SUPREME COURT OF INDIA

M/S Plasto Pack, Mumbai

Vs.

Ratnakar Bank Ltd.

C.A.No.5235 of 2001

(R.C.Lahoti and K.G.Balakrishna JJ.)

10.08.2001

JUDGMENT

R.C. Lahoti, J.

1. The respondent is a scheduled bank (non-nationalised). The first appellant is a sole proprietary concern. The second appellant is the proprietor of the first appellant. In January, 1990 the respondent filed a suit, for recovery of its dues, against the appellants. According to the respondent the appellants were sanctioned a cash credit limit of Rs.3,50,000/- for which purpose a demand promissory note dated 17.8.1985 was executed by the appellants in favour of the respondent. A deed of hypothecation dated 17.8.1985 hypothecating the stock of raw-materials and finished goods and a deed of mortgage of property dated 14.8.1985 mortgaging the appellants's bungalow situated in Andheri (West) and a few other documents are also said to have been executed by appellants in favour of respondent. On 24th January, 1990 an amount of Rs.7,61,798.68 p. was allegedly outstanding against the appellants for the recovery whereof a suit on the Original Side of High Court of Bombay was filed by the respondent.

2. On 3rd March, 1995 a learned Single Judge, sitting on the Original Side, passed a decree under Order 8 Rule 10 of the CPC against the appellants "in terms of prayers clause (a), (c)(ii), (d)(i) and (i)" with costs quantified at Rs.4026/-. The decree read with the prayer clause of the plaint, briefly stated, shows that following reliefs were granted by the Court to the respondent against the appellants:- a) The defendants were ordered and decreed to pay to the plaintiff the sum of Rs.7,61,786.68 p. 'together with interest thereon at the rate of 19.5 % per annum compounded quarterly or at such other rate as the Court may deem fit and proper from the date of filing of the suit till the date of payment or realisation.'

> “(c)(ii) appointment of Receiver on the bungalow situated in Andheri West.
>
> (d)(i) an injunction restraining the defendants from alienating, encumbering or parting with possession over the abovesaid bungalow. (i) costs of the suit.”

3. On 24th November, 1997 the learned Single Judge on a motion made by the respondent and without issuing any notice to the appellants passed the following order:-

> "order dated March 3, 1995 stands modified to the extent that in the order in place of prayers (c)(ii) and (d)(i), the same should read as prayers (h)(i) and (b)(ii), (e), (f) and (i). Court Receiver appointed in execution of decree."

4. The order dated 24.11.1997 read with the prayer clause of the plaint reveals that in place of the reliefs stated as clauses (c)(ii) and (d) (i) abovesaid, the learned Judge now granted the following reliefs to the respondent against the appellants:-

> "(b)(ii) a declaration that the plaintiffs have a first charge over the bungalow situated in Andheri (West) as per the mortgage created by defendant no.2 in favour of the plaintiff.
>
> (e) Court Receiver authorised to sell the hypothecated goods and sale proceeds be appropriated in satisfaction of the decree with personal decree against the defendants for the amount remaining, if any.
>
> (f) Court Receiver authorised to hold sale of the bungalow and appropriate the said proceeds in satisfaction of the decree with a personal decree for the remaining amount, if any."

5. It appears that the defendants (appellants) were trying to negotiate a settlement with the respondent bank setting out the fortuitous circumstances which had resulted in the defendants having fallen in arrears, also setting out the family circumstances which deserved a sympathetic consideration on the part of the bank but the proposal made by the defendants was not evoking any favourable response. The defendants pleading their ignorance of the decree and setting out the reasons for their default in contesting the suit moved the learned Single Judge for setting aside the ex-parte decree. By order dated 4.2.1999 the learned Single Judge refused to accept notice of motion taken out by the defendants stating that the remedy of the defendants laid only in filing an appeal. The defendants did file an appeal. However, by the impugned order dated 26.7.1999 a Division Bench of Bombay High Court refused to entertain the appeal and dismissed the same as barred by time.

6. The aggrieved defendants filed a petition for special leave invoking the jurisdiction of this Court under Article 136 of the Constitution. During the pendency of SLP also the appellants gave an offer for settlement of the dispute proposing to tender an amount of Rs.8,36,000/- in full and final settlement of the decree. The break-up of the amount offered by the defendant-appellants is as under:-

> 1. Payment of Principal Amount Rs.3,50,000 2. Interest @ 12% p.a. upto date Rs.1,26,000 of suit
> 3. Interest @ 10% p.a. from 1991 till 2000 (for 10 years) Rs.3,50,000
> 4. Cost of Suit Rs. 10,000 ---------- Rs.8,36,000 ========

7. On 19th November, 1999 this Court directed special leave to be granted and the operation of the impugned decree to be stayed subject to the appellants depositing a sum of Rs.7,61,000/- with the Registrar of this Court. The amount was deposited as ordered. The respondent-bank was put on notice about the amount tendered by appellants by way of deposit in this court. Learned counsel for the parties appearing before this Court tried to settle the matter. Learned counsel for the respondent-bank took several adjournments for seeking instructions in the matter of settlement from the respondent- bank but the latter gave no response. On 10.5.2001 this Court directed the Managing Director of respondent-Bank to appear in person in the Court so as to settle the matter. On 16.7.2001 the Chairman-cum-Managing Director of the respondent-bank did appear but only to state that the proposal made by the appellants was not acceptable to the bank and bank was not agreeable to settlement.

