(1976) 09 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : First Appeal From Order No. 171 of 1974

State Bank of India — APPELLANT

Vs

Mr. Kuljit Singh Neelam Sole Proprietor M/s Kemidies Pharmaceutical and Surgical Company Industrial Estate Rajpura and others — RESPONDENT

Date of Decision : 07-09-1976

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (1976) 09 P&H CK 0030

Hon'ble Judges : Gurnam Singh, J

Bench : Single Bench

Advocate : R.K. Chhibbar and Rajinder Paul, for the Appellant; S.L. Puri for Messrs M.B. Singh, Munishwar Puri and Vijay Jhanji, for the Respondent

Final Decision : Allowed

Judgement

Gurnam Singh, J.—The State Bank of India (hereinafter called the Bank), Plaintiff-Appellant, filed the suit for the recovery of Rs. 1,80,122.88 Ps. against the Defendant-Respondents in the Court of Sub Judge Ist Class, Chandingh.

2. The suit was contested by Defendant-Respondents Nos. 4 and 5 on various grounds and the learned trial Sub-Judge framed the following issues: -

1. To what amount, if any, the Plaintiff, is entitled to OPP recover and from whom ?

2. Whether this Court has no jurisdiction to try this OPD suit ?

3. Whether the suit is bad for mis-joinder of cause of OPD action ?

4. Whether the suit is barred by time ? OPD

5. Whether the suit is pre-mature as against Defendant OPD No. 4?

6. Whether the plant is not properly valued for the purpose OPD of Court fee and

jurisdiction ?

7. Relief.

The trial Sub-Judge first took up issue No. 2 and held that the Court has no jurisdiction to try the suit and returned the plaint to the plain- tiff-Appellant for presentation in the Court having proper jurisdiction.

3. Aggrieved with the order of the trial Sub-Judge, the Bank has preferred this appeal.

4. The case of the Plaintiff-Appellant Bank, in brief, is that the Bank has fixed cash credit limit at Rs. 75,000/- to Kuljit Singh Neelam, Defendant-Respondent No. 1 and under the aforesaid limit, he (Defendant No. 1) used to take loans on the pledge of stocks of raw materials and finished goods. The cash credit limit of Defendant No. 1 was guaranteed by Defendant-Respondent No. 2. Defendant Respondent No. 1 insured his goods pledged with the Bank, with Respondent Defendants Nos. 4 and, 5 and the insurance policies were issued by them (Respondent Nos. 4 and 5) showing the Bank as the mortgagee and Defendant-Respondent No. 1 as mortgagor. The Bank was entitled to receive the payment under the aforesaid policies by virtue of the bank clause if and when the claim or claims arose.

5. A fire broke out in the premises of Defendant-Respondent No. 1 on 24th/25th November 1970, when most of the stores were destroyed- and on account of the cash credit loan, the Bank was entitled to recover Rs. 97,934.66 Ps. from Respondents Nos. 1, 2, 4 and 5, whose liability was joint and several in respect of that amount.

6. Defendant-Respondent No. 1 also availed of the instalments credit loan and took a loan of Rs. 89,820/- on 6th September 1968 and Defendant-Respondent No. 3 had guaranteed that loan. Defendant- Respondent No. 1 failed to make payment of the instalments after making payment of the first instalment and as such a sum of Rs. 82.181.22 Ps. was due to the Bank from Defendant-Respondents Nos. 1 and 3. whose liability is joint and several.

7. Defendant-Respondent No. 1 further obtained a loan, against security of promissory note, of Rs. 3120/- from the Bank and failed to make the payment of the same. The Bank served notice to the Defendant Respondents but they failed to make any payment and there- after the Bank filed the suit claiming liability-of Defendant-Respondent No. 1 being obligatory in regard to the entire amount and the liability of Defendant Respondent No. 2 to the extent of Rs. 97,934.66 Ps.; of Defendant-Respondent No. 3 to the extent of Rs. 82, 188.22 Ps.; of Defendant-Respondent No. 4 to the extent of Rs. 63,678.60 Ps. and of Defendant-Respondent No. 5 to the extent of Rs. 63,678.60 Ps.

8. In this case, Mr. Kuljit Singh Neelam, Defendant-Respondent No. 1 is a resident of Chandigarh. It is not disputed that Kuljit Singh Neelam, Defendant-Respondent No. 1, borrowed money from the Bank at Chandigarh and the

agreement for cash-credit, Exhibit P. 1, and Instalment Credit Hypothecation of Moveable Machinery and equipment. Exhibit P. 12 were executed at Chandigarh. Agreement, Exhibit P. 2 by the guarantor Defendant-Respondent No. 2 was also executed at Chandigarh. Major Paul Singh Sidhu, Defendant-Respondent No. 3 also executed the guarantee, Exhibit P. 13 at Chandigarh. Kuljit Singh Neelam insured his goods which were pledged with the Bank, with National Insurance Company Ltd. and United India Fire and General Insurance Company Ltd. Defendant-Respondents Nos. 4 and 5, respectively. The address of National Insurance Company Limited given in the plaint is that of Chandigarh. u/s 20 of the Civil Procedure Code, a suit shall be instituted in a Court within the local limits of whose jurisdiction the Defendant resides or carries on business, or personally works for gain. According to Explanation II of this section a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. Thus Respondent No. 4 should be sued at Chandigarh and it has been so held by the learned trial Sub Judge.

