

(2000) 05 DEL CK 0011

In the Delhi High Court

Case No : I.A. 7892 of 1999 S. No. 2805 of 1996

State Bank of India

APPELLANT

Vs

M/s. Glavkosmos and Others

RESPONDENT

Date of Decision : 23-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2000) 5 AD 634

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Dr. A.M. Singhvi and Mr. Vikas Goel, for the Appellant; Mr. H.S. Phoolka and Mr. Arvind Nigam, Mr. Vineet Malhotra, for the Respondent

Judgement

Vikramjit Sen, J.—In the case of 1992 (61) ELT 3 (SC) the Apex Court had observed that it had "on more than one occasion pointed out that Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court by spending money on fees of counsel, court fees, procedural expenses and wasting public time. Courts are maintained for appropriate litigations. Court's time is not to be consumed by litigation which are carried on either side at public expenses from the source. Notwithstanding these observations repeated on a number of occasions, the present cases appear to be an instance of total callousness. The letter of October 3, 1988, indicated that the Cabinet Secretary was looking into the matter. That has not obviously been followed up. As an instance of wasting public time and energy this matter involves a principle to be examined at the highest level". Five years later the Court explained this decision in Steel Authority of India Ltd. (Successor to Hindustan Steel Ltd.) Vs. Life Insurance Corporation of India and Others, , holding that the previous directions for the Constituting of a High Powered Committee to resolve disputes between the Public Sector Undertakings and the Government of India was still the need of the hour so that needless consumption of time and waste of public funds could be avoided. The Apex Court had recorded the following observations :

"The object of issuing direction in those matters was to decide the fiscal disputes in case of major policy matters to save the public money and Court's valuable time, and disputes could amicably be settled between the Public Sector Undertaking and the Government of India or the State Governments. The intention was not to resolve the disputes like eviction of a Company or Public Undertaking under Public Premises (Unauthorised Occupants) Act; such petty disputes are not directed to be dealt with by the high level officers whose duty and time is of very important nature otherwise. Under these circumstances, the High Court has not committed any error warranting interference."

2. Keeping the facts of the case in perspective, the dispute now raised by the Indian Space Research Organisation (ISRO) by means of application under Order 1 Rule 10 of the CPC is a typical case falling within the proscription of the ONGC ruling. The proceedings should have been halted at the threshold and the application should have been heard only post obtainment of the Cabinet Committee Clearance. Since this objection had not been voiced at that stage, and arguments were heard in extension, I think it appropriate to decide the application on merits.

Very briefly stated, the relevant facts are that the State Bank of India (SBI) had initiated a suit for the recovery of Rs. 6,98,24,219.12 (Rupees Six Crores Ninety Eight Lakhs Twenty Four Thousand Two Hundred Nineteen and Twelve paise only) stated to have been paid by it by mistake to Defendant No.1, Messers Glavkosmos. The provisions of Section 72 of the Contract Act have been relied upon by the plaintiff.

3. On the first hearing itself i.e. on 20.11.1996, an injunction was issued restraining the movement of moneys of Defendant No.1 into the coffers of its Bankers namely, Bank of Rajasthan Ltd, Defendant No.2. Shortly thereafter, on 9.12.1996, on a fresh application being initiated, the Project Director, GSLV, ISRO, was also restrained from transferring, debiting or otherwise parting with the funds of Defendant No. 1 lying with ISRO to the extent of the money claimed in the suit. After hearing the arguments of the parties my learned brother, K. Ramamoorthy, J. directed the plaintiff to receive from ISRO the sum of Rs.6,98,24,219.12 plus interest at the rate of 24 per cent per annum on Rs. 4.8 crores from the date of the plaint till 30.9.1998. Till this money was received by the plaintiff, the learned Judge continued the operation of the interim orders passed earlier. These orders were passed on 7.10.1998. The annals of the litigation do not end here since the controversy was carried to the portals of the Division Bench. Significantly the applicant ISRO participated in the appellate hearings. On 16.12.1998 the following order was passed:

"CMs. 3822 & 4270/98 in FAO(OS) 290/98

Mr. Nigam states that without prejudice to the rights and contentions of the appellant, as an interim measure, the appellant will have no objection if a sum of Rs. 5,90,40,000/- is withdrawn by respondent No.1 State Bank of India. Counsel

further submits that rupees equivalent to US 2,10,000/- may be withdrawn from the account of appellant with respondent No. 2 and the balance from ISRO from whom some amount are payable to the appellant. It is ordered accordingly. We also direct that the order under appeal by the Bank would cover the amount of Rs.5,90,40,000/- so received by State Bank of India. As an interim measure the impugned order in appeal is modified in the above terms. We are, however, not inclined to grant the stay of proceedings in the suit. On payment so made, the interim orders dated 20th November, 1996 and 9th December, 1996 passed in the suit shall stand vacated. Considering the nature of controversy as also the fact that we have declined to stay further proceedings in the suit, we direct that the appeal may be listed for hearing at Item No.1 subject to part-heard on 5th April, 1998. A copy of this order be given dusty to counsel for the parties."

