Bank of Baroda Vs. Fishco

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Court : Kolkata

Decided On : Jan-22-1974

Reported in : AIR1975Cal225,78CWN535

Judge : Sudhamay Basu, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Section 11 - Order 6, Rule 17

Appeal No. : Suit No. 977 of 1962

Appellant : Bank of Baroda

Respondent : Fishco

Advocate for Def. : Mrigen Sen and ;C.R. Dutt, Advs.

Advocate for Pet/Ap. : A.K. Das and ;A.K. Sen, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

Sudhamay Basu, J.

1. This is a petition it appears for lie fourth time, for leave to amend the written statement filed in this suit. The suit itself was instituted as far back as 14th of June, 1962. The original written statement was filed on the 27th of August, 1962. More

than tight weeks thereafter when the suit appeared in the list for hearing the defendant sought to amend the written statement. Two applications for suchamendment -- one dated 22nd January, 1973, and the other dated 23rd February, 1973, were withdrawn with leave of the Court to file fresh applications. On the 22nd March, 1973 the third application was filed for amendment to incorporate as paragraphs 10 (a) & 10 (b) of the written statement the following :--

'10 (a). The said transactions relating to the said 8 letters of credit are unlawful and smenforceable in that the transactions as aforesaid were contrary to and in violation of, inter alia, Sections 3, 4, 5, 6, 21 and 22 of the Foreign Exchange Regulation Act. 1947 of India.

10 (b). The said transactions were contrary to the laws relating to Foreign Exchange Regulation of Pakistan, namely, I. R. P. X. 4.'

The said application for amendment was partially granted by S. K. Mukherjea, J. The amendment in the manner mentioned in paragraph 10 (a) was allowed but that mentioned in paragraph 10 (b) was disallowed. It is stated in the present petition for amendment that the necessary details about the Foreign Exchange Regulation Act of Pakistan could not be availed of. The present application again seeks to incorporate different provisions and details of the Foreign Exchange Regulation Act, 1947 of Pakistan after an averment which is similar to what was rejected in paragraph 10 (b) mentioned above. It is stated in the petition that the amendment is necessary for the purpose of determining the real question in controversy between the parties.

2. In an affidavit-in-opposition affirmed by one Narendjra Nath Kundu on the 20th of July, 1973, it is submitted that the present application is a mala fide one calculated to delay the hearing of the suit and that it is barred by the principles of res judicata. It is further stated that the application for the previous amendment of the written statement wss made with more or less the same kind of averment. It is further disputed that the amendment was refused earlier solely due to insufficient details being furnished about the Pakisran Foreign Exchange Regulation law. Tt is further submitted that the attempt to incorporate almost the entire Foreign Exchange Regulation Act of 1947 of Pakistan is in violation of all principles and

standards of drafting.

3. Mr. A. K. Das, learned Counsel appearing in support of the petition submitted that the Foreign Law was to be pleaded u a fact. Therefore he has sought to incorporate the different provisions of the Pakistan Foreign Exchange Regulation Act of 1947. Referring to Order 8, Rule 2 and Order 6, Rule 2 of the Code of Civil Procedure, he submitted that although material facts were to be stated in the pleadings and law was not to be pleaded. Foreign Law, however, was an exception to the latter. Mr. Das submitted that he was required to mention the sections of the Foreign Law specifically.

In support of his proposition he referred to the Annual Practice, 1966, in which undei the note under Order 18, Rule 8 of the Supreme Court Rules at page 375 on Foreign Law it is stated that

'Where Foreign Law is pleaded in support of, or as defence to an action, cetain particulars should be given. Orders have been made for particulars of any Code or Statute, if any relied on, but identifying the material clauses thereof.'

Mr. Das next referred to Bullen and Leake Precedents of Pleadings, 10th Edition at page 9 where it is stated that any of these matters (such as laws of the foreign country) relied upon must be alleged like other facts. Mr. Das also cited in this connection The Duke of Brunswick v. King of Hanover, reported in (1844) 6 Beavan's Report p. 1 at p. 59 where it is alleged that the allegation that an instrument depending upon Foreign Law is null and void was too vague.

4. White it appears that foreign law is to be pleaded as fact and that particulars should be given of a code or statute it is by no means clear from the authorities that specific and extensive provisions in detail have to be quoted. On the other hand the different provisions of the Evidence Act of India relating to the Foreign Law, to some of which Mr. Das himself drew the attention of the Court would seem to dispense with such a requirement Section 38 makes relevant any statement of law contained in books printed or published under the authority of (a foreign) country. Section 45 provides for opinion of experts to be given when they are skilled in foreign law, when the Court is to form an opinion upon a point of foreign

law. Section 57 provides for judicial notice of certain laws of India and United Kingdom. Section 84 deals with the presumption of the genuineness of books printed under the authority of any country and to contain the laws of that country.

5. Mr. Das next contended that different considerations applied in the case of amendment of written statement than what applied in the case of amendment of plaint, the Court would be more liberal in the former case. In this connection reference was made to a decision reported in : AIR1953 Cal15 , (N. P. Pal v. Steel Products Ltd). But even though Courts may be inclined to be more liberal in allowing amendment of defence than that of the plaint the inordinate delay involved has to be taken note of. The powef of amendment U not to be abused to starve the plaintiff out of his rights. The well known case of Mama v. Sasoon, reported in 32 Cal WN 953 p. 957 = (AIR 1928 PC 208) and K. Iyer v. O. Mathai, reported in : AIR1961 Ker110 may be referred to in this connection. The suit was filed as early as 1962 and it could hardly take 10 years for the defendants to wake up to the necessity of having an amendment of the written statement.

6. I regret to find that I have to reject the petition. It appears that while leave was granted by the Court while rejecting the first applications the same was not granted on the last occasion. In substance the present prayer is to include some specific provisions of foreign law which are alleged to have been offended by the transaclion in suit. Substantial averment to that effect without the provisions in detail was there in the last petition which was rejected. Mr. Dutta described the suggested amendment in the petition as an elaboration of the previous one. Mr. Das, of course, joined issue in this respect and said that without the specific provisions being mentioned on the earlier occasion the present amendment cannot be equated with the same. There is after all a need for giving a finality to judicial decision. As Das Gupta, J. pointed out in the case of Satyadhyan Ghosal v. Smt. Deorajin Debi, reported in : [1960]3SCR590 , when a matter ..... whether on a question of fact or on a question of law ..... has been decided between twoparties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed or no appeal lies, neither party will be allowed in a future suit on proceeding between the same parties to canvass the matter again. The principle of res judicata applies

between two stages in the same litigation to this extent that a Court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to reagitate the matter again at a subsequent stage of the same proceedings. In view of the rejection of the earlier petition without any leave for a further application (as had been given in the case of the first two applications) the principles laid down above appear to stand in the way of the present application.

7. Again, even assuming that incorporation of the provision of the foreign law was necessary it is difficult to accept that even a decade was not sufficient to procure the same. In the case of Mohan Singh v. Pashu-pati Nath, reported in AIR 1970 SC 42 an amendment after two decades was rejected. The Court would not normally be justified in allowing the parties to raise a new contention after a decade and give it a fresh lease of life. Court always insists on diligence and looks with disfavour on avoidable delays.

On the above view of the matter the prayer for amendment is rejected and the petition, therefore, fails and is dismissed with costs.