the premium is paid by the bank, in law, it could be construed as a payment made only by the defendants who would be the beneficiaries of the Scheme. As pointed out earlier, the premium under the Scheme is payable only by the bank. It might have recovered the amount from the defendants as one of the items of expenditure incurred by it in extending credit facilities to the defendants. Mr. Venkatesan, at this juncture, would refer to the decision in Rangaswami Gounder Vs. Ramaswami Gounder, , to claim that, when an indemnity is granted, it is an equitable right of indemnity which is enforceable as between the parties. Here again, there is a misconception. The indemnity is extended by the corporation not to the defendants under the Scheme, but is extended only to the bank. Therefore, this decision does not apply. Order 8A, Civil Procedure Code, would be applicable where a defendant claims to be entitled to contribution from or indemnity against any person not already, a party to the suit. Hence, the refusal by the court below to implead the corporation as a defendant under Order 8A being correct, this civil revision petition is to be rejected.

10. It is then contended by Mr. Venkatesan that when an amount of Rs. 41,000 and odd had been paid by the corporation to the plaintiff, the points as to whether the defendants could ask for the said amount to be adjusted out of the suit amount and whether payment of premium by them through the plaintiff tant amounts to payment of premium by them so as to avail of the Scheme to the extend of absolving the suit claim as against the plaintiff being available, these aspects will have to be left open. Undoubtedly, dismissal of this petition filed under Order 8A, Civil Procedure Code, would not prevent the defendants from raising such pleas and any other contentions which are available to them is law, as against the plaintiff, and seek for suitable and adequate remedies.

11. Hence, the revision petition is dismissed with costs.