

(1998) 12 GUJ CK 0051
In the Gujarat High Court

Case No : Civil Revision Application No. 1333 of 1998

Union Bank of India

APPELLANT

Vs

Tata SSL Ltd.

RESPONDENT

Date of Decision : 22-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115(1)(a), 115(1)(b), 115(1)(c)

Citation : (1998) 12 GUJ CK 0051

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : J.T. Trivedi, for the Appellant; Rajni H. Mehta and R.D. Dave, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—Learned counsel for the petitioner admits that in the title of this civil revision application by mistake the petitioner has been mentioned as original plaintiff in the suit. The petitioner is defendant in the suit out of which this revision application has arisen.

2. Union Bank of India, by this civil revision application, u/s 115, C.P.C., 1908, challenges the order dated 6th August, 1998 passed in special civil suit No.120/92 below Ex.94. I am constrained to observe that the learned trial court is also not careful in its checking, to the orders which have been passed by it. In this order though it is of 6th August, 1998 but the date has been mentioned as 6th August, 1978. Be that as it may.

3. The plaintiff-respondent No.1, a public limited company incorporated under the Indian Companies Act instituted special civil suit No.120/92 in the Court of Civil Judge (S.D.) Navsari against the defendant No.3-petitioner and the respondents No.2 and 3 herein for recovery of Rs.1,04,490-38ps. together with costs and running interest. The defendant No.3- petitioner filed its written statements in which a plea has been taken that the suit is not tenable in law as

well as facts. It is further averred in the written statement that the plaintiff's plaint and suit suffers from legal and factual infirmities. The issues have been framed in this suit on 29th June, 1995. On behalf of the plaintiff, witness No.1, Pawankumar Mahendrapal Jain, was examined and his statements were recorded. He produced documents Ex.58 and 82, two power of attorneys. The defendant No.3-petitioner filed an application Ex.94 and prayer has been made therein that the issue regarding the maintainability of the suit on the ground that only one of the power of attorney holders has signed the plaint and same is not maintainable be framed. This application has been contested by the plaintiff-respondent No.1 and under the impugned order that application came to be dismissed. Hence, this revision application before this Court.

4. Learned counsel for the defendant No.3petitioner by referring to the documents, power of attorney, contended that the plaint could have been signed by two attorneys and as it was signed by one attorney, the suit is not maintainable. Prayer has been made by the defendant No.3- petitioner by filing application Ex.94 for framing of the issues on the question of maintainability of suit and learned trial court could have allowed these issues to be framed.

5. Learned counsel for the plaintiff- respondent No.1 contended that this revision application is wholly misconceived. It has next been contended that the learned trial court has not committed illegality or material irregularity in exercise of its jurisdiction in passing of the impugned order which calls for interference of this Court u/s 115, C.P.C.. This application is nothing but only an attempt on the part of the defendant No.3 - petitioner to delay the suit. It is further contended that the suit has reached to the stage of final arguments after completion of evidence of both the parties and at this stage this application has been filed. The defendant No.3petitioner has also not taken in the written statement the plea of the nature as it is sought to be raised in the application for the purpose of framing of an additional issue. The issues were framed on 29th June, 1995 and after more than three years, this application has been filed. In case, it would have been really a matter of serious concern or a legal issue to be raised then the defendant No.3 - petitioner should have amended its written statements and further insisted for framing of an additional issue at the proper stage.

6. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

7. Learned counsel for the defendant No.3petitioner does not dispute the factual averments taken by the learned trial court that the application Ex.94 has been filed by it at the stage when the suit is fixed for final arguments. Learned counsel for the defendant No.3- petitioner does not dispute the position that very specific plea regarding the maintainability of the suit on the ground in respect of which additional issue is prayed for framing by the learned trial court has not been taken in the written statements. However, learned counsel for the petitioner contended that it is a pure legal issue and learned trial court should have framed the same. The additional issues which were prayed for framing in the suit by the

defendant No.3 petitioner are as under:

1. Whether Mr. P.K. Jain one of the attorneys has been given powers under the Power of Attorney (Ex.82) singly to sign Vakalatnama, to sign complaints and to authorise advocates to appear and plead before court of law on behalf of the plaintiff- company ?

