(1974) 04 BOM CK 0013

Bombay High Court (Nagpur Bench)

Case No: C.R.A. No. 521 of 1973

Rajaramka Pulp and Paper Mill Ltd., Tumsar		APPELLANT
	Vs	
Central Bank of India, Nagpur		RESPONDENT

Date of Decision: April 29, 1974

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 rule 17

Citation: (1974) MhLj 985

Hon'ble Judges: B.A. Masodkar, J

Bench: Single Bench

Advocate: A.M. Gorde, for the Appellant; R.K. Thakur, for the Respondent

Final Decision: Dismissed

Judgement

B.A. Masodkar, J.
In the present revision the original defendant questioned the validity of the order made by the trial Judge allowing amendment to the plaint which order is exhibited below Exh. 23.

2. The submission of the learned counsel appearing for the applicant is that the amendment could not have been allowed for it introduced a new and inconsistent case and further it deprived the defendant of an accrued right to defeat the suit claim on the plea of limitation. He submits that the original suit was based on the promissory note and having found that the same was defective, the plaintiffs wants to rely on the original cause of action which course is impermissible under Order VI, rule 17, of the Code of Civil Procedure. He has also pointed out and it must be said rightly-that the learned Judge who was bound by the decision of this Court, in the body of the order has observed that in view of the decision of the Madhya Bharat High Court the decision of the Bombay High Court was not the good law on the controversy.

3. To understand these submissions, it has first to find out what was the nature of the suit. No doubt the plaint styles itself as one based on promissory note and lays a claim as against the defendant to the certain amount due and outstanding. However a close look at the plaint shows that the demand promissory note is one of the cause of action pleaded by the plaintiff. In paragraph 2 of the plaint there are clear allegations that the plaintiff had advanced the amount of loan on 25-3-1969 and defendant had acknowledged its liability to pay the said loan on demand with interest the rate of which is pleaded. It was stated that defendant had executed the promissory note for Rs. 30.000. Repayment of Rs. 6000 on 8-8-1970 was specifically pleaded. In paragraph 3 of the plaint the account of this loan was specifically pleaded showing the payments, its adjustments and the balance due at the foot of the accounts. It is stated that in the books of account of the plaintiff Rs. 30010-04 arc outstanding and payable by the defendant and that is the suit claim. The details are stated in paragraph 4. In paragraph 5 while stating the cause of action Reference no doubt is made to the promissory note of 25-3-1969. In paragraph 9 the plaintiff has relied on the documents which include the accounts maintained from 1969 to 1970.

4. The nature of the suit, therefore, is not merely one based on the cause of action furnished by the promissory note but also by books of account maintained under the Bankers Books Evidence Act and specifically pleaded by the plaintiff. In other words it cannot be said that there is no pleading with respect to the original cause of action. If the suit was merely based on promissory note, there was no need to plead the accounts and the balance outstanding and due as were recoverable at the foot of the accounts from the defendant. This was the nature of the suit and that is how it was understood by the defendant is clear from the written statement. While replying to paragraphs 3 and 4 of the plaint, the written statement inter alia goes on to state "It is denied that the claim can be based on extract of accounts". After denying the accounts, the defendant has denied the suit claim. In paragraph 7, a plea was raised in defence that the said promissory note was not valid negotiable instrument as it does not purport to have been passed by the defendant and further that there was no valid resolution of Board of Directors to give or execute the promissory note or to borrow monies from the Bank.

5. The application for amendment of August 18, 1973 inter alia clarifies what was already pleaded. Because the defendant came out with the plea of want of authority and such invalidity of the promissory note, para 1-A was proposed to be added. There the details of the loan of Rs. 30,000 have been furnished along with how the promissory note was executed by Kunjbihari Agarwal the authorised Director. It was specifically stated that agricultural land account was opened at the plaintiff''s Bank at Nagpur. By paragraph 4-A it was alternatively stated that the plaintiff also bases the cause of action on accounts and claims thereunder. It was made specific that the suit was at the foot of the accounts and the claim was for the balance due. Reference was made to the certified extracts already filed along with the plaint. At para 8-A a pleading was introduced as to the nature of the defendant-Company and

the consequence of the false defence.

