

(2003) 02 MP CK 0063
In the Madhya Pradesh High Court
Case No : F.A. No. 42 of 1993

State Bank of Indore

APPELLANT

Vs

Balaji Traders Jarye Proprietor Veerendra Maheshwari and
Others

RESPONDENT

Date of Decision : 05-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 34, 96(3)
Legal Services Authorities Act, 1987 — Section 21(2)

Citation : AIR 2003 MP 252 : (2003) 2 BC 531 : (2004) 1 J LJ 404 : (2003) 1
MPJR 453 : (2003) 2 MPLJ 200

Hon'ble Judges : P.C. Agarwal, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; Rakhi Bhavsar, for the Respondent

Final Decision : Allowed

Judgement

P.C. Agarwal, J.

Appellant is a scheduled Bank. By impugned order A.D.J., Ganjbasoad sitting in Lok Adalat on 21.2.93 granted a decree for--

(a) Rs. 33,003.88 with interest @ 4% per annum from the date of institution of suit i.e. 23.11.87.

(b) facility of payment of the same in six equal instalments to the respondent was given with a default clause.

(c) both parties had to bear their own costs in the circumstances of the case and looking to the penury of the respondent.

(d) certified Advocate's fee was to be added to the decree. (c) Court fees paid was ordered to be returned to the appellant.

Appellant had filed this civil suit on 23.11.87 for recovery of Rs. 36,603.88 with interest @ 14% per annum since 25.9.87 with the prayer for recovery of the

same amount by sale of plot equitably mortgaged.

On 21.2.93 at Lok Adalat held at Basoda the respondent filed an application claiming that only Rs. 20,000 were advanced to him as loan out of which Rs. 9000 have been deposited before the suit. After suit also Rs. 300 on 14.10.87 and Rs. 500 on 11.1.88 have been paid. That a decree was given after adjusting this amount in the original loan cost of suit and future interest be exempted as the respondent is invalid and had suffered due to incendiary in his house. Facility of six yearly instalments was also prayed. Interest if allowed be payable from date of decree. Cost of suit and interest were left to be decided by the Court. Rs. 3000 were deposited by respondent in Lok Adalat and were accepted by the Bank Manager.

Certainly, this application was not signed by the Bank Manager or by any authorised person on behalf of the appellant-Bank. The Court had given the decree on the basis that the respondent had admitted the claim of the appellant.

The appellant has the grievance that the respondent had not fully admitted the claim of the Bank. The Trial Court could not without holding trial and giving an opportunity to the appellant to lead evidence could not have refused to grant the contracted rate of interest or deprived the appellant of costs or a decree for sale of the mortgaged plot and could not grant relief of instalments.

The learned Advocate for the respondent has raised a preliminary objection that decree being based on consent is not appealable in view of Section 96(3) of the CPC which reads as follows:

"No Appeal shall lie from a decree passed by a Court with the consent of the parties."

According to her in the Lok Adalat, the Advocate of Bank and the Branch Manager of the Bank were present. Branch Manager had accepted Rs. 3000 in cash and thus had agreed to the decree against which no appeal is competent. Certainly, the application was not signed by the Branch Manager or the Advocate for the Bank or by any person authorised to compound on behalf of the Bank. The same was not an application for record of agreement of compromise between the parties contemplated under Order 23 Rule 3 of the CPC. Demand of the claim by the respondent was not unqualified.

6A. Order XV of the CPC prescribes the procedure for disposal of suit at first hearing. Under Rule 1 the Court may at once pronounce a judgment if the parties are not at issue on any question of law or fact. Rule 2 provides that where out of several defendants one or more defendants are not at issue the Court may pronounce judgment at once for or against such defendants. Certainly, if parties are on issue holding of the trial is necessary or mandatory.

