
(2017) 04 SHI CK 0101
In the High Court Of Himachal Pradesh
Case No : 4017 of 2013

State Bank of India

APPELLANT

Vs

Kishan Chand and others

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 2Rule 3](#), [Order 1Rule 3](#)

Citation : (2017) 04 SHI CK 0101

Hon'ble Judges : Sureshwar Thakur

Bench : Single Bench

Advocate : Arvind Sharma, Dalip K. Sharma, S.D. Gill, R.L. Sood, Arjun Lall, Ajay Sharma, Anita Parma, Neeraj Gupta

Judgement

1. The plaintiff, made an averment in the instant suit, that principal defendant No.1 in

connivance with other co-defendants, opened 18 fake accounts, wherein, amounts depicted in the table reflected below paragraph No.5 of the plaint, stood hence transferred, amounts whereof stand averred, to be respectively embezzled by principal defendant No.1 alongwith other co-defendants, with theirs holding complicity with each other. Consequently, the plaintiff in its suit, reared a claim for a decree for a sum of Rs.1,41, 98,259.33 paisa along with future interest @18 % per annum along with monthly rest, till the realization of the aforesaid amount, being recorded upon the defendants also claimed a relief of the aforesaid liability being jointly fastened upon the defendants, given theirs in respect thereof, being jointly and severally liable.

2. The defendants instituted separate written statements to the plaint. Defendants No.1 and 5, in their written statement(s) to the plaint, respectively raised therein preliminary objections, of the suit of the plaintiff being bad for joinder of several causes of action as also it being bad for mis joinder of parties, particularly of the defendants, thereupon, they

espoused qua the suit warranting its dismissal. Besides, the aforesaid submission, of the suit, hence being bad for mis joinder of parties and causes of action, particularly of the co-defendants along with defendant No.1, an objection of the suit being not properly valued for the purposes of court fees and jurisdiction also stood reared.

3. On the aforesaid preliminary objections qua the maintainability of the suit, this Court, on 27.5.2015, framed the hereinafter extracted preliminary issues, for hence an adjudication standing pronounced thereon:- (1). Whether the present civil suit is not maintainable on account of clubbing different cause of action as well as different defendants together in one suit, as alleged?.....OPD 1&5.

(2). Whether the plaint is not properly valued for the purpose of court fee and jurisdiction, if so its effect? ...OPD 1&5.

(3). Relief.

4. A perusal of the order sheets makes a disclosure of the defendants concerned, whereupon whom, the onus for adducing evidence

thereon, stood cast, communicating their intention to not adduce evidence thereon, whereupon this Court proceeded to list the matter for hearing, on the aforesaid preliminary issues.

5. The entire fulcrum, of the preliminary objection, of defendants No.1 and 5 of the suit of the plaintiff, being bad for misjoinder of co-defendants along with principal defendant No.1 and mis joinder of causes of action, is grooved in the statutory provisions embodied in Order 1, Rule 3 of the Code of Civil Procedure (hereinafter referred to as the "CPC"), besides is embedded in the provisions held in Order 2, Rule 3 of the CPC, provision(s) whereof stand extracted hereinafter. Provisions of Order 1, Rule 3 of the CPC read as under:- "3. Who may be joined as defendants All persons may be joined in one suit as defendants where-

(a) any right of relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(b) if separate suit were brought against such persons, any common question of law or fact would arise."

Provisions of Order 2, Rule 3 of the CPC read as under:-

"3. Joinder of causes of action

(1) Save as otherwise provided, a plaintiff may unite the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit."

6. Both the afore extracted statutory provisions, though "respectively" cast, an interdiction upon the plaintiff against his joining several defendants, in one suit, "unless" the relief reared against them in the plaint, strikingly or palpably, arises out of the same act

or transaction or series of acts or transactions "and" if separate suits are brought against such persons, any common question of law or fact would arise "AND" also foist a leverage in the plaintiff, to unite in the "same suit" several causes of action against the same defendant or the same defendants. However, the aforesaid leverage foisted in the plaintiff, by the provisions occurring in Order 2, Rule, 3 of the CPC, "is" given the occurrence of the opening words therein "save and otherwise provided", is hence with an obvious conspicuous reservation, of other provisions apposite thereto, engrafted in the CPC, "not" prohibiting the aforesaid statutory facilitation. Consequently, with the aforesaid statutory right, occurring in Order 2, Rule 3 of the CPC, hence standing vested in the plaintiff, "subject" to operation besides sway of other statutory provisions, thereupon, the mandate, held in the statutory provisions engrafted in Order 1, Rule 3 of the CPC, also acquire their relevant tremendous clout. In sequel, the leveraging of the aforesaid right in the plaintiff, warrants its bestowment upon the latter, only, on this court concluding qua the

