

# SUPREME COURT OF INDIA

Prem Lala Nahata

Vs.

Chandi Prasad Sikaria

(S.B.Sinha and P.K. Balasubramanyan, JJ.)

02.02.2007

## JUDGMENT

**P.K.Balasubramanyan, J.**

1. Leave granted.

2. The appellants are the plaintiffs in C.S. No. 29 of 2003 filed on the original side of the Calcutta High Court.

3. They are mother and daughter. They together sued the respondent, the defendant, for recovery of sums allegedly due to them from him. Appellant No.1 sought recovery of a sum of Rs. 10,93,863/- with interest thereon and appellant No. 2 sought recovery of a sum of Rs.10,90,849/- with interest. Their claims were based on transactions they allegedly had with the respondent herein, through Mahendra Kumar Nahata, the husband of appellant No.1 and father of appellant No.2. In essence, the claim of appellant No. 1 was that a sum of Rs. 5 lakhs had been lent by her to the respondent and the same had not been repaid and the same was liable to be repaid with interest and damages. The case of appellant No. 2 was also that she had lent a sum of Rs. 5 lakhs to the respondent and the same along with interest and damages was due to her. It was their case that the transactions had been entered into through Mahendra Kumar Nahata, and that through Nahata, they have had prior dealings with the respondent. They had averred thus in paragraph 4 of the plaint:

"The said Nahata in his usual course of business was known to the Defendant for many years and sometime in April, 2000 while acting on behalf of the Plaintiffs, the said Nahata at the request of Defendant had duly arranged for two loans of Rs.5,00,000/- to be lent and advanced by each of the Plaintiffs to the Defendant and this Suit has been brought to recover the said loans with interest and special damages arising from the Defendant's failure to repay the said loans within the stipulated date therefor as is stated more- fully hereinafter."

4. The respondent not having repaid the money and having repudiated their claim by filing suits against them, the suit for recovery of the amounts was being filed.

5. The respondent had earlier filed two suits for recovery of amounts allegedly due from the appellants. Money Suit No. 585 of 2001 was instituted by the respondent against appellant No. 2 herein claiming recovery of certain amounts after setting off the amount of Rs. 5 lakhs taken from appellant No. 2. He had accepted that Rs. 5 lakhs had been paid by the appellant but pleaded that it was not a loan, but it was as part of a business transaction set out in that plaint. The respondent had also filed Money Suit No. 69 of 2002 against appellant No.1 herein for recovery of certain amounts on the same basis and after setting off the sum of Rs.5 lakhs alleged to have been paid by her. The suits were filed in the City Civil Court at Calcutta. The said suits were pending when the appellants together instituted their suit C.S. No. 29 of 2003. Their suit, as noticed, was on the basis that the sums of Rs. 5,00,000/- each paid by them to the respondent were by way of loans.

6. The appellants moved A.L.P. No. 10 of 2003 on the original side of the Calcutta High Court invoking clause 13 of the Letters Patent read with Section 24 of the Code of Civil Procedure (for short "the Code") seeking withdrawal of Money Suit No. 585 of 2001 and Money Suit No. 69 of 2002 for being tried with C.S. No. 29 of 2003 on the plea that common questions of fact and law arise in the suits and it would be in the interests of justice to try and dispose of the three suits together. Though the respondent resisted the application, the court took the view that it would be appropriate in the interests of justice to transfer the two suits pending in the City Civil Court at Calcutta to the original side of the High Court for being tried and disposed of along with C.S. No. 29 of 2003 filed by the appellants. The said order for withdrawal and joint trial became final.

7. While matters stood thus, the respondent herein, the defendant in C.S. No. 29 of 2003, made an application G.A. No. 4458 of 2003 praying that the plaint in C.S. No. 29 of 2003 be rejected under Order VII Rule 11 of the Code on the ground that the cause of action of each of the appellants, the plaintiffs in that suit, did not emanate from any common source and there was no interdependence or nexus between the causes of action put forward by the respective plaintiffs in the suit and that there was no common foundation for the right to relief claimed by them. It was pleaded that the appellants, the plaintiffs could not have joined as plaintiffs in one suit in terms of Order I Rule 1 of the Code and could not have united their independent causes of action in the same suit in terms of Order II Rule 3 of the Code. It was submitted that there was not only misjoinder of parties but there was also misjoinder of causes of action. It was on this basis that the prayer for rejection of the plaint under Order VII Rule 11(d) of the Code was made. The appellants, the plaintiffs, resisted the application. They contended that the claim of the plaintiffs emanated from the dealings at the instance of Nahata, husband of plaintiff No.1 and father of plaintiff No.2 with the defendant and that there was no defect of misjoinder of causes of action in the suit.

