
(2000) 07 RAJ CK 0105

In the Rajasthan High Court

Case No : Civil Revision Petition No. 395 of 2000

Subhash Enterprises

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 14-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (2000) 4 RLW 241 : (2001) 1 WLC 250 : (2001) 1 WLN 686

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—This revision petition arises out of an order passed by the Additional District Judge No. 1, Jaipur City on 25.2.2000 in Civil Suit No. 367/1995 whereby he decided issue No. 6 as preliminary issue against the defendant petitioner and in favour of the plaintiff respondent Bank.

2. M/s. Subhash Enterprises (defendant) took loan of Rs. five lacs from Hindustan Commercial Bank subsequently merged in the Punjab National Bank (Plaintiff respondent), to which the defendant Nos. 2 to 8 were guarantors, out of whom defendant Nos. 4 to 8 also mortgaged their houses with the Bank. But aforesaid loan amount since was not being repaid, the plaintiff Bank instituted present Civil Suit for recovery of Rs. 4,42,100/- with interest towards maturity amount of Rs. 90,000/- of FDR No. 110/1983 which was ordered to be released by the State Commissioner under judgment dt. 23.9.1992 while it was pleaded with the Bank Security to loan in question.

3. The defendant No. 1 partnership firm, through one of its partner applied to the Bank for limit of Rs. 90,000/-, for which it agreed to pledge a Fixed Deposit Receipt No. L/110/83 as security with reference to earlier guarantees given by defendant Nos. 4 to 8, specifically pointing out that real owners of the FDR are minor sons namely Ballabhdas, Gokuldas, Jamnadas & Krishandas.

4. The defendant No. 9 filed a separate written statement contending there that the suit is barred provisions of Order 2 Rule 2 CPC as no permission has been sought of the Court where earlier suit was pending.

5. On the basis of pleadings of the parties, seven issues including issue No. 6, as to whether suit is barred by provisions of Order 2 Rule 2 CPC, were framed besides additional issue framed on 7.8.1999 as to whether for the negligence of the Bank payment of FDR was made as per the order of the State Consumer Commission and what is its effect on the suit?

6. However, the trial Court by its order dated 25.2.2000 decided issue No. 6 as preliminary issue in favour of the plaintiff Bank holding that the suit is not barred under Order 2 Rule 2 CPC. Hence, this revision petition.

7. I have heard learned Counsel for the petitioner and perused the impugned order. It is not in dispute that the defendant No. 1 Firm (petitioner) agreed to pledge FDR No. 110/1983 as security with the Bank and against that FDR, loan of Rs. 90,000/- was secured and adjusted against FDR No. 110/1983 and therefore, the FDR No. 110/1983's amount was not included in earlier Suit No. 1021/1986 filed before the Addl. District Judge No. 7, Jaipur City for the recovery of loan amount of Rs. five lacs which was drawn by the defendant No. 1 Firm (petitioner). It is also an admitted fact that during pendency of earlier Suit No. 1021/1986, though FDR No. 110/1983 was in the name of minors but when those minors attained majority, defendant No. 9 for taking back FDR No. 110/1983 dt. 7.7.1983, had filed Complaint No. 75/1991 before the State Commission for Consumer Redressal wherein the Bank also contested but by judgment dt. 23.9.1992 the Commission directed to make the payment of the FDR to all four sons of defendant No. 9 and not to the defendant No. 9 and pursuant thereto, ultimately on 17.1.1994 amount of FDR No. 110/1983 with interest to the tune of Rs. 3,13,425/- was paid to them. Thus, amount of Rs. 90,000/- in the form of FDR No. 110/1983 duly pledged with the Bank as security to the loan amount in question, which could not have been secured again remained outstanding on account of payment thereof by virtue of judgment of aforesaid Commission. Hence, it cannot be said that the plaintiff Bank relinquished any portion of its claim in order to bring the suit within the jurisdiction of the trial Court in earlier suit nor can it be said that for the FDR No. 110/1983 which was got released under aforesaid judgment after earlier suit No. 1021/1986 was filed, the plaintiff will not afterwards sue, as the subsequent suit in aforesaid circumstances is barred under Order 2 Rule 2 CPC. In my considered view, in the facts and circumstances, which have crept as a result of complaint having been filed by defendant No. 9 for release of FDR No. 110/1983 which was admittedly pledged as security, and on account of the judgment of the State Commission as discussed above, the provisions of Order 2 Rule 2 CPC are not attracted to the present case and therefore, the trial Court has rightly decided Issue No. 6 on the application of the defendants in favour of the plaintiff Bank. The trial Court has not committed any error of law of jurisdiction or illegality with

material irregularity so as to call for interference in revisional jurisdiction of this Court.

8. As a result of the discussion made above, this civil revision petition is dismissed in limine. The impugned order dated 25.2.2000 of the trial Court whereby it decide issue No. 6 as preliminary issue in favour of the plaintiff respondent Bank, is upheld. However, the trial Court is directed to expedite the decision of the suit, itself, but not beyond three months from the receipt of this order. A copy of this order be sent to the trial Court forthwith.