suit of the plaintiff constituted against principal defendant No.1 along with whom other co-defendants stand arrayed, being not amenable to a conclusion of its suffering failure, failure whereof, arising from mis joinder of other co-defendants alongwith principal defendant No.1, and mis joinder of causes of action would occur, on the plaintiff, in espousing relief against principal defendant No.1, his prima facie "not" establishing of the relief asserted by it, against principal defendant No.1 also warranting the arraying along with him of other co-defendants, markedly given the relief asserted by it, against principal defendant No.1, prima facie standing established, to arise out of the same act or transaction or series of acts or transactions, "common" with respect to all codefendants, "common" acts/transactions whereof, stand conjointly reared in the suit, against all the defendants. He was also enjoined to prima facie establish, of, if separate suits were brought against such persons, any common question of law or fact would arise. Succinctly, hence, prima facie pleadings were enjoined to bespeak, the trite fact of the

transactions with respect to the aforesaid sums of money concerted to be realised severally or jointly from the defendants, hence, arising out of the same act or transaction or series of acts or transactions. Also the fact of inter se intrinsic blending of an act or of a transaction or series of acts or transactions, whereupon, the relief reared by the plaintiff against the defendants, is rooted or embedded, warranted its prima facie satiation, by apposite averments in respect

thereto, being constituted in the plaint.

7. In summa, prima facie the fact of commonality or inter se innate blending of an act or of a transaction or series of acts or transactions, whereupon, a purported conjoint relief stands reared against all the defendants, stood enjoined, to make its candid bespeaking, by averments in respect thereto, standing constituted in the plaint. Contrarily, if the aforesaid fact of inter se intrinsic blending of an act or of a transaction or series of acts or transactions, whereon conjoint relief(s) are reared against all the codefendants, remains prima facie uncommunicated in the plaint, thereupon, the joinder of the principal

defendant No.1 along with other co-defendants as also joinder of causes of action, would render the suit to be mis-constituted, for hence mis joinder of codefendants along with principal defendant No.1. In sequel, this Court would stand constrained, to hence conclude qua findings in the affirmative being rendered upon preliminary issue No.1.

8. Having culled out, the subtle nuance of the afore extracted statutory provisions, thereupon, their applicability, besides attraction hereat, is enjoined to be gauged, gauging whereof warrants, an allusion to the relevant averments in respect thereto, constituted in the plaint, apposite averments whereof exist, in paragraph No.5 of the plaint, wherein, the plaintiff concedes qua defendant No.1, in connivance with other co-defendants, opening 18 fake accounts, details whereof are depicted hereinafter: -

Sr. No. Account No. Name of borrower Date of Loan/Deposit account opened Amount in Rs.

1. 31562884013 Parvinder Jeet 30.12.2010 7.50 lacs
2. 31630162409 Parvinder Jeet 15.02.2001 12.00 lacs
3. 31726136073 Parvinder Jeet 28.04.2011 15.00 lacs
4. 30807959536 Star Electrical & Trading Co. 29.06.2009 23.00 lacs
5. 31016329721 Star Electrical & Trading Co. 07.01.2010 18.00 lacs
6. 31766770274 Star Electrical & Trading Co. 30.05.2011 18.00 lacs
6. 31766770274 Star Electrical & Trading Co. 30.05.2011 18.00 lacs
7. 31101868968 Satish Kumar 20.03.2010 18.00 lacs
8. 31882525831 Satish Kumar 12.08.2011 13.00 lacs
9. 31929813886 Satish Kumar 09.09.2011 18.00 lacs
10. 31445916084 Star Electrical Recording 28.09.2010 5.00 lacs.
11. 31504686111 Star Electrical Recording 19.11.2010 9.50 lacs.
12. 31971585289 Star Electrical Recording 03.10.2011 9.50 lacs.