In the present case parties were at issue on following points:

(a) Rate and amount of interest--Appellant claimed it to be 14% per annum since

25.9.87 pendente lite and after the decree. Respondent first claimed that he be excused from payment of interest and then claimed interest @ 4% from the date of decree be awarded. The Court awarded interest @ 4% per annum since the date of suit i.e. 23.11.88 to the date of payment.

(b) Costs of suit--Appellant claimed cost of suit. Bank had paid Court fee of Rs. 3340. The respondent claimed exemption from payment of cost and then left the same to be decided by Court below on its discretion. The Trial Court ordered return of Court fees to the appellant. Costs were ordered to be borne by the parties themselves. Advocate's fee on being certified was to be added to the decree. The Advocate certified it at Rs. 678. The same was added to the decree.

(c) The appellant had claimed recovery of the principal and interest in lumpsum and an injunction against the respondent not to sell the mortgaged plot till decretal amount is fully paid. Respondent claimed facility of payment in six yearly instalments as he was invalid and had suffered the calamity of incendiary in his house. The Court had granted the facility of payment in 6 equal yearly instalments with a default clause. No injunction against sale of mortgaged plot was given.

(d) Amount of loan--The respondent had claimed that he had already paid Rs. 9000 before suit, Rs. 300 on 14.10.87 and Rs. 50 on 11.1.88. He had deposited Rs. 3500 in Lok Adalat. Appellant had claimed Rs. 36,603.88 in plaint. Decree was granted for Rs. 33,003.88 i.e. an adjustment of Rs. 3600 was allowed by the Court. While according to respondent Rs. 380 had to be adjusted in the amount. Statement of account was there on record. Amount deposited before 25.9.87 had already been accounted for in the amount.

Certainly, the Lok Adalat was held on 21.2.93. By that time the Legal Services Authorities Act 1987 No. 39 of 1987 had not come in force. Only Madhya Pradesh Samaj Ke Kamjor Vargon ke Liye Vidhik Sahayata Tatha Vidhik Salah Adhinyam, 1976, MP Act 26 of 1976 was in force. There was no specific provision for holding Lok Adalats in that Act. Lok Adalats were being held under executive instructions under the Lok Adalat Yojna framed u/s 3 of the M.P. Act. Informal procedure for receipt of applications and preparation of dockets was there. One public spirited Advocate of the local Bar used to be appointed as a convener. Lok Adalat used to be assisted by Public spirited conciliators who could guide and inspire the public in mutual conciliations. The Judge had to preside the Bench and pass a decree in terms with the compromise entered into between the parties with the help of 3-5 conciliators. Thus generally decrees were being granted on the basis of conciliation and compromise between the parties to the civil suit.

Certainly a final decree could have been given by judge sitting in Lok Adalat only when both the parties have agreed or consented to it or were not on issue on any point. Source of power of Lok Adalat was conciliation. It emanated from the goodwill and consent of both the parties. Lok Adalat had been only a forum for alternative dispute resolution. The Bench of Lok Adalat could act on conciliation.

The same had no adjudicatory functions. For adjudication of a case, the parties had to be sent back to the regular Court. Though, of course, the members of the conciliatory board had certain powers of arbitration but they acted only on basis of mutual consent of parties and their trust in them. A docket had to be prepared with the summary of the case and contentions of the parties. Each party was to be called in presence of general public conciliators who had to confer with the parties. They had to patiently hear them separately and try to know the crux or real cause or reason of the dispute. Such conference had to be independent, impartial and without any pressure. Conciliators had to be practical and had to suggest more than one of the alternatives for resolution of the dispute. However, only that resolution of the dispute which was agreeable to both the parties was to be presented before the Judge with the signatures of both the parties or their authorised representative and Judge had to accept it after verification on the point whether the same was voluntary and valid and then only a decree could have been passed.

