

20 Microns Limited Vs State Bank of India

Court: Gujarat High Court

Date of Decision: Sept. 27, 2012

Acts Referred: Contract Act, 1872 " Section 30
Foreign Exchange Management Act, 1999 " Section 10(4)

Hon'ble Judges: M.D. Shah, J

Bench: Single Bench

Advocate: S.I. Nanavati with Mr. Pavan S Godiawala, for the Appellant; Pranav G Desai with Biju A Nair, for the Respondent

Final Decision: Dismissed

Judgement

Honourable Mr. Justice M.D. Shah

1. Although this Appeal From Order is listed on the board for admission, with the consent of the learned counsel appearing for both the parties, it

has been taken up for final hearing. This Appeal From Order under Order XLIII of CPC has been filed by the appellant-original plaintiff

(hereinafter referred to as "plaintiff for short) against the respondent-original defendant (hereinafter referred to as "defendant" for short) being

aggrieved and dissatisfied with the order dated 27-6-2012 passed below Ex. 5 by the learned 5th Additional Senior Civil Judge and Addl. C.J.M.,

Vadodara, in Special Civil Suit No. 356 of 2012 whereby injunction application was dismissed.

2. The plaintiff, a Company incorporated under the companies Act, 1956 in 1987, is engaged in the business of manufacturing supreme quality of

white minerals offering innovative products in the field of Functional fillers, Extenders and Specialty chemicals and also import and export of goods

in foreign currency. The defendant, a banking company, has offered various facilities to the plaintiff and to extend further facilities, the defendant

offered the facility of hedging of dollars by entering into Forward Contracts with them. The plaintiff availed Foreign Currency Loans offered by the

defendant and on 18-3-2010 entered into a Master Agreement with the defendant that will govern future transactions or future agreements for sale

and purchase of currencies of such type and amount at such exchange rate with such value date and on such other terms as agreed upon by the

parties. The plaintiff informed the defendant on 18-3-2010 that it authorised Mr. Suresh Jagetia vide Board Resolution dated 28-1-2010 to deal

with the defendant as per the Master Agreement and to enter into forward contracts for imports and exports on behalf of the plaintiff. As per the

plaintiff, Mr. Jagetia entered into five unauthorised Forward Sale Contracts of which, three have already expired due to which, the plaintiff suffered

huge loss of Rs. 3.30 crores and in the remaining two Forward Contracts, plaintiff will suffer Rs. 3.21 crores and Rs. 1.59 crores respectively.

According to plaintiff, Mr. Jagetia drew up a false MIS report debiting the said amounts to FCNR-B Loan Account and hence, a show cause

notice was issued by the plaintiff on 7-5-2012 to Mr. Jagetia. Thereafter, a complaint was filed against Mr. Jagetia for cheating. As per the

plaintiff, though there was no underlying trade transaction, the defendant did not cancel the contract nor asked for the proof of trade transactions

thereby defendant was negligent in following Clause 2.15 of Master Agreement and guidelines of Reserve Bank of India and hence, huge losses

were caused to the plaintiff. As per the RBI guidelines, defendant cannot enter into Forward Contracts without taking evidence of underlying

exposure if the customer failed in three previous occasions in the financial year to submit documents and hence, Forward Contract entered into

between the plaintiff and defendant are ab initio void as per Sec. 30 of Indian Contract Act, 1872. According to the plaintiff, it is not bound by any

contracts which were entered into without any proof of any underlying trade transaction, non-obtaining statutory auditors reports and violating

specified limits set by the defendant for foreign exchange transactions. Letters dated 7-5-2012 and 16-5-2012 were sent by the plaintiff to the

defendant about the same. Hence, a suit being Special Civil Suit No. 356 of 2012 was filed by the plaintiff along with an application for temporary

injunction at Ex. 5 restraining the defendant from acting under or in furtherance of Master Agreement dated 18-3-2010 expiring on 7-6-2012 and

29-6-2012.

3. In pursuance of issuance of notice to the defendant and upon affording opportunity of hearing to learned advocates appearing for both the

parties and on perusal of the documents produced by both the parties, trial court has dismissed the injunction application and hence, the present

Appeal From Order by the original plaintiff.

4. Heard learned Senior Advocate, Mr. S.I. Nanavati with learned advocate, Mr. Pavan S. Godiawala for the plaintiff and learned counsel, Mr.

Pranav G. Desai with learned advocate, Mr. Biju Nair for the defendant.