13. 31169654779 Sai Electrical Works 13.05.2010 5.00 lacs
14. 31206549560 Sai Electrical Works 11.06.2010 18.50 lacs
15. 30681578823 Vijay Singh 10.03.2009 15.00 lacs
16. 30682429869 Vijay Singh 17.02.2009 CA
17. 31726135321 Vijay Singh 28.04.2011 19.50 lacs
18. 30967445314 Vijay Singh 23.11.2009 23.50 lacs.

9. A perusal of the afore extracted table, drawn below paragraph No.5 of the plaint, makes graphic unfoldments, qua 18 fake accounts, as stood opened by principal defendant No.1, purportedly in connivance respectively with other co-defendants, of their opening "not" occurring on one date rather their openings, occurring on contradistinct dates, wherefrom, apparently, hence, an apt conclusion ensues qua the mandate, engrafted in Order 1, Rule 3 of the CPC, of

the plaintiff holding a right to join other co-defendants along with principal defendant No.1, on satiation, standing begotten qua his espoused relief, of recovery of sums of money jointly and severally from the defendants, being rooted or grooved, in the fact of same act or transaction or series of acts or transactions, hence, prima facie not begetting its apt statutory satiation. Consequently, the joinder of other co-defendants along with principal defendant No.1, is rendered open to erection of an inference of their joinder along with principal defendant No.1, in the suit for recovery of sums of money, jointly and severally from them, being hence bad.

10. However, the aforesaid statutory conditions when stand concluded to not beget satiation, yet with mandate of sub rules (b) of Order 1, Rule 3, of the CPC also warranting its conjoint satiation along with the mandate held in sub rule (a) thereto, conspicuously when the aforesaid sub rules (a) and (b) of Order 1, Rule 3 of the CPC, stand separated by the conjunctive "AND". Consequently, it is imperative to adjudge qua mandate thereof also begetting satiation. In making

the aforesaid discernment, the contradistinctivity of acts or transaction or series of acts or transaction vis-avis co-defendants arrayed along with principal defendant No.1, per se, hence, constrains an inference qua hence distinct question(s) of law, as well as of fact, spurring from each of the separate, "uncommon act" or transaction or series of acts or transactions, especially, with hence the plaintiff standing driven to institute separate suits against the defendant(s), thereupon, also no common question of law or fact would arise in each of the separate suits. In aftermath, though the import of sub rule (b), is rooted in the salutary objective, of obviating multiplicity of litigation, whereas, for reasons aforestated, the mandate of both sub rules (a) and (b) of Order 1, Rule 3 of the CPC not begetting satiation, hence, the suit of the plaintiff, wherein he, with respect to a contradistinct act or transaction or series of acts or transactions inter se each, joins each of them as co-defendants along with

principal defendant No.1, is palpably bad for misjoinder of defendants.

11. The learned counsel appearing, for the plaintiff has made a concerted assay, to oust the vigour of the aforesaid inference, by contending qua with in paragraph No.24 of the plaint, an averment existing, qua from account No.31726135321 opened by principal defendant No.1 in the name of Vijay Singh, codefendant No.2, the respective onward transmission of funds occurring in the bank accounts of other codefendants, hence, with the aforesaid account, constituting the "corpus fund" also its holding, the apt linkage of similarity inter se each/all bank accounts, of all co-defendants besides its holding commonality with respect to subsequent transactions which occurred therefrom. In aftermath, he proceeds to contend of, hence, all the subsequent series of acts or transactions, holding the apt alignment with the initial opening of account No. 31726135321 by principal defendant No.1 qua co-defendant No.2, thereupon, hence the joining of all co-defendants along with principal defendant No.1, being not bad. However, the aforesaid submission warrants its rejection, in the trite fact of principal defendant No.1, being averred to, in connivance with

other co-defendants opening 18 fake accounts, whereupon it was imperative for the plaintiff bank, to prima facie establish of hence, the opening of fake accounts, by principal defendant No.1 with respect to other co-defendants, spurring from each of the codefendants, holding knowledge qua the relevant factum probandum, wherefrom, alone an inference would surge forth, of theirs holding complicity with principal defendant No.1, rendering hence their joinder with principal defendant No.1, to be apt. However, the judgment of conviction, pronounced by the learned Special Judge, CBI, Shimla in Sessions Trial No. 20-S/7 of 2014/2013, upon defendant No.1, naturally unfolds, of the co-defendants being "not" along with principal defendant No.1 arrayed, as accused, in the aforesaid Sessions trial, wherefrom, an inevitable inference, is of the prosecution acquiescing, of all the co-defendants "not" holding knowledge nor obviously theirs colluding with one K.C. Tundkia, in the latter opening fake accounts in their respective names. Corollary whereof, is qua prima facie, the veracity of the averments, constituted in the plaint of the opening of fake bank