Certainly, the Lok Adalat can take up those uncontested civil cases also where the defendant admitted the claim of the plaintiff and parties are not on issue on any point. Such an expedient was resorted to by the defendants who had the benefit of early disposal and reduction of cost. The Court fees paid was being returned to the plaintiff and was not to be added to the costs as an incentive. However, even in such cases the Court has to be on guard that it could not pass a decree unless both the parties were at idem and were not on issue on any point. Even in such cases, the Court had no adjudicatory functions. The Court could not decide or use its discretion even with the consent of the parties in absence of any trial or material on which trial or other material on record on the basis of which it could exercise its discretionary powers. Certainly, all the powers vested in the Court had to be used only judicially i.e. objectively based on record and were subject to either appeal or revision by the higher Court.

In the present case, parties were at issue on different matters. Certainly, Section 34 of the CPC does not confer any unbridled or arbitrary discretionary power to fix the rate of interest pendente lite or after decree. Question of costs has also to be decided judicially on facts and circumstances of each particular case. Discretion to award costs is neither unbridled nor arbitrary. Certainly, question as to grant of facility of instalment was also not purely discretionary. A disputed question could always arise whether instalments could be granted for payment of a loan secured by equitable mortgage. Further the loan was secured by equitable mortgage and the question was whether the plot could be released of the charge. Thus, in all the facts and circumstances of the case no valid decree could have been given unless there had been a trial on all questions of facts and law between the parties.

Bar against filing of appeal u/s 21(2) of the Legal Authorities Act, 1987 did not apply as the Act had come into force on 9.11.95 (See Gazette of India 9.11.95, Pt. II, Section 3(ii) Ex. P.L. (No. 626) while the impugned judgment and decree

were passed on 21.2.1993. Thus Punjab National Bank v. Lakhmi Chand 2002(3) MPLJ 232, has no application. No appeal is barred u/s 96(3) of CPC, decree not being based on consent. Samant Singh v. Sadhu Khan 1990 MPJR 553. Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, , and The Oriental Fire and General Insurance Co. Ltd. Vs. Ram Singh and Others, Certainly, Maganlal v. Ramesh Chand 2000(1) MPWN 128, is not applicable there being no question of two alternatives on compromise. Actually, decree is not based on compromise or consent. Reference to Rami Manprasad Gordhandas and Others Vs. Gopichand Shersing Gupta and Others, , was not relevant. In that case appeal was prohibited under the local rent Act applicable to Bombay. Revision to High Court was also not provided. High Court was not requested to exercise its power u/s 115 of the CPC. Appellant in Supreme Court could not be permitted to make out a new case that case he sent back to High Court for disposal u/s 115 of the CPC.

The argument of the appellant that the appellant could have approached the High Court under Article 227 of the Constitution has also no substance as the appellant had a clear remedy of appeal as every decree of civil suit is appealable. Section 96(3) of CPC being no bar. The other argument of the appellant that the appellant could have applied under Order 9 Rule 13 of the CPC also has no legs in it as this is not a case in which an ex parte decree was passed against the appellant to necessitate invoking of provision of Order 9 Rule 13 of the said Code.

The learned Advocate for the respondent has argued that the respondent had admitted the claim of the appellant in the hope that he would get some respite in rate of interest, costs and facility of instalments and would be saved from undergoing the trial. He has paid almost the whole of the decretal amount under the impugned decree, had he known that no decree can be given without undergoing the trial he would not have admitted the claim of the appellant and would have contested the same. Certainly, this cannot be the ground for upholding the impugned judgment and decree which is not sustainable under law.

Certainly, it was a case of a judgment and decree which were not based on mutual agreement or compromise under Order 23 Rule 3 of the Code. Both parties were on issue on several crucial points. Certainly, the Court below should have framed issues and invited both the parties to lead evidence on such issues and should have given a contested judgment thereafter.

Thus, the appeal merits to be allowed. Judgment and decree of the Trial Court are set aside. Matter is remanded back to the Trial Court for framing issues and deciding the case afresh after giving opportunity to lead evidence to both the parties.

Appeal allowed. Case remanded back for fresh trial as per directions of this Court. Parties shall remain present before Trial Court on 17.2.03. Costs as incurred.