5. Learned Senior Advocate, Mr. S.I. Nanavati, submitted that though the trial court has only relied upon Secs. 237 and 238 of the Contract Act

held that fraud is committed with plaintiff by one Mr. Jagetia, who is an authorised agent of the present plaintiff and, therefore, plaintiff is

responsible for the misappropriation or fraud committed by its agent. He further submitted that the trial court has not at all referred the relevant

provisions of Master Agreement particularly Clauses 2.15 and 2.17 nor discussed the guidelines issued by the Reserve Bank and also not

considered Sec. 10(4) of Foreign Exchange Management (FEMA) Act, 1999 and by that committed error in holding that as Mr. Jagatia was an

authorised agent and acted on behalf of the plaintiff as a matter, plaintiff is liable for act committed by its agent. Mr. Nanavati took this Court

through the relevant clause 2.15 which reads as under:

Clause 2.15.

The Bank may treat all instructions given as fully authorised and binding on the customer regardless of the circumstances prevailing at the time of

the instructions being given or the nature or amount of the transaction and notwithstanding any error misunderstanding, lack of clarity errors in

transmission, fraud, forgery or lack of authority in relation to the instructions except in the case of gross negligence, wilful misconduct or fraud,

forgery or lack of authority in relation to the instructions except in the case of gross negligence, wilful misconduct or fraud on the part of the bank

while acting under such instructions. The customer agrees that the customer is under an express duty to the bank to prevent any fraudulent, forged

or unauthorised instructions being.

6. He further submitted that if bank is negligent and not acted as per clause 2.17 and by that, if any loss is occurred, then, only the bank is liable

and plaintiff is not liable. Mr. Nanavati also took this Court through relevant provisions and guidelines issued by Reserve Bank of India and also

Sec. 10(4) of FEMA Act. He further submitted that the trial court has not discussed this relevant provision inspite of raising this contention in the

plaint and by that committed grave error in rejecting the injunction application filed by the plaintiff. He further submitted that the plaintiff is customer

of the defendant bank since the last 24 years. He further submitted that the plaintiff is a profit making company and has mortgaged the property

worth Rs. 70.00 crores with the defendant bank and plaintiff has been enjoying several facilities extended by the bank and number of transactions

took place during this period and presently also huge funds of the plaintiff is lying with the bank and, therefore, if suit of the plaintiff is dismissed,

then also, the defendant is entitled to recover the same. However, the trial court has not considered the same and by that committed a grave error

and hence, it is prayed that the injunction as prayed for may be granted by allowing this Appeal From Order.

7. Learned counsel, Mr. Pranav Desai submitted that there is a relationship of more than 25 years between the plaintiff and the defendant bank and

bank has always supported the plaintiff in its financial aspects. He further submitted that considering the long standing relationship of the bank with

the plaintiff, the bank allowed the alleged business of ""forward contract"" and, therefore, considering the past conduct of the plaintiff and business

relations with the bank, bank had not strictly asked the plaintiff to comply with the guidelines issued by the Reserve Bank of India and, therefore, it

could not be said that bank is negligent for the alleged loss occurred to the plaintiff by not following the clauses of Master Agreement executed

between the plaintiff and the defendant bank and the guidelines issued by Reserve Bank of India. He further submitted that number of transactions

numbering approximately 34 took place between the plaintiff and the defendant bank and in five transactions, plaintiff has gained profit and the said

profit was credited in the account of the plaintiff and now it is not proper for the plaintiff to state that as bank is grossly negligent for breach of the

terms of Master Agreement and no-compliance of guidelines issued by the Reserve Bank of India, when profit is earned by the plaintiff, though it

was within the knowledge of the plaintiff that these are illegal transactions, the bank did not inform the plaintiff nor credited the said profit with the

defendant bank but used the profit of the plaintiff. He further submitted that though cause of action for filing the suit arose in 2010, suit was filed in

May 2012 after a lapse of two years. He further submitted that though bank has not earned any profit, bank has made payment to concerned

person as per the terms of Master Agreement. He further submitted that bank is an undertaking of the Government and it is the money of the public

and the bank has acted as per the terms and conditions of Master Agreement and instructions on behalf of the plaintiff and, therefore also,

injunction was rightly not granted in favour of the plaintiff. According to him, prima facie case and balance of convenience are in favour of the

defendant. He further submitted the plaintiff could not establish that it would suffer irreparable loss if injunction was not granted. In view of the

above, it is requested this Appeal From Order be dismissed. He has relied on a judgment reported in (2011)10 SCC 420 in the case of Cauvery

Coffee Traders, Mangalore Vs. Hornor Resources (International) Company Ltd. and submitted that it is well settled by the Hon"ble Supreme

Court that a party cannot "blow hot and cold" to suit its purpose of defeating the lawful claim.

