(1976) 10 BOM CK 0015

Bombay High Court

Case No: Short Cause Suit No. 41 of 1973

The Groundnut Extractions Export Development Association		APPELLANT
	Vs	
State Bank of India		RESPONDENT

Date of Decision: Oct. 6, 1976

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 88

Citation: (1977) 79 BOMLR 184

Hon'ble Judges: Mridul, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mridul, J.
This matter comes up before me for confirmation of the Report of the Taxing Master of this Court dated July 80, 1973. The Report has bean made by the Taxing Master pursuant to the reference made u/s 5 of the Bombay Court-fees Act, 1959 by Nain J. on June 12, 1973.

2. Plaintiffs, a representative association of Groundnut Extraction Exporters filed the above suit as an interpleader suit under the provisions of Order XXXV of the Code of Civil Procedure. It appears that a sum of Rs. 1,10,217.74P was due and payable by the plaintiffs to the defendants No. 3 by way of export development assistance. In respect of the said debt, it was claimed by defendants No. 1 that they had a lien and the amount was payable to them. The defendants No. 2 assorted their claim to the said amour t by virtue of an order of attachment before judgment in their favour. The defendants No. 2 had instituted a suit against defendants No. 3 in the Court of the subordinate Judge at Vijayanagaram for recovery of the sum of Rs. 1,50,000 from defendants No. 8. In the said suit they applied for and obtained a prohibitory order on December 18, 1971, inter alia prohibiting the plaintiffs from paying the said

amounts to defendants No. 3 or to any other person. The other allegations made in the said interpleader suit need not be gone into. It is however, necessary to observe that in paragraph 8 of the plaint the plaintiffs claim that there is no collusion between the plaintiffs and any of the defendants in respect of the subject-matter of the suit. The plaintiffs further state in the said paragraph that they have no claim over the said sum of Rs. 1,41,097.74P save and except for their charges and costs.

3. The suit was filed as a Short Cause. A question as to the amount of Court-fees payable in that behalf arose before Nain J. and the reference aforesaid was consequently made by Nain J. to the Taxing Master.

4. The Taxing Master has taken the view that a plaintiff in an interpleader suit does not seek to prevent any monetary loss being caused to him. According to the Taxing Master, payment of Court-foes in an interpleader suit is not governed by Article 7 of Schedule I of the Court-fees Act, but comes within the preview of Article 23(f) of Schedule II of the Bombay Court-fees Act, 1959 (hereinafter referred to as the Act): The Taxing Master therefore made findings in favour of the plaintiffs and held that the fixed Court-fees of Rs. 30 was payable under the provisions of Article 23(f) of Schedule II of the Act. The plaintiffs claim in view of the Report of the Taxing Master that the amount of Court-fee paid in excess of Rs. 80 should be directed to be refunded to them. The plaintiffs also seek a declaration under Rule 4 of Order XXXV of the CPC to the effect that the plaintiffs are discharged from all liability to the defendants. The plaintiffs also pray that the provisions be made for costs of the plaintiffs and further that the plaintiffs be dismissed from the suit. These directions wore prayed for orally by the plaintiffs in course of the hearing of the matter today.. Normally having regard to the provisions of Rule 4 of Order XXXV, such directions can be given by the Court only at the first hearing of the suit. Whatever the expression ''first hearing'' might mean, it undoubtedly connotes the hearing of the suit. As the suit was not on Board for hearing and final disposal I was not inclined to entertain the application of Shri Doctor, the learned Counsel for the plaintiffs for the aforesaid directions. However, the learned Counsel for all the parties agreed to have the matter placed on Board by consent and thus induced mo to entertain plaintiffs'' application for the aforesaid directions.

5. Shri Doctor contends that having regard to the provisions of Section 88 read with the provisions of Order XXXV, Rules 1, 2 and 4 of the Code of Civil Procedure, a plaintiff to an interpleader suit cannot be said to be a person who seeks any monetary gain or prevention of monetary loss for the purposes of or within the contemplation of Article 7 of Schedule I to the Act. According to the learned Counsel, a plaintiff, in an interpleader suit seeks no relief, much less relief pertaining to a subject-matter capable of any monetary evaluation.

6. Shri Bharucha, the learned Counsel appearing for the defendants No. 1 claims that the Court-fees is payable in the present case under the provisions of Section 6(i) of the Act. A similar claim is made by Shri Gandhi, the learned Counsel for defendant

No. 2. In my opinion, the claim made by the learned Counsel for the defendants that the Court-fees is payable on ad valorem basis is well conceived and must be uphold, but not merely on the ground canvassed by the learned Counsel.

