

(2012) 01 MP CK 0049

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2447 of 2007

Sobhagmal Jain

APPELLANT

Vs

M.P. Financial Corporation, Indore and Others

RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Citation : (2012) 2 MPLJ 603

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : R.T. Thanewala with Vivek Shrivastava, for the Appellant; Shekhar Bhargava with Mrs. (Dr.) Ritu Bhargava and Romesh Dave respondent No. 7/
State : Bhuwan Deshmukh, Panel Lawyer, for the Respondent

Judgement

N.K. Mody, J.—Arguments heard finally. Order dictated in Open Court. Being aggrieved by the order dated 22-3-2007 passed by I ADJ, West Nimar, Mandleshwar in Civil Suit No. 7-A/2003 whereby preliminary issue No. 8 was decided against the petitioner holding that petitioner is liable to pay the Court-fee on a sum of Rs. 91,46,279 = 60 paise, present petition has been filed. Short facts of the case are that petitioner filed a suit on 26-10-2002 alleging that the petitioner is the husband of respondent No. 6. It was alleged that respondents No. 1 to 5 has to recover some amount from M/s Awanti Chemicals of which respondent No. 6 is the owner. It was alleged that; petitioner has nothing to do with it but the respondents No. 1 to 5 and 7 are bent upon to recover the amount. In the suit damages of Rs. 90,000/- was claimed and the damages of Rs. 1,000/- per day was also claimed from the date of filing of the suit. Ad-valorem Court-fee was paid on the amount of damages claimed and fixed Court-fee was paid on declaratory relief. The suit was contested by the respondents No. 1 to 5 by filing the written statement alleging that since the petitioner is avoiding the liability of Rs. 91,46,279 = 60 paise, therefore, suit cannot be proceeded unless the petitioner pays the ad- valorem Court-fee. It was prayed that suit be dismissed. On the basis of pleadings of the parties learned Court, below framed the Issue No. 8 which was to the effect that "Whether proper Court-fee has been

paid by the plaintiff ?" Since no evidence was required, therefore, the same was decided by the learned Court below as preliminary issue by the impugned order directing the petitioner to pay the ad- valorem Court-fee against which the present petition has been filed.

2. Learned counsel for the petitioner argued at length and submits that the impugned order passed by learned Court below is illegal, incorrect and deserves to be set-aside. It is submitted that petitioner is neither borrower nor surety of the alleged loan amount which has been advanced by the respondents No. 1 to 5. It is submitted that petitioner is not avoiding the liability as shown in the impugned order, on that contrary, prayer of the petitioner is that petitioner is not liable for payment of outstanding amount, therefore, the property owned by the petitioner cannot be attached. It is submitted that in the facts and circumstances of the case learned Court below committed error in passing the impugned order. It is submitted that the petition filed by the petitioner be allowed and the impugned order passed by the learned Court below be set-aside.

3. Learned counsel for the respondents No. 1 to 5 submit that respondent No. 6 is none else but the wife of the petitioner. It is submitted that loan was taken for the business of M/s Awanti Chemicals of which respondent No. 6 is also one of the partner along with son of the petitioner who has not been impleaded as party in the present suit. It is submitted that since the petitioner is avoiding the liability of respondents No. 1 to 5, therefore, learned Court below committed no error in directing the petitioner to pay the ad- valorem Court-fee. It is submitted that in the suit filed by the petitioner prayer made is to the effect that respondents No. 1 to 5 be restrained to proceed for recovery of outstanding amount against the property of the petitioner. It is submitted that petition filed by the petitioner be dismissed.

4. From perusal of record, it appears that learned trial Court has observed that since petitioner is impliedly avoiding the liability of respondent No. 6 who is wife of the petitioner, therefore, the petitioner is liable to pay the ad- valorem Court-fee. In the matter of Subhash Chand Jain vs. Chairman, M.P. Electricity Board 2000(3) MPLS 522 wherein the Full Bench of this Court has held that "settled legal position seems to be that plaint has to be read as a whole. Allegations in the plaint including the substantive relief claimed must be the basis for settling the Court-fee payable by the plaintiff. Mere astuteness in drafting the plaint would not glaze the jurisdiction of Court for looking at the substance of the relief asked for. The nature of suit u/s 7(iv) is such where the Legislature could not lay down fixed standard thereby leaving it to the plaintiff to mention it. But where he attempts to under-value the plaint and the reliefs, Court has to intervene. While doing so, concept of real money value forms integral part of Court enquiry where relief sought has real money value which can be objectively ascertained. Where a plaintiff has been made liable to pay specified amount and asked to pay the same and he claims to avoid it, obviously, he seeks relief to that effect and in case, he avoids payment of Court-fee by drafting the plaint in such a way that

results in under-valuation of the plaint and the relief, it will be a case of arbitrary and unreasonable undervaluation which Court is bound to correct." In this case the petitioner was Subhash Chand Jain who was avoiding the liability of electricity bill of Rs. 2,14,747/- which was relating to energy supplied to M/s Vinay Agro Industries which was owned by him and the suit was valued as Rs. 600/- and the Court-fee of Rs. 60/- was paid. In the circumstance, Full Bench of this Court held that plaintiff was liable to pay the ad- valorem Court-fee.

5. In the present case petitioner is not avoiding the liability, on the contrary, contention of the petitioner is that no recovery can be made from the petitioner for the alleged loan as petitioner is neither owner of M/s Awanti Chemicals nor any document has been executed by the petitioner as borrower or surety. In the facts and circumstances of the case, this Court is of the opinion that the impugned order passed by the learned Court below cannot be allowed to sustain only on the ground that impliedly the petitioner is avoiding the liability of respondent No. 6. In view of this, petition filed by the petitioner is allowed and the impugned order passed by the learned Court below is set-aside. With the aforesaid observations, petition stands disposed of C.C. as per rules.