
(2006) 05 DEL CK 0073

In the Delhi High Court

Case No : IA No. 7303 of 2004 and CS (OS) No. 2805 of 1996

State Bank of India

APPELLANT

Vs

Glavkosmos and Others

RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2006) 05 DEL CK 0073

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : R. Mohan, Additional Solicitor General, for the Appellant; D.P. Sharma, for the Respondent

Judgement

Sanjay Kishan Kaul, J.

IA No. 7303/2004 (Under Section 151 CPC)

1. This application has been filed by the plaintiff seeking restoration of the suit which was dismissed on 26.04.2004 in view of the order of the Division Bench passed on 12.11.2003 in FAO(OS) 290/98. In terms of the order dated 16.09.2004 of the Division Bench in RFA(OS) No. 13/2004 the plaintiff has been permitted to re-agitate the issue in view of the fact that the plaintiff was not represented when the order dated 26.04.2004 has been passed. On 17.11.2005, and again on 02.02.2006, when this application was listed a plea was raised by learned Counsel for the defendants that the restoration of the suit would be a fruitless exercise since no cause of action survives in the present suit. Learned Counsel for the plaintiff was thus put to notice that this Court would examine both the issues of restoration and the survival of cause of action, if any.

2. It is in view thereof that arguments have been heard on both the aspects today.

3. In view of the averments made in the application, I consider it appropriate to allow the application and restore the suit.

1. The plaintiff has filed the suit for recovery of Rs. 6,98,24,219.12 against the defendants consisting of the principal amount of Rs 4.8 crores and the balance of interest at the rate of 24 per cent per annum. The plaintiff has also claimed pendente lite and future interest at 24 per cent per annum till realization.

2. In order to appreciate the cause for filing of the suit, it would be necessary to set out the prior transactions between the parties. ISRO had entered into an agreement with defendant No. 1 for supply of space technology and the payments used to be made by ISRO to defendant No. 1 through the plaintiff-bank by process of crediting the account of defendant No. 1 with defendant No. 3 and the transactions used to be governed by rupee-rouble trade. Defendant No. 3 in turn used to credit the account of defendant No. 1. The present suit arises in respect of one of the contracts out of a number of them for supply of such technology and in respect of one particular Installment. This Installment is stated to be a milestone payment as it was payable on occurrence of a particular event.

3. In December, 1991 on account of the break-up of USSR, the Reserve Bank of India issued instructions suspending the rupee-rouble trade. In terms of the directions issued by Reserve Bank of India, plaintiff had to make payment on behalf of ISRO through defendant No. 2 in favor of defendant No. 1 in convertible currency. Despite these instructions of Reserve Bank of India the payment in question was made to defendant No. 3 for the credit of defendant No. 1 This transaction was repudiated by the Reserve Bank of India on 07.04.1993 and the plaintiff was directed to make payment through defendant No. 2 in convertible currency. The money was thereafter routed accordingly.

4. The present suit came to be filed in the year 1996 by the plaintiff ostensibly on the ground that defendant No. 3 was demanding the payment from the plaintiff and the same would amount to a double payment being made to defendant No. 1 since the payment had already been made through defendant No. 2. An interim application was filed seeking deposit of the amount by defendant No. 1 ostensibly on the ground that the double payment had been made and in terms of the order dated 07.10.1998 of the learned single Judge such payment was directed. This deposit with the plaintiff was to carry an interest of 24 per cent per annum on Rs 4.8 crores and it was further observed that the fixation of the said rate of interest was only on the prima facie view and the parties were at liberty to urge all points available in law with regard to the grant of interest pendente lite.

5. Defendant No. 1 aggrieved by the said order filed an appeal being FAO(OS) No. 290/98. The interim applications in said appeal were disposed of by the order dated 16.12.1998. In terms of the said interim orders a variation was made in respect of the order for deposit of amount by defendant No. 1 inasmuch as the amount required to be deposited was reduced to Rs 5,90,40,000 on the same terms and conditions. An amount of USD 2,10,000 was to be withdrawn from the

account of defendant No. 1 with defendant No. 2 and the balance had to be recovered through the process of the payments which had to be made by ISRO to defendant No. 1 through defendant No. 2 in future against other contracts.

6. The main appeal ultimately came to be decided by the order dated 09.04.2003. There were certain developments in between as defendant No. 3 stated that it was no more seeking recovery of any amount against the plaintiff. It may also be noticed that defendant No. 3 had filed a counter claim in the suit which defendant No. 3 sought to withdraw before the Division Bench. The Division Bench thus came to the conclusion that the very cause of action of filing this suit did not survive as there was no threat by defendant No. 3 to recover the amount from the plaintiff.

7. The problem however arose in view of the fact that there were interim orders passed whereby the plaintiff was the beneficiary of the amount deposited by defendant No. 1. The Division Bench directed the amount to be paid by the plaintiff to defendant No. 1 along with interest at 24 per cent per annum.

8. The plaintiff was of the view that the said order called for review and filed CM No. 445/2003 as the review application. It may be noticed that there was really no grievance in respect of the refund of the amount but the question raised was about the imposition of 24 per cent per annum interest as according to the plaintiff if at all interest was liable, the same should be calculated at 4.6 per cent per annum.

9. This application was disposed by the Division Bench by a detailed order dated 12.11.2003. The Division Bench was of the view that the plaintiff had never been debited with the two amounts and had only paid the amount once. The plaintiff was thus not out of pocket and continued to enjoy the amount deposited by defendant No. 1 with the plaintiff. There were fluctuations in the rate of exchange which were to the detriment of defendant No. 1 as the deposit had been made in dollars. It was thus held that the plaintiff is liable to pay the interest at 24 per cent per annum.

10. In view of the aforesaid facts, it was put to the learned senior counsel that the plaintiff as to what cause of action survives in the present suit. The submission of learned senior counsel is that in view of the liberty granted in terms of the order dated 07.10.1998 in this suit, it is open for this Court to consider reduction of interest of 24 per cent as interest was awarded only on a prima facie view of the matter as held by the said order.

11. The aforesaid contentions would have had some merit if the Division Bench had not passed the two orders dated 09.04.2003 and 12.11.2003. The plaintiff chose to raise this very grievance before the Division Bench about the claim of interest which according to the plaintiff ought not to be 24 per cent per annum and the Division Bench in its wisdom rejected the same by detailed orders. Thus this question is no more rest integra insofar as this Court is concerned.

12. Learned Counsel for defendant No. 1 further submits that even the SLP filed by the plaintiff against the order dated 12.11.2003 stands dismissed as withdrawn though the submission of learned Counsel for the plaintiff is that the same was withdrawn in view of the fact that this suit itself had been disposed of by the order dated 26.04.2004

13. In view of the aforesaid position, the cause of action for continuation of the suit does not survive and the suit is accordingly disposed of.