4. In the application it has been pleaded by ISRO that it had entered into a supply contract with GLAVKOSMOS, and had been making payments to the latter from time to time. While the applicant ISRO was making arrangements for the payment of US \$ 4.3 million (approx. Rs.15.50 crores) it obtained, on 11.12.1996, knowledge of the injunction passed by this court. It is pleaded by ISRO that so far as it is concerned all payments due under this contract totalling Rs. 60.31 crores has been remitted to Glavkosmos in full. In strictly complying with the orders passed by the Division Bench, ISRO paid the balance amount due to Defendant No.1, Glavkosmos, but in this process has incurred an additional burden of Rs.1,24,70,534.88 because of variations in the exchange rate, "solely on account of the Court case filed by SBI against M/s. Glavkosmos over the double payment purportedly made by them to M/s. G.K." It is further averred "that in event of Glavkosmos or SBI winning the case, it is likely that these parties to the litigation would claim for payment of interest on the amount withheld up to the date of the judgment ISRO's liability is limited only to the amount withheld". Thereafter the following prayers are made, which are reproduced verbatim since, on a plain reading, the application for impleadment has been initiated for purposes of the other reliefs, all of which are not directly in issue in the present suit. These reliefs are palpably of a nature that would be prayed for in a separate suit but without payment of the advalorem fees that would be immediately attracted.

"1. It is Therefore, respectfully prayed that this Hon"ble Court may be pleased to implead the Union of India in the present proceedings.

2. Decree for payment of Rs.1,24,70,534.88 (Rupees one crore a twenty four lakhs seventy thousand five hundred and thirty four and paise eighty eight only) to the imp leader (ISRO) by the State Bank of India, towards refund of the excess amount paid by ISRO in Indian Rupees to M/s. GK, Russia on account of delayed payment to M/s. GK and the consequent exchange rate variation, caused by the order dated 9.12.96 passed by the Hon"ble Court in the case filed by SBI against M/s. GK over the double payment.

3. A decree restraining SBI and M/s. GK, as the case may be from claiming

payment of any interest from ISRO on the amount withheld and subsequently released and up to the date of judgment inasmuch as ISRO had with-held the amount solely in compliance with the court's order dated 9.12.96 and would have released the payments to GK on the due date but for the court's order.

4. Cost of suit be awarded in favor of imp leader (ISRO).

5. Any other relief that the Hon"ble Court may deem fit."

5. Only the plaintiff has filed a reply to the application, but significantly, it has been actively and vociferously joined in its opposition to it also by Defendant No. 3, the Russian Bank.

6. In Razia Begum Vs. Sahebzadi Anwar Begum and Others, , Razia Begum had prayed for two declarations in the suit: (1) that she was the legally wedded wife of the Defendant and (2) that she was entitled Rs. 2000/- as maintenance. An application under Order I Rule 10 C.P.C. was filed by the applicants, claiming to be the lawful and legally wedded wife and son. It was, inter alia, pleaded that litigation was collusive. In this context the Apex Court made the following observations; the second having assumed the proportions of a jurisprudential grand norm.

"As a result of these considerations, we have arrived at the following conclusions:

(1) That the question of addition of parties under R.10 of O. 1 of the Code of Civil Procedure, is generally not one of initial jurisdiction of the court, but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case; but in some cases, it may raise controversies as to the power of the court, in contradistinction to its inherent jurisdiction, or, in other words, of jurisdiction in the limited sense in which it is used in Sec. 115 of the Code;

(2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;

(3) Where the subject matter of a litigation, is a declaration as regards status or a legal character, the rule of present or direct interest may be relaxed in a suitable case where the court is of the opinion that by adding that party, it would be in a better position effectually and completely to adjudicate upon the controversy.

(4) The cases contemplated in the last proposition, have to be determined in accordance with the statutory provisions of Sec. 42 and 43 of the Specific Relief Act;

(5) In cases covered by those statutory provisions, the court is not bound to grant the declaration prayed for, on a mere admission of the claim by the defendant, if the court has reasons to insist upon a clear proof apart from the admission.

