

(1981) 02 CAL CK 0024
Calcutta High Court
Case No: Suit No. 493 of 1979

Reliance Jute and
Industries Ltd. and
Others

APPELLANT

Vs

Oriental Bank of
Commerce

RESPONDENT

Date of Decision: Feb. 13, 1981

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10

Citation: 85 CWN 554

Hon'ble Judges: D.K. Sen, J

Bench: Single Bench

Advocate: Anindya K. Mitra, for the Appellant; Hirak K. Mitra for the Respondent No. 1, for the Respondent

Final Decision: Allowed

Judgement

D.K. Sen, J.

This suit has been filed by the Reliance Jute & Industries Limited and five others against the Oriental Bank of Commerce for enforcement of a guarantee issued by the defendant bank being Guarantee No. 2 of 1979 in favour of one Paban Kumar Kanoria guaranteeing the due payment and discharge of certain liabilities undertaken by one Kamal Krishna Singh to the said Paban Kumar Kanoria to the extent of Rs. 5,00,000|-. After filing the suit the plaintiffs have made an application for final judgment and decree for Rs. 5,00,000| - with interim interest on judgment and costs under chapter XIII A of the Rules of the Original Side of this Court. At this stage the said Kamal Krishna Singh seeks to intervene in the proceedings and with leave of Court has made the present application praying inter alia that leave be given to him to intervene in these proceeding including the application for final judgment made by the plaintiffs and to file affidavit and make submissions before any order is

passed in the said proceedings; that he be added as a party to the suit; stay of further hearing or passing of any order on the application for final judgment made by the plaintiffs.

2. It is a matter of record that prior to the filing of the suit Kamal Krishna instituted arbitration proceedings in Indore. The Bank as also the plaintiffs are parties to the said arbitration which is pending. Kamal Krishna contends that he is vitally interested in this suit inasmuch as in the event a decree is passed against the Bank. It is ultimately he as a confirming party to the said guarantee he will have to meet the claim of the Bank as the principal debtor. He contends further that there are substantial defences to the claims of the plaintiffs in this suit. It is contended that plaintiffs are not the original creditors but the assignees of the guarantee and that this suit has not been filed in the proper form. It is also contended that the cause of action of the plaintiffs in this suit in its entirety arose outside the jurisdiction of this Court. It is further contended that the guarantee was conditional and personal and cannot be enforced at this stage. It is lastly contended that the plaintiffs have filed this suit in order to circumvent the arbitration proceedings.

3. It is contended on behalf of the plaintiffs on the other hand that the suit is maintainable. It is further contended that Kamal Krishna who seeks to intervene in this suit might be a proper party but is not a necessary party to this suit and that the whole object of the present application is to delay the realisation of the plaintiffs' claim.

4. In support of his contentions the following decisions were cited on behalf of the intervenor,

(a) *Elia and Rabbath (Trading As Elia & Rabbath) v. Matsas & Matsas* reported in 1966 (2) LLR 495. In this case, where an arbitration was pending between ship owners and the charterers in respect of demurrage and a Bank guarantee furnished in respect thereof was sought to be enforced the shippers filed a suit for a declaration that the guarantee was not valid and prayed for an injunction to restrain the owners and their agents from proceeding to enforce the guarantee. In the Court of Appeal it was held by the Lord Denning, M. R. that though the shippers were not parties to the Bank guarantee, nevertheless they had an important interest in it. The shippers would be debited with the amount if the guarantee was enforced and ultimately might have to sue the shipowners in respect of their claims. It was held that the shippers could shorten the disputes by using the shipowners at once for an injunction restraining the latter from enforcing the guarantee at an interlocutory stage.

(b) *The Minerals and Metals Trading Corporation of India Ltd v. Surajbalaram Sethi & anr.* reported in 74 CWN 991. In this case a Division Bench of this Court held; *inter alia* observed as follows:-

It is true that the guarantees were executed by the Batik in favour of the appellant; it is equally true that the Agent is not a party to either of the guarantees. The guarantees, however, have a dual aspect. They are not merely contracts between the appellant and the Bank; they are also securities furnished by the Agent in terms of the agreements between the Agent and the appellant. In seeking to enforce the bank guarantees the appellant is in effect seeking to realise the securities furnished by the Agent on the basis that it has suffered loss and the loss has been occasioned by negligence or default on the part of the Agent.

5. Learned Counsel for the intervenor who drew my attention to the provisions of Order 1 Rule 10 of the CPC under which the Court at any stage of the proceedings even without the application of any party, and on terms might order that any person whose presence before the Court may be necessary to enable the Court to adjudicate upon and settle all the questions involved in the suit, effectually and completely be added.

Learned counsel for the plaintiffs contended on the other hand that it was not necessary for the intervenor to be made a party to this suit as the Court could deal with the matter effectually even in his absence. It was further contended that in the facts of this case Kamal Krishna should not be allowed to intervene only to prolong the proceedings. In support of his contentions learned Counsel for the plaintiffs cited a decision of a Division Bench of this Court in Appeal No. 455 of 1979 entitled the Punjab and Sind Bank Ltd. v. Electro Steel Castings Ltd. and Ors. connected appeal initiated chemopulp Tissus v. Electro Steel castings Ltd. and Ors. in that case during the pendency of an application for summary judgment in a suit for enforcement of a Bank guarantee the person who claimed to be intimately liable to the Bank sought to intervene by an oral application such application was refused and a decree was passed on the guarantee Appeal were preferred both against the decree and the order of rejection of the oral application of the intervenor. The Appeal Court upheld summary judgment on the merits and after fully hearing the intervenor also rejected his appeal. It was recorded that in view of the judgment in the appeal against the summary decree the appeal by the intervenor against the rejection of his application has become infructuous.

6. In the instant case the intervenor has come by way of a formal application. The defence sought to be disclosed by the intervenor prima facie appears to be of some substance and the same will have to be considered further in the application for summary judgment. The only question before me in this application is whether the intervenor should be allowed to intervene in this suit or be added as a party thereto. On such facts the decision of the Division Bench in my view is not applicable.

7. It cannot be disputed that the intervenor is vitally interested in his suit, inasmuch as admittedly if the guarantee is enforced the intervenor will have to reimburse the Bank. In that view of the matter it appears to me that the intervenor is entitled to be heard before any decree is passed in this suit. The application of the intervenor is

maintainable under Order 1 Rule 10.

In this connection I refer to the judgment of the Supreme Court in [Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya](#), where the Supreme Court construed the scope and objects of the CPC and observed as follows :--

Now a code of procedure must be regarded as such. It is "procedure", something designed to facilitate justice and further its ends; not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

8. Next, there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed where ever that is reasonably possible, in the light of that principle. Keeping in mind the above principle and there being no bar to the intervener being added as party I allow the application of the intervener and order that he be added as a party to the suit. The plaintiffs having carriage of proceedings are directed to take necessary steps for incorporating necessary amendment in the pleadings and to serve the added defendants with a copy of the amended plaint. The intervener waives service of the writ of summons. Learned Counsel for the intervener at the hearing of this application submitted on instruction that in the event he is allowed to participate in this suit that he will not proceed with the arbitration proceedings pending in Indore and now undertakes not to continue on behalf of his client the said Arbitration proceedings till the disposal of this suit. This undertaking is recorded in presence of the intervener. The part of the order directing amendment to be incorporated in the pleadings is stayed for a fortnight. Liberty is given to effect amendment on the signed copy of the minutes of this order. Costs in the cause.