8. In such circumstances leave to appeal has been granted and the learned counsel for the parties have been heard on merits.

9. Having heard learned counsel for the parties we are satisfied that the High Court was not justified in refusing to set aside the ex- parte decree dated 3.3.1995 as modified on 24.11.1997.

10. A perusal of the affidavit filed by the defendant-appellants in support of notice of motion seeking setting aside of the ex-parte decree did make out a case for allowing the notice of motion. We have no reason to disbelieve the bona fides of the defendant-appellants. They were making a genuine effort with the respondent-bank for settlement of the dispute. They were justifiably hopeful of the settlement because their offer was reasonable and the family and the business circumstances of the appellants brought to the notice of the respondent-bank should have normally evoked sympathy of the respondent-bank on humanistic considerations. There was nothing wrong in the appellants expecting that the respondent-bank would, instead of indulging in litigation, settle the matter giving such just and equitable relief to the appellants as they deserved. There was no counter proposal made nor the appellants' proposal was at any time turned down by any written communication made by the respondent- bank.

11. Apart from the facts and circumstances stated in the affidavit in support of notice of motion the interest of justice also demanded the decree being set aside.

12. By order dated 3.3.1995 relief (a) set out in the plaint was granted 'as it was', without specifying the exact decretal amount and the rate of interest allowed by the Court. Such of the prayers as were not granted by decree dated 3.3.1995 would be deemed to have been refused and to that extent the suit shall be deemed to have been dismissed. More than two years and eight months later the Court could not have, on a mere notice of motion, substituted almost a new decree in place of the old one by granting such reliefs as were not granted earlier and that too without noticing the defendant-appellants. As held in *K. Rajamouli Vs. AVKN Swamy*[1], power to amend a decree cannot be exercised so as to add to

or subtract from any relief granted earlier. A case for setting aside the decree was earlier made out. In the facts and circumstances of the case the Division Bench ought to have taken a liberal view of the events and entertained the appeal for consideration on merits by condoning the delay in filing the same. However, that was not done. We are satisfied that grave injustice has been done to the appellants by denying them an opportunity of hearing and contesting the suit on its merits. We are also of the opinion that the respondent-bank ought to have taken a reasonable stand and should have sympathetically considered the proposal of the appellants which was not lacking in bona fides and in the interest of avoiding litigation and early recovery of outstanding debts the respondent should have compromised the suit. Even if the appellants' proposal was not acceptable to the respondent, at least a counter-proposal should have been made in which case across the table discussion between the parties with the assistance of their learned counsel would have brought out a mutually accepted resolution and an end to the litigation. We are constrained to observe that this litigation is being perpetuated because of the unreasonable and rigid attitude of the respondent-bank.

13. In ordinary course we would have remanded the matter back to the Division Bench for hearing the appeal but we are of the opinion that that course is unwarranted. As we are satisfied that decree dated 4.3.1995 and the order dated 24.11.1996 amending the decree __ both suffer from serious legal infirmities and error of jurisdiction and as such the same deserve to be set aside; more so when we are also satisfied on the affidavit of the defendant-appellants that there was a sufficient cause for their non-appearance in the suit.

14. For the foregoing reasons the appeals are allowed. The judgment of the High Court dated 26.7.1999, the decree dated 3.3.1995 and the order 24.11.1997are all set aside. The suit is restored on the file of the High Court. It shall be taken up for hearing and decided afresh after affording the defendant-appellants an opportunity of contesting the suit on its merits. The amount of Rs.7,61,000/- deposited by the appellants with the Registry of this Court shall be refunded to the appellants as the decree has been set aside and settlement has failed. Costs up to this stage shall be borne by the parties as incurred. Before parting we expect the respondent- bank to take a sympathetic view of the appellants' proposal and still try to reach a settlement. The High Court may also make an effort to settle the dispute by trying a conciliation. In any case, we make it clear that on the abovesaid amount of Rs.7,61,000/- interest shall cease with effect from 31.7.2000, the date on which the respondent- bank had notice of the deposit and yet it unreasonably refused to accept the tender of such amount.

[1]*(2001) 5 SCC 37*