7. Section 88 of the CPC provides for an interpleader suit. A plain reading of Section 88 shows that the provisions thereof do not do away with the basic purpose of a suit-contest between the parties requiring adjudication by a Court of law. The section is in two parts : a substantive provision and a proviso thereto. The key concepts in the substantive provision are ''two or more persons claiming adversely'' arid a ''decision of the Court as to the person to whom, the payment or delivery should be made.'' The provision also postulates an indemnity for the plaintiff. The intendment of the provision is clear. It provides a machinery for adjudication of rival claims between the defendants in an interpleader suit and a decision of the Court in that behalf. The decision of the Court entitles the plaintiff to an indemnity in regard to ''payment or delivery'' to the person whose claim is affirmed by the Court. The proviso to the section underlines the aforesaid intendment. It in terms provides that where ''any suit is pending in which the rights of all parties can be properly decided,'' an interpleader suit in respect thereof is not permissible under the substantive provisions of the said Section 88. Decision as to claims of defendants inter se does not place interpleader suits in a class by themselves. It is an established practice that in eases whore it becomes necessary for a Court to decide inter se disputes between the defendants in order to give relief to the plaintiff, the Court raises issues between the co-defendants and makes findings in that behalf. What is more, such findings operates as res judicata as between the co-defendants. The provisions of Section 88 are an extension of the said practice to oases where a plaintiff does not put in issue his title but puts in issue the rival claims of contesting defendants so as to secure a decision binding on all and an indemnification for himself as a consequence thereof. Where such rivals claims can be properly decided in a pending suit, an interpleader suit becomes unnecessary and is interdicted by the proviso to Section 88.

8. Order XXXV makes detailed provisions for an interpleader suit. Rule 1 of Order XXXV contemplates the filing of an interpleader suit by instrumentality of a plaint. The expression ''plaint'' emphasises the character of the proceedings. It equates them with a proceeding in any other suit. The other key provision of the said Order relevant for the purpose of the present controversy is the one enacted in Rule 4 of Order XXXV. It provides that at the first hearing of the suit, the Court may either declare that the plaintiff is discharged from all liability to the defendant in respect of the claim, award him his costs and dismiss him from the suit or if the interest of justice or convenience requires, retain all the parties until the final disposal of the suit. Clause (a) of Sub-rule (1) of Rule 4 which embodies the first ingredient referred to above provides for the substantive relief of a declaration by the Court as to the discharge of the plaintiff from all liability to the defendants. There is no escape from the conclusion that such a declaration prevents a loss, It prevents a liability being

fastened upon the plaintiff. Thus looking at it in a pragmatic manner it must be held that when the Court grants a declaration to the plaintiff in an interpleader suit such a declaration results in his discharge from liability to the defendants. This is a situation which comes within the direct coverage of the provisions of Article 7 of Schedule I to the Act, Article 7 lays down two conditions. The subject-matter should be susceptible to monetary evaluation and a substantive relief is claimed in the plaint. As to second requirement, I take the view that the declaration contemplated by Clause (a) of Sub-rule (1) of Rule 4 of Order XXXV amounts to a substantive relief. The exoneration of liability to the defendants or an indemnification in respect thereof cannot but be characterised as a substantive relief to the plaintiff. Moreovor, as observed later, the plaintiffs claim an injunctive, relief of substantive character. As to the first ingredient, it will have to be ascertained as to what is the subject-matter of the present interpleader suit and whether it is capable of monetary evaluation or not.

9. The law as to the concept of ''the subject-matter of a suit'' is well established by two decisions of the Vallabh Das Vs. Madan Lal and Others, and Ram Gobinda Dawan and Others Vs. Smt. Bhaktabala, In Vallabh Das''s case, while interpreting the provisions of Order XXIII, Rule 1 of the Code of Civil Procedure, Hegde J. held that the expression ''subject matter'' in Order XXIII, Rule 1 means the bundle of facts which have to be proved in order to entitle the plaintiff to the relief claimed by him. In other words, the subject-matter was hold to be bundle of facts which a plaintiff has to prove in order to entitle the plaintiff to the relief claimed by him. The subject-matter was equated with both the cause of action and the relief claimed. In Ram Gobinda''s case, the Supreme Court was called upon to consider the applicability of the doctrine of res judicata in the context of the identity of the property involved in the two relevant suits. The Supreme Court made a distinction between the property involved in the suit and the titles relating thereto. The Supreme Court enunciated the principle that a subject-matter is identity of-the title and not mere identity of the property involved in the suit. The judgment shows that what the Supreme Court referred to as the title to the property was the cause of action sustaining relief in respect thereof. It is undoubtedly true that the amount of Rs. 1,41,097.74 which is the genesis of conflicting claims between defendants Nos. 2 and 3 is the property involved in the suit. It is equally true that the plaintiffs in the suit do not claim any interest in the said property. But the last factor by itself is not enough. The subject-matter of the suit is the rival title of the defendants to the said amount and the plaintiffs'' claim for declaration for discharge of their liability to the defendants in respect thereof. The relief for discharge of liability in the present case is clearly borne out by a reasonable reading of the averments made in the plaint. Further more, in the present suit, the plaintiffs not only set out the rival claims of defendants Nos. 2 and 8 but also refer to the suit filled by defendant No. 2 against defendant No. 3. The plaintiffs claim in prayer (a) an injunction against the defendants "from taking or continuing any proo3odings against the plaintiffs in