8. They submitted that the plaint was not liable to be rejected under Order VII Rule 11(d) of the Code.

9. The trial judge on the original side, considered the question whether the plaint filed by the appellants was liable to be rejected under Order VII Rule 11(d) of the Code on the basis that the suit appeared from the statements in the plaint to be barred by any law. The learned Judge

took the view that there was no law barring a suit in which there was misjoinder of parties or a misjoinder of causes of action, though, of course, for the purposes of convenience, a court would avoid the misjoinder of causes of action or misjoinder of parties. But on the basis of such a defect, the plaint could not be rejected by invoking Order VII Rule 11(d) of the Code since it could not be held that a suit which suffers from the defect either of misjoinder of parties or misjoinder of causes of action or both, is barred by any law. Thus, the application filed by the respondent herein, the defendant in C.S. No. 29 of 2003, was dismissed.

10. The respondent purported to file an appeal challenging that order under clause 15 of the Letters Patent. The Division Bench held that the suit was bad for misjoinder of causes of action and hence the trial court was not justified in not invoking Order VII Rule 11(d) of the Code and in not rejecting the plaint. The Division Bench, did not reject the plaint, but, gave the appellants an opportunity to elect to proceed with the present suit at the instance of one of them and thus confine the plaint claim to one of them and the transaction relied on by that plaintiff. Aggrieved by this decision of the Division Bench this appeal has been filed by the plaintiffs.

11. Though arguments were addressed on the maintainability of the appeal filed by the respondent before the Division Bench under clause 15 of the Letters Patent, (in which one of us, Balasubramanyan, J. finds considerable force) counsel for the appellant fairly brought to our notice the decision in *Liverpool & London S.P. & I'* to which one of us (Sinha J.) was a party, which has taken the view that an appeal under clause 15 of the Letters Patent lies even in a case where the trial judge refuses to accede to the prayer of a defendant to reject a plaint under Order VII Rule 11 of the Code. Of course, that was a case where the rejection was sought under Order VII Rule 11 (a) of the Code on the basis that the plaint did not disclose a cause of action.

12. For the purpose of this case, we accept the position enunciated therein. We also do not think it necessary to consider whether there is any distinction between prayers for rejection sought under clause (a) of Rule 11 of Order VII of the Code and clause (d) of Rule 11 of Order VII of the Code and we proceed on the basis that the Letters Patent Appeal under clause 15 filed by the respondent herein was maintainable.

13. But it is a different question whether a suit which may be bad for misjoinder of parties or misjoinder of causes of action, is a suit barred by law in terms of Order VII Rule 11(d) of the Code. The Code of Civil Procedure as its preamble indicates, is an Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature. No doubt it also deals with certain substantive rights. But as the preamble vouchsafes, the object essentially is to consolidate the law relating to Civil Procedure. The very object of consolidation is to collect the law bearing upon the particular subject and in bringing it upto date. A consolidating Act is to be construed by examining the language of such a statute and by giving it its natural meaning uninfluenced by considerations derived from the previous state of the law.

14. Based on this understanding, we can consider the respective positions of Order I and Order II in the scheme of things. Order I deals with parties to a suit and provides who may be joined as plaintiffs and who may be joined as defendants. It also deals with the power of the Court to direct the plaintiffs either to elect with reference to a particular plaintiff or a particular defendant or to order separate trials in respect of the parties misjoined as plaintiffs or defendants. It also gives power to the Court to pronounce judgment for or against one of the parties from among the parties who have joined together or who are sued together. The order also specifies that a suit shall not be defeated by reason of the misjoinder or non-joinder of parties, so long as in the case of non-joinder, the non-joinder is not of a necessary party. The Code also gives power to the Court to substitute the correct person as a plaintiff or add parties or strike out parties as plaintiffs or defendants, at any stage, if it is found necessary.

15. Order II deals with frame of suits. It provides that every suit shall be framed as far as practicable so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

16. It is also insisted that every suit shall include the whole of the claim that a plaintiff is entitled to make in respect of its subject matter. There is a further provision that the plaintiff may unite in the same suit several causes of action against the same defendant and plaintiffs having causes of action in which they are jointly interested against the same defendant, may unite such causes of action in the same suit. It provides that objection on the ground of misjoinder of causes of action should be taken at the earliest opportunity. It also enables the Court, where it appears to the Court that the joinder of causes of action may embarrass or delay the trial or otherwise cause inconvenience, to order separate trials or to make such other order as may be expedient in the interests of justice.

17. Thus, in a case where a plaintiff suffers from the defect of misjoinder of parties or misjoinder of causes of

*Judgment Referred.*

<sup>1</sup>(2004) 9 SCC 0512