accounts, by principal defendant No.1 with respect to the other co-defendants, spurring from each colluding with principal co-defendant No.1, hence, prima facie standing dislodged. In aftermath, the aforesaid averment, cast in paragraph No.24 qua the account reflected therein, constituting the "corpus fund", wherefrom, funds flowed into the subsequently opened "fake" bank accounts of each of the co-defendants, whereupon, the counsel for the plaintiff concerts, of there hence existing an apt commonality inter se the initial opening of account(s) vis-a-vis the subsequently opened fake accounts, by the principal defendant No.1 with respect to each of the other co-defendant(s), hence, the mandate of Order 1 Rule 3 CPC standing satiated, "not" for reasons aforesaid, displacing the effect of the inference recorded hereinabove. Consequently, issue No.1 is decided in favour of the defendants and against the plaintiff. Issue No.2.

12. Be that a it may, the suit of the plaintiff against the co-defendants, who stand arrayed along with principal defendant No.1, when stands construed

to be suffering from a vice of mis joinder of parties and causes of action, yet it would "not" oust the plaintiff, to, in consonance with the table occurring under para 25 of the plaint, institute separate suits with respect to separate causes of action arising against principal defendant No.1, wherein, other apposite co-defendants stand arrayed, as defendant(s) along with him. In sequel thereto, the suit instituted by the plaintiff against co-defendant No.1, arraying, along with codefendant No.2, is properly constituted, whereas the suit constituted against defendant No.1 jointly, arraying, alongwith him, co-defendants No.3, 4 and 5, is misconstituted. However, the suit for recovery of money instituted against principal defendant No.1 arraying, along with co-defendant No.2, if falls, within the pecuniary limits of the jurisdiction of this Court, it, be retained hereat and if, it falls outside the pecuniary limits of the jurisdiction of this Court, it be transferred to the appropriate Court holding the appropriate pecuniary jurisdiction. Sequelly, also it is open to the plaintiff to in the appropriate Civil Court, holding the apposite pecuniary jurisdiction to try it, institute civil

suit(s) against principal defendant No.1, arraying, along with him the apposite co-defendants, wherewithwhom, he holds likeness or commonality of act or commercial transaction or series of acts or transactions. Issue No.2 stands decided accordingly. Relief.

13. For the foregoing reasons, it is held that the suit of the plaintiff suffers from a vice of mis joinder of defendants and causes of action. However, the suit instituted by the plaintiff against principal defendant No.1, arraying, along with co-defendant No.2 is properly constituted, whereas, the suit constituted against principal defendant No.1 jointly, arraying, along with him, co-defendants No.3, 4 and 5, is misconstituted. However, the suit for recovery of money against principal defendant No.1 along with codefendant No.2, if falls within the pecuniary limits of the jurisdiction of this Court, it be retained hereat and if it falls outside the pecuniary limits of jurisdiction of this Court it be transferred to the appropriate Court holding the appropriate pecuniary jurisdiction to hold trial thereof. Sequelly, also it is open to the plaintiff to in the

appropriate Court holding the apposite pecuniary jurisdiction to try it/them, appropriate institute civil suit(s) against principal defendant No.1, arraying along with the apposite co-defendants, wherewithwhom, he holds likeness of commonality of act or commercial transaction or series of acts or transactions. Court fees respectively, in accordance with law be refunded to the plaintiff for facilitating him to institute civil suits in the aforesaid manner against principal defendant No.1 arraying along with him the apposite co-defendants "except" co-defendant No.2, in respect whereto, the suit be transmitted, if not falling within the pecuniary limits of the jurisdiction of this Court, to the Court holding the pecuniary limits of jurisdiction, to try it, "after" making necessary deletions from the array of co-defendants, of defendants No.3 to 20. All pending applications

also stand disposed of. However, it is made clear that the observations made hereinabove shall not, in any manner, affect the merits of the case in the "suits".