State Bank of India

Vs

Ramkrishna Pandurang Barve and Another

Civil Appeal No. 3743 of 1990

(L. M. Sharma, Dr. T. K. Thommen JJ)

23.07.1990

JUDGMENT

1. Heard the learned counsel for the parties. Special leave is granted.

2. This appeal arises out of a suit filed by the appellant - State Bank of India for a money decree against the partnership firm, defendant 1, and its four partners, defendants 2 to 5. The trial court passed a decree against the firm, defendant 1, and two of its partners, defendants 2 and 4, and dismissed the suit against the remaining partners, defendants 3 and 5. Defendants 1, 2 and 4 did not file any appeal against the decree.

3. The appellant - Bank challenged the decision of the trial court so fat it dismissed the claim as against defendants 3 and 5 but did not implead defendants 1, 2 and 4 as parties to the appeal before the High Court. On a preliminary objection raised against the maintainability of the appeal, the High Court held that defendants 1, 2 and 4 were necessary parties and in their absence the appeal was not maintainable. Accordingly, the same was dismissed by the impugned judgment.

4. Mr. Solicitor General appearing on behalf of the appellant has contended that defendants 1, 2 and 4 were not necessary parties and the decision of the High Court is illegal. He has further said that even assuming that the three defendants should have been impleaded as party respondents, the High Court ought to have added them as such by exercising the power under the proviso of Order XLI, Rule 20 of the Code of Civil Procedure. Mr. V. N. Ganpule, the learned counsel for the respondents has supported the view of the High Court by saying that if the facts and circumstances of the case are properly analyzed it will be clear that defendants 3 and 5 could not be saddled with the present liability.

5. The argument of Mr Solicitor General is well founded. The question as to whether a decree against defendants 3 and 5 should be passed or not is one dependent on evidence and cannot be considered at this stage. The High Court has not relied on this aspect and has refused to go into the merits of the cases of the parties by deciding the preliminary point against the appellant. The question of maintainability of the appeal cannot depend on the ultimate conclusion of the disputed issue between the parties about the binding nature of the debt on defendants 3 and 5. We must confine ourselves to the question as to whether the defendants 1, 2 and 4 are necessary parties. They are clearly not so. A decree has been passed against them by the trial court, which having not been appealed from becoming final. Now when the other defendants are also held liable for the debt, they (defendants 1, 2 and 4) cannot be prejudiced. In case the present appeal is allowed, the decision is not going to adversely affect defendants 1, 2 and 4 at all. On the other hand, they will find the other partners sharing their burden. 6. There is still another aspect which has been completely lost sight of

by the High Court, namely, that the firm, defendant 1, represents all the four partners and has suffered a decree which has become final. In other words, defendants 3 and 5 also should prima facie be called upon to share the burden. By dismissing the suit against them and anomalous position has been created. However, we are not expressing any concluded opinion on this part, as their individual liability is, according to the learned counsel for the respondents, limited on account of the circumstances pointed in the judgment of the trial court. In any event defendants 1, 2 and 4 cannot be held to be necessary parties so as to render the appeal in their absence not maintainable.

7. We accordingly set aside the impugned judgment of the High Court and remit the appeal to it for fresh decision in accordance with law. We make it clear that it will be open to the High Court to add defendants 1, 2 and 4 as respondents to the appeal if on a consideration of the merits of the case it is of the view that their presence is proper or desirable.

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