2. If not, in that event : whether the suit is tenable in law at its very institution and in consequence thereof, whether the plaintiff is non-suited ?

8. From reading of the issues, it transpires that the defendant No.3 - petitioner want to take the plea that as the complaint is not signed by two constituted attorneys under Power of Attorney the same is not maintainable. Learned trial court considered the matter from each and every aspect and though it is found that such a plea has not been taken by defendant in written statements still it has granted liberty to defendant No.3- petitioner to raise this legal issue regarding maintainability of the suit at the time of final arguments in the suit. This is clearly borne out both from the body of the order as well as the operative part thereof. Learned trial court has observed that it is open to the defendant NO.3petitioner to advance his arguments on legal point and for which no such issue is required to be framed as additional issue in the suit. In the operative part, the court has ordered that the defendant NO.3petitioner may advance its arguments regarding Ex.82 and 86 at the time of final arguments and/or on maintainability of the suit. Learned counsel for the petitioner when confronted with this part of the impugned order of the learned trial court has submitted that without framing of issue how the defendant No.3petitioner could have raised all these points. I am constrained to observe that this approach of the defendant No.3petitioner is wholly perverse as well as it gives out how the Banks are spending money in litigation, which is absolutely uncalled for and avoidable. Learned trial court has taken note of the fact that it is a legal issue which can be raised without framing of any issue and when this liberty has been given still the petitioner filed this revision application, which clearly goes to show that its Law Officers are not taking the matters properly and they appear to be in the interest that Bank's money may be spend in litigation. Once this liberty has been granted to raise this point at the time of final hearing of the suit, filing of this revision application against such a reasonable and equitable order by the Officers of defendant No.3- petitioner is ill-advised.

9. Filing such an unwarranted and avoidable litigation before this Court by none other than a Bank, more so a nationalised Bank, resulted in two-fold serious consequences. First is that the public money is spent in litigation which is totally uncalled for and avoidable and second, this Court's valuable time is being consumed in such litigation. This court is already facing serious problem of heavy mounting arrears of pending cases and it is not out of context to state here that the revision applications of 1980s are still pending for decision. Increasing the pendency by none other than a nationalised bank by filing of frivolous, unwarranted and uncalled for revision application is nothing but adding of more

numbers of cases to the already mounting arrears of cases in this Court. Time has come where these Corporate Bodies, State of Gujarat and other constitutional bodies like District Panchayat, Gram Panchayat, Municipalities, and other statutory Corporations and further nationalised Banks to take all care that only litigations which are very essential and necessary are being filed in the Courts. In all these Authorities, Corporations etc. Law Officers are there and they are having legal knowledge but despite of this, such a frivolous litigation is being filed before this Court, clearly speaks of the working of their Legal Cell.

10. There is another serious repercussion of filing of this matter and that is that the other side has unnecessarily been dragged into litigation, which nowadays heavily costs.

11. Leaving apart all these things as aforesaid, u/s 115, C.P.C. this Court can only interfere with the order of the subordinate court in which no appeal lies and where it falls under any of clauses (a), (b) and (c) of subsection (1) of the said section. In this case, it is difficult to say that the learned trial court has committed any material irregularity in exercise of its jurisdiction in passing of the impugned order. Certainly this case will not fall under clauses (a) and (b) of subsection 1 of section 115, C.P.C.. Leaving apart that this case does not fall under clause (c) of subsection (1) of section 115, C.P.C. This case also does not fall under clause (a) or clause (b) to proviso to the aforesaid section. It also may not fall under the category of case decided. In case this order impugned in this civil revision application is allowed to stand it will certainly not occasion failure of justice or will cause injury to the defendant No. 3 petitioner. In case this order is quashed and set aside, Ex.94 filed by the defendant No. 3- petitioner is granted it will not result in final disposal of the suit also. Taking into consideration this legal aspect, otherwise also, this revision application is wholly misconceived.

12. In the result, this civil revision application fails and the same is dismissed with costs. The defendant No. 3- petitioner is directed to pay the cost of this revision application to the plaintiff-respondent No. 1, which is quantified at Rs. 1000/-.