

Before S. S. Sodhi, J.

SUDERSHAN GOEL,—Petitioner.

versus

THE NEW BANK OF INDIA AND OTHERS,—Respondents.

Civil Revision No. 959 of 1982.

November 30, 1983.

Code of Civil Procedure (V of 1908)—Order 1 Rule 3 and Order 2 Rule 3—Suit for recovery of money on an over-draft account—Manager of the Bank alleged to have allowed the over-draft without permission of the higher authorities—Such Manager arrayed as a defendant besides the debtors—Suit against the Manager—Whether bad for misjoinder of parties or causes of action.

Held, that a reading of Order 1 Rule 3 and Order 2 Rule 3 of the Code of Civil Procedure, 1908 would show that both these Rules deal essentially with the same matter though from different stand points. The underlying object of both of them being the avoidance of multiplicity of suits. In terms of these Rules, a plaintiff has been enabled to join not only different causes of action against a defendant but also different causes of action against different defendants. In other words, it is not necessary that all the defendants should be interested in all the reliefs sought or that the liability of all the defendants should be the same. It is enough if there is one question common to all defendants which is of sufficient importance in proportion to the rest of the action. Where all the defendants including the Manager were concerned with the over-draft in question, the suit cannot be held to be bad for mis-joinder of parties and causes of action. The question being one common to all the defendants and it is certainly of sufficient importance in the action to provide the necessary common link justifying all the defendants being proceeded against in one suit. Thus, the Manager against whom it is alleged that he allowed the over-draft without permission of the higher authorities was a necessary party and the suit had been rightly filed against him alongwith the debtors.

(Paras 7 and 8).

Petition under section 115 C.P.C. for the revision of the Order of the Court of Shri H. R. Kaushik, PCS, Sub-Judge 1st Class, Kharar, dated 16th March, 1982 dismissing the application filed on behalf of Shri Sudershan Goel, Deft. No. 3 for deletion of his name from the array of defendants.

N. C. Jain, Senior Advocate, with S. S. Jain, Advocate, for the Petitioner.

Petitioner also in person.

Raj Kumar Aggarwal, with Kamal, Advocate, for Respondent No. 1.

B. S. Gulani, Advocate, for Respondent Nos. 2 and 3.

Sudershan Goel v. The New Bank of India and others
(S. S. Sodhi, J.)

JUDGMENT

S. S. Sodhi, J.

(1) In a suit filed by the New Bank of India seeking to recover the amount due to it on an over-draft account, arrayed as defendants besides the debtors, was the petitioner, who was the Manager of the bank at the relevant time. The question arises, is this a case of misjoinder of parties or causes of action?

(2) The case against the petitioner is that the over-draft facilities had been allowed by him without the consent of the higher authorities and further that he had been allowing withdrawal of huge amounts in the current over-draft account of the debtor without taking proper precautions and had thereby deliberately acted against the interests of the bank and was thus guilty of violating the instructions issued by the bank and as a consequence caused loss to the bank. It was, therefore, pleaded that he was jointly and severally liable with the other defendants to pay the amount due to the bank.

(3) The point canvassed on behalf of the petitioner was that the cause of action against him was separate and distinct from that against the debtors from whom the amount was due in respect of the over-draft account and consequently in a suit to recover the amount due from the debtors, the petitioner could not be joined as a defendant. The argument being that whereas against the debtors the cause of action was the recovery of the money paid and received, against the petitioner it rested upon allegations of negligence or acting in excess of his authority.

(4) As somewhat similar situation arose in *Brajabala Barua and others v. M/s. Gauhati Bank Limited and others* (1), a precedent upon which great reliance had been placed by the counsel for the petitioner. The matter here arose in a suit filed by the bank to recover amounts due in respect of an over-draft account. The claim in this suit being not only against the debtor and the surety, but also against the Director of the bank, who actually sanctioned the over-draft and the Managing Director thereof, who, it was said, had acquiesced in and approved of the over-draft. It was held that

(1) A.I.R. 1962 Assam 85.

the mere fact that from time to time the position of the over-draft account had been brought to the notice of the Managing Director in a routine manner, no inference could be drawn that he had acquiesced in or approved of the conduct, of the defendants in making the advances. There being no allegation that the advance had actually been made by the Managing Director, the cause of action against him if at all was distinct and separate from that against the other defendants and consequently it could not be tried in the same suit.

(5) It is pertinent to note in dealing with *Brajabala Barua's* case (supra) that no controversy had been raised therein with regard to the Director of the bank who had actually sanctioned the loan. He had been impleaded as a defendant in the suit. The position of the petitioner here is similar to that of this Director. This authority, therefore obviously cannot be read as extending the support which the petitioner sought to spell out from it.

(6) The other case relied upon is equally of no avail to the petitioner. This being *Indian Overseas Bank Ltd. v. Thermolith Products Pvt. Ltd. and others* (2). This was a suit for the recovery of a sum of money loaned by a bank to a Company. Included in the array of the defendants, besides the Company, the Director thereof and the person who had issued the letter of guarantee, was defendant No. 6, who had assigned to the bank bills drawn by him on defendants Nos. 7 and 8 in liquidation of the liability of the Company towards the Bank. It was held that defendants 7 and 8 had been wrongly joined as parties to the suit. It was explained that the relief claimed against all the other defendants was based upon the loan transaction between the Bank and the Company; while the claim against defendants 7 and 8 was founded upon the assignment of certain bills drawn on them which was a wholly separate and distinct cause of action.

(7) What is really relevant to the controversy raised here are the provisions of Order 1 Rule 3 and Order 2, Rule 3 of the Code of Civil Procedure. A large number of authorities were cited by counsel with regard to the meaning and scope thereof. A reading of these authorities, would show that it is now well settled that both these Rules deal essentially with the same matter though from

Bhardwaj & Co. Bombay v. M/s. Jain Solvent Oil Mills Pvt. Ltd.
Patiala (S. S. Sodhi, J.)

different stand points. The underlying object of both of them being the avoidance of multiplicity of suits. In terms of these Rules, a plaintiff has been enabled to join not only different causes of action against a defendant but also different causes of action against different defendants. In other words it is not necessary that all the defendants should be interested in all the reliefs sought or that the liability of all the defendants should be the same. It is enough if there is one question common to all defendants which is of sufficient importance in proportion to the rest of the action.

(8) Applying these principles to the case in hand, there can be no escape from the conclusion that the present suit cannot be held to be bad for misjoinder of parties or causes of action. All the defendants including the petitioner here being concerned with the over-draft in question. This question being one common to all the defendants and it is certainly of sufficient importance in the action to provide the necessary common link justifying all the defendants being proceeded against in one suit. No exception can, therefore, be taken to the impugned order of the trial Court, holding that the petitioner was a necessary party and that this suit had been rightly filed against him along with the other defendants.

(9) This Revision Petition is accordingly dismissed. Costs of this petition shall be costs of the suit.