9. The contention of the Learned Counsel for Defendant-Respondent No. 3 is that it had been agreed upon between them that all disputes regarding the insurance policies shall be settled at New Delhi and, therefore, the Court at Chandigarh has no jurisdiction to entertain the suit.

10. The goods pledged with the Bank caught fire at Rajpura and were destroyed. The Bank made a claim against the Insurance Companies also. Since the goods had been burnt at Rajpura, the suit against the insurance Companies could either be filed at Rajpura or at Delhi as the insurance policies had been executed at Delhi. In such a case, the parties could by agreement, settle the place as to where the suit was to be filed. In the instant case the Bank, Defendant-Respondent No. 1 and the Insurance Companies had entered into an agreement that in case of dispute Court at Delhi shall have the jurisdiction and the dispute will be settled by the Courts at Delhi. Thus the jurisdiction of the Rajpura Court was also ousted and Defendant-Respondent No. 5 could be sued only at Delhi. There could have been no difficulty if the claim would have been only as against Defendant-Respondent No. 5. Since the suit had been filed against more than one Defendant and at the time of the commencement of the suit, four Defendants were residing at Chandigarh, it was necessary for the plain- tiff to obtain a leave from the Court to institute the suit against all the Defendant-Respondents at Chandigarh. Defendant-Respondent No 5 did not acquiesce in the filing of the suit at Chandigarh so the leave of the Court was essential. Now the question arises as to whether such leave of the Court was required while the suit was instituted or the same can be granted now by this Court. Section 20, sub Clause (b) does not contain any inhibition to the institution of a suit without taking proper leave of the Court. The proviso under this sub-clause regarding the leave of the Court cannot be read to mean as imposing a condition precedent to the institution of the suit. On the other hand under this sub-clause a Plaintiff is permitted to institute a suit at a place where any of the Defendants, where there

are more than one, resides or carries on business or personally works for gain. After such a suit is instituted, two situations may arise; either that, the Defendants who did not reside Within the jurisdiction of the Court may not arise an objection to the jurisdiction of the Court and the suit proceeds further because of their acquiescence in such institution or the non-resident Defendants object to the jurisdiction of the Court. The proviso does not exclude the possibility of the leave of the Court being given after the institution of the suit If the suit can be continued by subsequent acquiescence of the non-resident Defendants, it can also be continued by subsequent leave of the Court. Thus Section 20 (b) Civil Procedure Code, cannot be read in a way that may limit the power of the Court to grant leave only prior to the institution of the suit and not after it. Illustration B appended to Section 20, CPC Code, further makes the position clear and shows that leave can be granted by the Court when the non resident Defendants object to the jurisdiction of the Court. By acquiescence of the non-resident Defendants a defect in the institution of the suit can subsequently be removed which shows that obviously there could be no acquiescence at the time of institution of the suit. Thus it is not correct to say that the leave of the Court in such cases must be obtained before filing the suit, in the instant case the Bank has moved an application for permission to sue the non-resident-Defendant at Chandigarh u/s 20(b), CPC Code.

11. As said above Defendant-Respondent No. 1 had borrowed money from the Bank at Chandigarh and as such for the realisation of the money, the cause of action arose to it at Chandigarh. The claim of the Bank as against the United India Fire and General Insurance Company Ltd., Defendant Respondent No. 5, is in respect of the loan which had been taken by Defendant-Respondent No. 1. No doubt according to the stipulation in the policy, Defendant-Respondent No. 5 could be sued at Delhi but to avoid multiplicity of the suits a provision has been added as Section 20(b) in the CPC Code, that in such cases suit shall be instituted with the permission of the Court, in the Court where the other Defendants reside. u/s 107(2), CPC Code, the Appellate Court has the same powers and has to perform as nearly as may be, the same duties as are conferred and imposed by the CPC on Courts of original jurisdiction in respect of suits instituted therein and can do, while the appeal is pending, what the original Court could have done while the suit was pending. J, therefore, see no reason why the Appellate Court cannot grant leave u/s 20(b) Code of Civil Procedure, in appropriate cases. The trial Court can grant such leave even after the institution of the suit and if that can be done it can certainly be granted by the Appellate Court. In view of the facts of the present case and to avoid multiplicity of suits it is proper that the Bank should be allowed to sue all the Defendants at Chandigarh. The Bank is, therefore, granted leave to file the suit at Chandigarh u/s 20(b) of the Code of Civil Procedure. As the bank has been granted leave to file the suit at Chandigarh, the plea of lack of jurisdiction fails and the impugned order of the Sub-Judge is set aside and the suit is remanded for decision on merits. The parties through three counsel are directed to appear in the trial Court

on 27th September, 1976. The record of the case be sent to the trial Court at once.

