
(1980) 12 CAL CK 0025
In the Calcutta High Court
Case No : Matter No. 191 of 1980

State Bank of India

APPELLANT

Vs

B.M.S. Engineering Works (Pvt.) Ltd. and Others

RESPONDENT

Date of Decision : 03-12-1980

Acts Referred:

Letters Patent Act, 1865 — Clause 12

Citation : AIR 1981 Cal 231

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : B.K. Bachawat and Sujit Sinha, for the Appellant; P.K. Roy and S.P. Majumdar, for the Respondent

Judgement

Sabyasachi Mukharji, J.—This is an application for revocation of leave under Clause 12 of the Letters Patent. Leave under Clause 12 of the Letters Patent was obtained on the averments made in paragraph 7 of the plaint. This paragraph refers to two documents, viz., the document dated 10th March, 1979 and another document dated 5th July, 1979 being Annexure D/1. These two documents have been annexed to this application. Paragraph 30 of the plaint shows that it is a suit for a total sum of Rs. 43,61,421. It comprises of four accounts, viz. (1) Stock cash credit account No. 1, (2) Export packing credit account No. 3 and clean cash credit account No. 4, (3) Instalment credit account and (4) Loan account. The last item being the loan account is for Rs. 36,146,94. For the two items there are two documents which are material. For the last item there is no document.

2. On behalf of the defendant No. 1 revocation of leave under Clause 12 of the Letters Patent was asked for on two grounds, viz. no part of cause of action had arisen within the jurisdiction of this Court and secondly that the balance of convenience was overwhelmingly in favour of the trial of the suit at Howrah where the transactions took place. In support of this contention, learned Advocate for the defendant, No. 1, who asked for revocation of leave contended

that the plaintiff had relied on a very large number of documents and only those two documents only, referred to hereinbefore, were alleged to have been executed at Calcutta. It was stated that the transaction between the parties took place at Howrah, the accounts were opened and maintained at Howrah. Therefore, it would be very proper, it was submitted, for the suit to be tried at Howrah. It has to be borne in mind that the plaintiff is a Bank which has branches at Howrah. It has a main office at Calcutta. Secondly, there are six defendants. Of those the defendant No. 1 is the main debtor and the others are guarantors. So far as the defendant No. 2 is concerned though he resides outside the jurisdiction of this Court, he is not a resident of Howrah but resides at Suhrawardy Avenue. Park Circus, outside the jurisdiction of this Court. Other defendants admittedly reside within the jurisdiction of this Court. The balance of convenience is always a question of fact. The proximity of Howrah and Calcutta is notorious of which judicial notice can be taken and in a suit of this magnitude it would not be so preponderantly inconvenient if the suit is tried in this Court.

3. As to the revocation of leave under Clause 12 of the Letters Patent, after all it has to be reiterated and I had observed more than once that the cardinal principle of balance of convenience, is, that the defendant should not be harassed by the exercise of choice of forum by the plaintiff. In this case having regard to the peculiar facts and circumstances of the case, it cannot, in my opinion, be said that the trial of a suit of this nature at Calcutta instead of its trial at the Howrah Court, where most of the defendants are not residing within the jurisdiction of the Howrah Court, would be so harassing and the balance of convenience would be so preponderantly in favour of the defendant No. 1 as to revoke leave under Clause 12 of the Letters Patent on that ground.

4. The next ground, however, upon which revocation of leave under Clause 12 of the Letters Patent was sought, was that no part of cause of action had arisen within the jurisdiction of this Court. Admittedly, apart from the cause of action if any based on two documents, referred to hereinbefore, no part of cause of action had arisen within the jurisdiction of this Court. It was submitted that the said two documents were not executed at Calcutta within the jurisdiction of this Court but were executed at Howrah. This is a disputed question of fact. Plaintiff's affidavit in opposition states as well as the plaint states that those documents were executed at Calcutta. In the affidavit in opposition, it has been stated that those documents were executed at the Office of the Solicitor within the Jurisdiction of this Court. The entries in the day book of the Solicitor had been produced. But those entries, however, are not conclusive because those recorded that the Solicitor and his assistant were present at the time of the preparation of those documents, execution and attestation. Those entries did not indicate exactly whether those documents were executed at Calcutta Office or whether they had attended at the time of execution of those documents at Howrah. Thus, this would raise a question of fact as to where those documents were exactly executed either at Calcutta within the jurisdiction of this Court or at Howrah. If the documents were not executed at Calcutta then, of course, no plait of cause of

action would arise within the jurisdiction of this Court and this Court could not have the jurisdiction to try this suit.