relation to the sum of Rs. 1,41,097.74P". This injunctive relief is a substantive relief in respect of the said amount of Rs. 1,41,097.74P. In my opinion, both having regard to the essential bundle of facts pleaded in the plaint and the relief claimed by the plaintiffs that the subject-matter of the suit is the said amount of Rs. 1,41,097.74P in regard to which plaintiffs plead non-liability and an injunctive relief. In substance the object of the suit is to prevent a loss which might be caused if an injunction in terms of prayer (a) or if a declaration of discharge from liability or indemnity therefore in pursuance of provisions of Rule 4 of Order XXXV of the Coda of Civil Procedure is not granted by the Court.

10. There is an yet another way of looking at the problem. As conceded by Shri Bharucha that if the word ''for'' occurring in the expression "any suit for money" being the opening words of Clause (i) of Section 6(i) of the Act, is to be read as ''in respect of, then Court-fees becomes payable with regard to all suits ''in respect of money''. It has been held in many cases that the word ''for'' connotes ''in respect of. So read Section 6(i) of the Act clearly predicates the payment of ad valorem Court-fees on the amount in respect of which the claim is made in the suit. I therefore, find no warrant to uphold the contention raised on behalf of the plaintiffs that the Court-fees payable in respect of the above-mentioned suit was only Rs. 30 because the subject-matter of the suit is not capable of monetary evaluation. I hold that the subject-matter of the suit viz. the claim for discharge in respect of the said amount of Re. 1,41,097.74P was and is capable of monetary evaluation and the plaintiffs wore bound to pay the Court-fees on the said amount on ad valorem basis.

11. I am informed at the Bar that having regard to the view that I have taken, there will be a deficit as to the quantum of Court-fees payable by the plaintiffs. This deficit has arisen, I am informed, by reason of the fact that the original claim made by the plaintiffs was in respect of a sum of Rs. 1,17,217.74P but the amount was increased by virtue of amendment of the plaint granted by this Court on August 22, 1975. I direct the plaintiffs to pay within a period of one week from today, the amount equivalent to the deficit so as to make up the amount of the Court-fees which is payable on the said amount of Rs. 1,41,097.74P.

12. Ordinarily I would have granted the prayer of Shri Doctor for a direction in terms of Clause (a) of Rule 4 of Order XXXV of the Code of Civil Procedure. There is, however, a crucial circumstance which militates against the grant of such a direction in favour of the plaintiffs. In paragraph 2 of the written-statement of defendant-No. 2, it is alleged that the plaintiff''s in collusion with defendants No. 1 have deliberately refused to apply with the orders of a competent Court and have with a view to circumvent and/or render the said orders infructuous filed the present suit in the guise of an interpleader suit. Without expressing any definite opinion as to the rival contentions of the parties, I am of opinion that on facts of the present case, both justice and convenience require that the plaintiffs should be retained until the final disposal of the suit. I therefore, decline to give direction sought for by the plaintiffs

in that behalf.

13. In the result I set aside the findings of the Taxing Master and hold that the plaintiffs were and are liable to pay ad valorem Court-foes in regard to the relief claimed by them pertaining to the said amount of Rs. 1,41,097.74P. I also reject the application of the plaintiffs for a declaration of discharge from liability to the defendants or for the costs of the suit or for their dismissal from the suit at this stage. It may however, be made clear that the refusal to give directions at this stage would not debar the plaintiffs to such reliefs as they might be entitled to at the time of the final hearing and disposal of the suit.

14. Upon the application of Shri Doctor and without any opposition from the learned Counsel appearing for the other side, I further direct that the issues as between defendants No. 1 and No. 2 may be framed and tried in these proceedings. In the circumstances of the case, no order as to costs of the State of Maharashtra and with regard to the costs of the other parties, the costs to be costs in the suit.