(6) The result of a declaratory decree on the question of status, such as in controversy in the instant case, affects not only the parties actually before the Court, but generations to come, and in view of that consideration, the rule of "present interest" as evolved by case law relating to disputes about property does not apply with full force; and

(7) The rule laid down in Sec. 43 of the Specific Relief Act, is not exactly a rule of *res judicata*. It is narrower in one sense and wider in another.

7. It would be improper for this court to reflect upon or express any observations on the tenability of the surmises, concerns and/or conjectures pertaining to the liability of ISRO towards payment of interest. It does not arise in the facts of the present case especially for the disposal of the application. Before moving on it cannot but be mentioned that the contents of the application and the reliefs contained therein are essentially in the nature of a plaint. The objection of Mr. Vineet Malhotra, learned counsel for Defendant No. 3, to the effect that appropriate court fees has not been paid on the relief of the recovery of Rs.1,24,70,534.88 underscores and highlights this impression. However, the averments made in the application as well as the reliefs claimed therein provide the answer to the question whether to implead or not to implead. The applicant has itself expressed that it is not concerned in the dispute between the parties to the suit, and that it has been allegedly obliquely or indirectly affected by the orders passed by the court, to its financial detriment. It is now fairly well established that merely because a third party is so affected is no ground for allowing it to be impleaded in a suit. There must be a direct interest in contradistinction to a commercial, monetary or financial interest. The plaintiff has prayed for a decree of recovery of Rs. 6,98,24,219.12 against Defendant No.1 on the foundation of Section 72 of the Contract Act, as double payment made by mistake. In this controversy, the applicant is not even obliquely concerned; it has come into the picture only incidentally, as a consequence of the orders passed in this suit. This is no reason for ignoring and violating the principle that the plaintiff is *dominus litis*. If the suit is decreed it would be of no consequence to the applicant. There would be no ground, in that event, for Defendant No.1 to claim any interest, because it would not be entitled to any money. What appears to me to be most important is that it would be illogical and wholly improper for the Court to be influenced by the consideration of ISRO being rendered vulnerable to a claim for payment of interest if the suit is rejected. In other words, if ISRO is allowed to be impleaded all it would represent, impress and stress before the Court is that the suit should be dismissed because otherwise it may possibly be rendered liable to payment of interest.

8. This brings me to the question of the timing of the application. Learned counsel for the plaintiff and Defendant No. 3 have strongly imputed connivance between ISRO and Defendant No.1 inasmuch as the application has been preferred even post disposal of the appeal of Defendant No.1 on a concession, albeit without prejudice, made by Defendant No.1 who was the appellant, before

the Learned Division Bench. It was upon this accusation being voiced that the decision in the ONGC's case (supra) came to be reflected upon. This very application could have been filed three years previously, immediately after 11.12.1996 on ISRO having gained knowledge of the passing of the injunction orders. Having failed to do so it ought not to be heard at this belated stage. In these proceedings, especially where no Explanation is forthcoming as to why it has now filed the application after such inordinate delay. All the more so because had the present relief been asked for in December 1996, the alleged liability for extra payment having been incurred due to variation in exchange rates between 1996 and 1999 would not have arisen at all, or would have been immediately obviated. All that had to be done was to deposit the amount in dispute and thereby obtain a complete discharge.

9. Prima facie, collusion between ISRO and Defendant No.1 appears to exist. Learned counsel for the Russian Bank, Defendant No. 3, has supported the plaintiff's allegation that money has been paid twice over to Defendant No.1. In spite of this, ISRO is speculating upon its liability to pay interest to Defendant No.1 and thereby espousing the cause of M/s. Glavkosmos against the State Bank of India. The direct consequence of the intervention of ISRO is to buttress and support Defendant No.1's defense that it has not received double payment and that further foreign exchange should leave India. This is, Therefore, definitely a case which was within the contemplation of the Supreme Court when it made its observations in ONGC's case (supra) and Steel Authority of India's case (supra). One arm of the Government is not expected to truncate the other - prior clearance from the Cabinet Committee should have been obtained. An argument was put forward on behalf of the applicant ISRO that its functioning would be impaired if payments are not made to Defendant No. 1. There is no justification for this argument been made in circumstances where the plaintiff and the Defendant No. 3, who do not have any common or joint interest, have joined issue on double payment having been made. If ISRO would be prepared to countenance and be privy to the alleged double-payment it should separately petition its fountainhead of finance. There is no justification for passing the buck to the plaintiff.

10. The application is wholly untenable in the context of the scope of Order I, Rule 10. It is clearly belated, and in my view vexatious. It is dismissed with exemplary costs of Rs.25,000/- payable to the Prime Minister's National Relief Fund, (for Draught), by Demand Draft to be deposited with the Registrar of this Court within fifteen days.