
(1987) 07 CAL CK 0014
In the Calcutta High Court
Case No : Civil Order No. 3141 of 1986

State Bank of India

APPELLANT

Vs

Techno Ceram and Others

RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:

West Bengal Court Fees Act, 1970 — Section 21, 21(2)

Citation : (1989) 65 CompCas 74 : 92 CWN 48

Hon'ble Judges : C. Mookherjee, C.J.; S.S. Ganguly, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Suchit Kumar Banerjee and S.K. Ash, for the Appellant;

Final Decision : Allowed

Judgement

Mookherjee, C.J.—The plaintiff-petitioner bank has instituted against the defendant-opposite parties Title Suit No. 21 of 1986 in the Eighth Court of the Assistant District Judge, Alipore, inter alia, for recovery of Rs. 1,33,124.54 for a decree against them under Order 34, Rule 4, of the CPC in respect of the property mentioned in Schedule A and for enforcing the plaintiff bank's right to sell the goods, machinery, tools and equipment mentioned in annexure M to the plaint by way of enforcement of the charge created thereon for repayment of the aforesaid amount.

2. The learned Assistant District Judge, by an ex parte order dated July 26, 1986, has held that the plaintiff's claim for Rs. 1,33,124-54 did not arise out of one transaction or one cause of action. It arose out of a first term loan of Rs. 40,018.23, cash credit account for Rs. 59,577.23 and a second term loan of Rs. 33,535.12. According to the learned Assistant District Judge, separate causes of action had been joined in one suit. Therefore, court fees were liable to be paid on each claim. Amalgamation of the three claims into one for the purpose of court fees was hit by Section 21 of the West Bengal Court Fees Act, 1970. The learned Assistant District Judge directed the plaintiff to deposit the deficit court fees by

September 4, 1986, Being aggrieved by the said order, the plaintiff bank filed this revisional application u/s 115 of the Code of Civil Procedure. In spite of due service of notice upon them, the defendant-opposite parties have not appeared to oppose this revisional application. We accept the affidavit of service filed by the plaintiffs.

3. In our view, the learned Assistant District Judge has acted illegally and with material irregularity in the exercise of his jurisdiction by calling upon the plaintiff bank to pay separate court fees upon "each claim". Upon a proper construction of the plaint, the learned Assistant District Judge ought to have held that the plaintiff bank has prayed for several reliefs, inter alia, by way of several declarations, passing of mortgage decree and also personal decrees against defendants Nos. 1 and 2 and against defendants Nos. 3 to 10 as heirs and legal representatives of the late Bimala Debi, etc. At the present stage, when the defendants did not yet appear and file their written statements and the trial has, not taken place, the court fees payable upon the plaint are to be computed according to the averments made in the plaint filed by the plaintiff bank. In paragraph (3) of its plaint, the plaintiff bank has alleged that on or about February 22, 1982, at the request of defendants Nos. 1 and 2 and one Bimala Mukherjee alias Bimala Debi, the plaintiff had agreed to grant overdraft facilities" to defendants Nos. 1 and 2 in diverse accounts, namely, cash credit account and term loan account, on, inter alia, the condition that the said Bimala Debi (since deceased) would deposit with the plaintiff the title deeds of her property at premises No. 34Q, Suren Sarkar Road, Beliaghata, Calcutta, with an intent to create a security thereon for the due repayment to the plaintiff of all moneys to be advanced by the plaintiff to defendants Nos. 1 and 2. In the subsequent paragraphs of its plaint, the bank has averred that pursuant to the said agreement or understanding, the bank had granted defendants Nos. 1 and 2 advances under three accounts, namely, a first term-loan account, overdraft account and a second term-loan account. The aggregate amount due to the bank under the said three accounts has been stated to be Rs. 1,33,124.58. The plaintiff is bound to prove the aforesaid agreement pleaded in its plaint but at the present stage the averments in the plaint are to the effect that the plaintiff is entitled to seek the different reliefs prayed for on the basis of the same cause of action. Therefore, the court fee upon the plaint should be paid in terms of Sub-section (2) of Section 21 of the West Bengal Court Fees Act, 1970, according to the value of the relief in respect of which the largest fee is payable. In the instant case, the plaintiff has not pleaded separate and distinct causes of action in respect of the three separate loan accounts mentioned in the plaint. We have already referred to some in the averments in the plaint of the suit in question which are to the effect that in pursuance of one agreement, these three separate accounts were allowed by the plaintiff to be opened by defendants Nos. 1 and 2. The suit is, in substance, for recovery of a composite amount of Rs. 1,33,124.58 by enforcement of the alleged personal obligation of defendants Nos. 1 and 2 and of defendants Nos. 3 to 10 as legal representatives of the deceased Bimala

Debi, for enforcement of an alleged mortgage in respect of an immovable property and also for enforcement the charge and/or hypothecation of certain plant, machinery, goods, equipment, etc. The learned Assistant District Judge has, therefore, committed a jurisdictional error by applying Sub-section (1) of Section 21 of the West Bengal Court Fees Act, 1970, for computing the court fees payable upon the plaint of the suit.

4. Mr. Mukherjee has drawn our attention to a single Bench decision of the Madras High Court in the case of *Vagesana Kanakaraju Vs. Vagesana Venkataraju and Others*, , where it was held that a suit in respect of two mortgages granted for amounts, due under five promissory notes did not embrace five distinct subjects and the court fee was to be computed upon two mortgages whose enforcement the plaintiff bank was seeking, A later single Bench of the Madras High Court in the case of *In Re: Oruganti Appa Rao*, , after considering the said earlier decision, in the case of *Vagesana Kanakaraju Vs. Vagesana Venkataraju and Others*, , held that a suit for redemption of four usufructuary mortgages executed by the same set of mortgagors in favour of the same mortgagee on the same day in respect of the same property did not involve four distinct subjects but only one subject within the meaning of Section 17 of the Court Fees Act, 1870, because the transaction was intended to be and was really a single transaction. This decision clearly supports the view we have taken in the present case. We, however, make it clear that at the time of the passing of the judgment and decree, the court below may again examine the sufficiency or otherwise of the court fees in the light of its determination of the issues framed in the suit.

5. We accordingly allow this application, set aside the order complained of and direct the learned Assistant District Judge to consider again the sufficiency of the court fees paid upon the plaint by applying the provisions of Sub-section (2) of Section 21 of the West Bengal Court Fees Act, 1970.

Ganguly, J.

6. I agree.