6. This amendment has been allowed by the impugned order. I have already referred to the pleading of the plaintiff-Bank which clearly indicates that along with the promissory note the Bank had pleaded as the basis of its claim its own accounts. Not only that but the plaintiff had filed certified extracts of those accounts along with the suit itself. By the amendment plaintiff merely clarified what was contended in the original suit. Mere title to the plaint does not indicate the real nature of the pleadings of the parties. I have also corns to the conclusion that the defendant understood the pleadings of the plaintiff in this manner alone.

7. With this result on the pleadings itself, it is not really necessary to refer to the authority on which reliance was placed in the lower Court, i.e. Burjorji Jivanji Todywalla Vs. Hormusji Nowroji Davar, where the learned Single Judge of this Court appears to have observed that when a suit was brought on a promissory note but the same was found inadmissible in evidence, an amendment could not be allowed at the trial of such a suit so as to enable the plaintiff to sue on the original cause of action that being the cause of action wholly distinct from the cause of action based upon the promissory note. It is obvious that the learned Judge thought that those were different, contradictory and dissimilar causes of action. The ratio of this judgment was not approved by the Division Bench of this Court in Sarafalli Mahomedalli Vs. Mahasukhbhai Jechandbhai, . It has been stated there that if two alternative and inconsistent claims could be combined originally in the plaint, there was no reason on principle why the same should not be allowed to be so combined at the later stage by amendment. Authority of Burjarji''s case (supra) is not therefore a good law. Even if therefore it was merely a suit based on promissory note the plaintiff was always entitled to fall back upon the original cause of action, i.e. of advancing of the loan itself. Only because a negotiable instrument is initially pleaded it would not affect the nature of the claim of the plaintiff to have a money decree. The claim on the basis of original advance at the most would change the burden of proof and not the nature of the claim itself. In fact pleadings of such nature are not in any manner inconsistent or contradictory in a suit for the recovery of money. At the most it may be an alternative basis or alternative cause of action available to such a suitor. Nature of suit is not only determinable by the several facts pleaded as cause of action but by the reliefs sought. In the text of the CPC there is no inherent prohibition to seek alternate or even inconsistent reliefs and as such rely on alternate and somewhat inconsistent causes of action. Claim based on pronote and one based on the original advance at the most can be treated as alternate one and not inconsistent to each other for upon both, the same relief can be afforded. Test that governs alternate claim has relevance and reference to reliefs. If the character of reliefs is itself self contradictory then alone demonstrably an Anthology is introduced which may be impermissible course of pleadings and Court may invoke its power to put the party to election. Unless such a stage is not reached in that absolutely inconsistent or self-opposed pleas are raised, inconsistency is

implicitly tolerated by the doctrine of alternatives. Suit based on promissory notes can therefore validly contain, nay can always assimilate a plea based on the passing of the original payment of loan. Only for the original transaction has merged and had been given the form of a negotiable instrument it does not cease to exist so as to disable the part) from invoking or relying on the same. Liability to pay the plaintiff is constant and consistent in both these contingencies i.e. under the negotiable instrument or under the original advance of money. Looking therefore to the nature of transaction giving rise to legal obligations of the parties it is obvious that such pleadings are supplementary or at the most alternative but not inconsistent.

8. As to such right of a suitor to succeed on alternative and inconsistent plea, the Supreme Court observed in Srinivas Ram Kumar Vs. Mahabir Prasad and Others, that it was certainly open to the plaintiff to make an alternative case and make a prayer in the alternative for a decree for money in a suit for specific performance even if the allegations of the advance of money having been paid as consideration in pursuance of a contract of sale could not be established by evidence. Such a relief or a prayer would have been inconsistent with the other prayer of specific relief but it was not really material, for a plaintiff may rely upon different rights alternatively and there was nothing in the CPC to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. It is of interest that the suit out of which the appeal before the Supreme Court arose was one based on the agreement to sell property and one for enforcement of that agreement. It was the defendant who had denied the agreement and set up the plea of loan advanced under the agreement of sale. The Court observed that even on the pleading of the defendant the money decree could be passed and the Court had ample power to give such relief although such a pleading may be totally inconsistent to the main plea raised by the plaintiff. These principles do support the view I have expressed above.

9. In the result, there is no error of jurisdiction committed by the learned Judge in allowing the present amendment that can be successfully reached in this revision as for what was allowed by amendment was very much the part of the original cause of action and it merely, if at all, raised an alternative plea and prayer. The revision thus fails and is dismissed with costs.