8. This Court has gone through the impugned judgment and order passed by the trial court together with the submissions made by learned counsel

appearing for the respective parties. This Court has also gone through the Master Agreement and guidelines issued by Reserve Bank of India. This

Court has also gone through the principles laid down in various decisions relied on by the learned counsel for the respective parties. Keeping in

mind the principles laid down therein, this Court is proceeding further.

9. In the opinion of this court, even assuming that bank has not strictly followed the terms of the Master Agreement and Reserve Bank of India

guidelines, then also, considering the conduct of the appellant plaintiff and long standing relations with the plaintiff, from any angle, it could not be

said that with ulterior motive to illegally get something from the plaintiff, committed fraud or favoured the authorised person of the plaintiff and

thereby huge loss is occurred to the plaintiff. It is rightly pointed out by learned advocate, Mr. Pranav Desai that as far as five transactions are

concerned, profit earned by the plaintiff is credited in its account. If we believe the say of the plaintiff that forward contract is not permissible under

the terms of the Master Agreement as well as guidelines of Reserve Bank of India and as bank has not complied with the mandatory guidelines

issued by Reserve Bank of India, plaintiff ought to have informed the bank to cancel all the transactions nor to deposit the profit earned by them for

the alleged transactions. However, the plaintiff has not immediately informed the bank about the same. No doubt, as per the guidelines of the

Reserve Bank of India, plaintiff has not supplied the information for said 34 transactions and bank has not strictly asked for the same but, as stated

above, considering the long standing good relations of the plaintiff with the bank of 25 years, if plaintiff has relied upon and because of the trust the

bank has given credit for the profit which was allegedly received by the agent of the plaintiff and credited in the account of the plaintiff, in the

opinion of this Court, the bank in bona fide belief has allowed the agent of the plaintiff for carrying future contracts or transactions.

10. It is to be noted that Mr. Jagatia, who is an authorised agent of the plaintiff, has acted against the interest of the plaintiff and necessary action

has been taken by the plaintiff against him and allegations are made that bank officials with hand in gloves and without consulting the plaintiff carried

the business transactions of forward contract and, therefore, because of gross negligence and misdeed of the bank, the plaintiff has suffered loss

and, therefore, plaintiff is entitled to get the relief. There is no force in the argument of Mr. Nanavati that for interse dispute between the agent and

the master, master is liable for the deed of the agent and, therefore, it could not be said from any angle, as observed above, that bank is grossly

negligent. In view of the above, plaintiff is not entitled to get any relief as prayed for and, hence, this appeal deserves to be dismissed.

11. It has been held by Hon"ble Apex Court in Cauvery Coffee Traders (supra) relied on by learned counsel, Mr. Pranav Desai in paragraphs 34

and 35 as under:

34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits

of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This

rule is applied to do equity, however it must not be applied in a manner as to violate the principles of right and good conscience. (Vide: Nagubai

Ammal and Others Vs. B. Shama Rao and Others, ; Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, ; Maharashtra State Road

Transport Corporation Vs. Balwant Regular Motor Service, Amravati and Others, ; P.R. Deshpande Vs. Maruti Balaram Haibatti, ; Sri Babu

Ram Alias Durga Prasad Vs. Sri Indra Pal Singh (Dead) by Lrs., ; Chairman and M.D., N.T.P.C. Ltd. Vs. Reshmi Constructions, Builders and

Contractors, ; Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., ; and Pradeep Oil Corporation Vs. Municipal Corporation of Delhi and

Another, .

27. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in

it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a

person may be precluded by his actions or conduct or when it is his duty to speak, from asserting a right which he otherwise would have had.

12. As far as the judgments relied on by the learned counsel for the plaintiff are concerned, this Court is of the opinion that each case has its own

facts and considering the facts of each case, judgments have been rendered. However, as facts of the present case are different from the facts of

cited judgments, they would not be applicable to the present case.

13. In the entirety of the facts and circumstances narrated hereinabove and in view of the aforesaid decision of the Hon"ble Apex Court rendered

in Cauvery Coffee Traders (supra), this Court is of the opinion that trial court after considering the evidence on record and after discussing the legal

position, was perfectly right in passing the impugned order. Since the said order is just, legal and proper this Court should not interfere with the

same and hence, this Appeal From Order is required to be dismissed.

14. Appeal From Order is accordingly dismissed.

15. In view of the dismissal of the Appeal From Order Civil Application does not survive and is disposed of. It is needless to state that the

observations made by this Court in this order being tentative ones may not prejudice the parties while deciding the main civil suit.

Further Order

After pronouncement of the aforesaid order it is fairly stated by learned counsel Mr. Pranav G. Desai for the respondent-original defendant, that

the respondent bank will not take any further steps for a period of six weeks.