(1986) 02 GUJ CK 0006

In the Gujarat High Court

Yamuna Engineering Co. APPELLANT

Vs

Bank of Baroda and Another RESPONDENT

Date of Decision : 21-02-1986

Acts Referred:

Bombay Court Fees Act, 1959 — Article 23, 23(f), 7, 7 Schedule I

Citation : (1986) 2 GLR 878

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—The petitioner instituted a Suit No. 274 of 1976 in the Court of the learned Civil Judge (Senior Division) Baroda, for an injunction to restrain Jyoti Limited from demanding payment from the Bank of Baroda under a guarantee given by the plaintiff in respect of the transactions in question. Briefly stated, the facts are as under.

2. The plaintiff and Messrs Jyoti Limited entered into a contract dated 9th May 1974 for the manufacture and supply of valves suitable for electrical operations on the terms and conditions set out therein. Under the terms of the contract, Messrs Jyoti Limited agreed to pay 25 per cent of the price as advance payment amounting to Rs. 4,47,680/-for which the plaintiff gave a bank guarantee. The terms of the bank guarantee are ''Bank hereby agrees unequivocally and unconditionally to pay within 48 hours on demand in writing from Messrs Jyoti Limited and sum upto and not exceeding the amount mentioned.'' On the strength of this bank guarantee advance payment was made by Jyoti Limited as per the details contained in the letters produced at S. Nos. 1 to 8 of list Exhibit 22. The plaintiff failed to supply the goods of the specification ordered by Jyoti Limited whereupon the latter served notice dated 19th March 1976 calling upon the Bank to discharge its obligation under the guarantee letters amounting to Rs. 4,47,680/-. To restrain the Bank of Baroda from paying the amount to Jyoti Limited on the strength of the letters of guarantee executed by the plaintiff, the suit in question was filed seeking an injunction restraining Jyoti Limited from

demanding the payment and the Bank of Baroda from paying the same. The suit was valued at Rs. 100/-and a fixed court-fee of Rs. 30/- came to be paid on the premise that the suit fell within the ambit of Clause O of Article 23 in Schedule II to the Bombay Court Fees Act, 1959, (hereinafter called ''the Act''). On behalf of the defendants a preliminary contention was raised that proper court-fee had not been paid since the suit was to obtain a relief which could be valued in terms of money since what was sought to be achieved was to prevent the payment of money by the Bank of Baroda to Jyoti Limited under the letters of guarantee executed by the plaintiff. It was, therefore, contended that the suit fell within the ambit of Article 7 in Schedule I of the Act, a contention which has found favour with the Court below. I think the view of the learned trial Judge must be upheld.

3. Article 7 in Schedule I of the Act refers to any plaint, application or petition (including memorandum of appeal), to obtain substantive relief capable of being valued in terms of monetary gain or prevention of monetary loss. The court-fee required to be paid on such a plaint, application or petition or memorandum of appeal is to be calculated on the amount of the monetary gain or loss to be prevented, according to the scale prescribed under Article 1 in the said Schedule. In the background of facts stated above there can be no doubt that the purpose of the suit was to avoid the payment of Rs. 4,47,680/- in respect of which the plaintiff had given a bank guarantee. Ordinarily, on the terms of the letters of guarantee the Bank of Baroda would be under an obligation to pay the said amount to Jyoti Limited on demand since according to Jyoti Limited, the plaintiff had failed to perform its part of the contract. By seeking an injunction restraining Jyoti Limited from recovering and Bank of Baroda from paying the said amount, what the plaintiff desires is to prevent a monetary loss likely to be occasioned to it. Unless an injunction is granted of the type sought, the Bank of Baroda would undoubtedly pay the amount to Jyoti Limited under the terms of the letters of guarantee executed by the plaintiff. What does the plaintiff seek when he seeks an injunction to restrain Jyoti Limited from demanding and Bank of Baroda from paying the said amount on the strength of the letters of guarantee executed by it? Obviously the plaintiff seeks to avoid the payment of Rs. 4,47,680/- to Jyoti Limited which under the letters of guarantee, the Bank of Baroda is obliged to pay on demand. There is, therefore, no doubt whatsoever that the underlying idea in instituting a suit and seeking an injunction of the type sought is to prevent monetary loss likely to be occasioned on the Bank of Baroda- discharging its obligation under the terms of the guarantee. I am, therefore, of the opinion that the view taken by the learned trial Judge is correct.

4. A more or less similar situation arose in State of Gujarat Vs. Kantilal Pratapji and Others, . In that case a declaration was sought to the effect that the promissory notes in question were void by reason of the fact that they were obtained by fraud or coercion and were executed without consideration. This Court came to the conclusion that the suits was for a substantive relief capable of being valued in terms of money inasmuch the plaintiff desired to prevent monetary loss and fell within the meaning of Article 7 in Schedule I to the Act.

5. The plaintiff placed reliance on Clause (f) of Article 23 in Schedule II of the Act which refers to plaint, petition or application (including memorandum of appeal) which is capable of being treated as a suit in or to any Civil Court not otherwise provided for and the subject matter of which is ''not capable of being estimated in money value''. This Article can have no application for the simple reason that the suit is capable of monetary evaluation as stated earlier. Besides, this Clause of Article 23 can apply if there is no other provision covering it; but once the Court comes to the conclusion that the suit is covered by Article 7 in Schedule I to the Act, that clause will have no application. I am, therefore, of the view that Article 23(f) in Schedule II to the Act has no application having regard to the nature of the suit and the relief sought.

In the result the Revision Application fails and is dismissed. The rule is discharged with no order as to costs. Interim stay is vacated.