5. The other aspect that was urged before me was that the effect of these two documents upon which the plaintiff sought to rely would not create any evidence of cause of action. The cause of action was money lent or money borrowed from the plaintiff bank by the defendant No. 1 and the guarantee given by the other defendants. Now, it was urged that the document dated 21st May, 1977 merely recited the past happenings and it did not create any new bargain. It was, further, urged that the documents which were relied upon related to certain items and it did not cover all the items. The first document covered only an item, viz., Rs. 3,42,720 while the total claim in the suit on this account was admittedly over Rs. 6 lakhs. Secondly, so far as the second document viz., the document dated 10th March. 1975 was concerned, this covered only two items where certain items of claims were only admitted while the claims were made really for larger amounts. Therefore, the admission of certain items of claim in a running and continuous account of the Bank would not attract part of cause of action for the total balance ultimately found due. Moreover, it was submitted that these two items were wholly unnecessary pieces of evidence in establishing the cause of action of the plaintiff. Reliance was placed on the observations of Mr. Justice Bachawat in the case of Mahaluxmi Bank Ltd. Vs. Chotanagpur Industrial and Commercial Association, . Reliance was placed on the observations of the learned Judge at paragraphs 15 & 16 of the judgment which are as follows :

"15. In this case the over draft account was opened, maintained and operated upon at the defendant's office at Ranchi. The loans were advanced at Ranchi and on the date of the advances, the plaintiff had a branch and the defendant had its registered office at Ranchi. Each loan was repayable without previous as soon as it was made. The obligation to repay was in the eye of the law broken and the cause of action arose instantly on the loan -- "Norton v. Ellam, (1837) 2 M & W 461. Quite clearly the appointed place for repayment was Ranchi where the creditor had its branch office and where the over draft account was maintained. As a matter of fact all repayments were made at Ranchi and were credited to the defendant in its overdraft account at Ranchi.

16. In the case of current account it is well settled that the obligation of the banker to reply arises on demand and is limited to the office where the account is kept, see "Clare & Co. v. Dresdner Bank (1915) 2 KB 576 and Joachimson v. Swiss Bank Corporation (1921) 3 KB 110 at pp. 126, 129-130" Though the loan by the Bank on an over draft account is repayable without demand, in my opinion, the loan is repayable at the office where the over draft account is maintained and the state of accounts can be ascertained. The Bank is under no obligation to ac-cent payment in any office other than the office where the overdraft account is kept and to which the payment is to credited. It is well settled that though Branch Offices are agencies of one of the same banks, they are distinct trading bodies for certain purposes, "Rex v. Lovitt 1912 AC 212 at p.

219".

6. Reliance was also placed on the observations of the Supreme Court in the case of Khan Bahadur Shapoor Fredoom Mazda Vs. Durga Prosad Chamaria and Others, where the Supreme Court observed as follows :

"It is thus clear that acknowledgment as prescribed by Section 19 merely renews date; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a person subsisting line though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such a jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship can be implied from it. The admission in question need not be expressed but must be made in circumstances and in words from which the Court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statement made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally. Courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasonings. Broadly stated that is the effect of the relevant provision contained in Section 19 and there is re-ally no substantial difference between the parties as to the accrued legal position in this matter."

7. Undoubtedly, the said observations, both of this High Court as well as of the Supreme Court, would have been very much relevant in favour of the plaintiff had it not been for Clauses 2 & 4 of the first and second agreements. In the background of the recitals in both these documents, one of the contentions urged was that whether for a particular period interest had been charged at 14 1/2 per cent and for a particular period no interest had been charged at all though the stipulated rate of interest of the Bank was 15 per cent per annum. It was stated that after the execution of the said document the rate of interest would have been 15 per cent. But on behalf of the plaintiff it was urged that this agreement merely stated what had been stipulated before. Therefore, it did not give rise to any fresh cause of action. On the other hand, it was urged that though the stipulated rate of interest had been 15 per cent for the entire period it had charged interest at 14 1/2 per cent for a certain period and it had not charged

interest at all for a certain period. It is possible to contend from the conduct of the parties that the stipulated rate of interest had been modified. If such a contention was raised, which was a possible contention to raise, in a running and continuous account what was the probable rate of interest to negative the contention -- the plaintiff bank would be required to prove these documents. If this was so, then this formed part of cause of action. It was also urged that the guarantors acknowledged and admitted the liability by those two documents. These are questions of construction of those two documents interlinked with the intention of the parties, as reduced in writing. This question specially in the background of the question of cause of action of these two documents whether those were at all executed in Calcutta or not should, in my opinion, better be agitated as a preliminary issue in a suit rather than to try them piecemeal and revoke leave under Clause 12 of the Letters Patent. On the same grounds, learned advocate for the plaintiff contended that leave under Clause 12 of the Letters Patent had not been claimed on this plea alone but it had been sought on the promise to pay as well as on the admission and acknowledgment of liability in those two documents. It is true that the averments in the plaint indicate that way. But inasmuch as the documents have been annexed to the plaint, in my opinion, it would not be proper to read the plaint in such a technical fashion. In that view of the matter and in view of the order made by the Appeal Court in this matter, in my opinion, the proper order would be to direct that the defendants should have the liberty to file the Written Statement by 7th January, 1981 and the defendants would be at liberty to take this point of jurisdiction urged in this application in the Written Statement. I further direct that the defendants would have the liberty to raise this issue of jurisdiction before the trial Court and this should be tried by the trial Court as a preliminary issue before other issues are gone into.

8. Cost of this application will be cost in the cause.