

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 10531-10532 OF 2013
(@ Special Leave Petition (C) Nos.5945-5946 of 2009)

State Bank of India ... Appellant

Versus

Gracure Pharmaceuticals Ltd. ... Respondents

J U D G M E N T**K.S. Radhakrishnan, J.**

Leave granted.

2. We are, in this case, concerned with the applicability of Order 2 Rule 2 of the Code of Civil Procedure (for short "the CPC") in respect of two suits filed by the respondent, one in the Original side of the Delhi High Court and another before the District Court, Delhi. Original Suit No.1145 of 2003 was filed by the respondent herein on 15.05.2003 for

recovery of an amount of Rs.44,30,994 against the appellant bank and its officers towards the amount of Letter of Credit issued by Credit Du Nord, Paris (CDN) and towards interest for the delay in receipt of payment from BNP - Paribas S.A., Ivry-Sur-Scine (BNP) with cost *pendente lite* and future interest @ 18% per annum.

3. Suit No.288/03/04 of 2003 was also filed by the respondent on 21.05.2003 claiming damages of Rs.3,09,000/- with cost and *pendente lite* and future interest @ 18% per annum against bank and its officers for withdrawing credit facility on 23.03.2002. Notice was issued to the bank and its officers by the District Court, Delhi.

4. The bank and its officers then filed an application under Order 7 Rule 11 CPC in Suit No.288/03/04 of 2003 before the District Court, Delhi for rejection of the plaint in the suit for damages on the ground that the same is barred by the provisions of Order 2 Rule 2 CPC. The District Court elaborately

heard the matter and after perusing the plaints, averments in both the suits as well as the reliefs sought for, came to the conclusion that the cause of action in both the suits was same and the relief sought for in Suit No.288/03/04 of 2003 could have been claimed by the plaintiff in the Suit No.1145 of 2003 filed before the Delhi High Court. The application under Order 7 Rule 11 was, therefore, allowed, holding that the latter suit was barred under Order 2 Rule 2, CPC and plaint was accordingly rejected.

5. The respondent, aggrieved by the said order, filed RFA No.490 of 2006 before the Delhi High Court. The High Court took the view that the earlier suit No.1145 of 2003 was founded on cause of action pertaining to the contract between the parties and the second Suit No.288/03/04 of 2003 was on entirely different footing, being the malicious action of the officers of the bank to withdraw the credit facility because of their animus emanating from the action

of the respondent to lodge a complaint before the Ombudsman Banking. Holding so, the appeal was allowed and the order dated 10.05.2006 of the District Court was set aside. Challenging the above-mentioned order these appeals have been filed by the State Bank of India.

6. Shri C.U. Singh, learned senior counsel appearing for the bank submitted that the High Court has failed to consider the scope of Order 2 Rule 2, CPC and committed a mistake in holding that the respondent could not have claimed the relief of damages in Suit No.1145 of 2003, the earlier suit filed before the High Court. Learned senior counsel submitted that the respondent, on the date of filing of the earlier suit, was aware that the bank had declined to grant any further credit facility, in the event of which, the respondent could have sought the relief for damages against the bank and its officers in the earlier suit. Learned senior counsel submitted that, having omitted to claim such a relief

in the earlier suit, the Court ought to have held that the respondent had relinquished its claim and is estopped from preferring a second suit in view of the provisions of Order 2 Rule 2, CPC. Learned senior counsel also submitted, what is required is, that every suit shall hold whole of the claim arising out of one and the same cause of action and it was obligatory on the part of the respondent to raise the whole claim at the time of institution of the first suit. Learned senior counsel placed reliance on the judgments of this Court in **Deva Ram and another v. Ishwar Chand and another** (1995) 6 SCC 733 and **Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd. and others** (2007) 7 SCC 148.

7. The respondent filed a detailed counter affidavit before this Court explaining its stand. It was pointed out that the cause of action to file the first suit arose much prior to the subsequent suit since on the basis of wrongful debits made by the bank to the account of the respondent on 01.05.2001 and 14.06.2001 for

the amounts of two Letters of Credit, one of which the bank could not recover and second was recovered later from the foreign bank. Further, it was also pointed out that the facts on the basis of which two suits have been filed and respective reliefs sought for, are absolutely distinct and separate and cause of action subsequently arose because of the wrongful acts of the bank depriving the respondent of various banking facilities. Further, it was also pointed out that the damages claimed in the subsequent suit have no link or nexus to the cause of action with the previous one. Consequently, it was pointed out that the High Court has rightly allowed the appeal which calls for no interference by this Court under Article 136 of the Constitution of India.

8. We may, before examining the rival contentions, extract the relevant provisions of Order 2 Rule 2, CPC for easy reference which reads as under:

“2. **Suit to include the whole claim.**— (1) Every suit shall include the whole of the claim which the plaintiff be entitled to make in respect of the cause of action; but a plaintiff

may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) **Relinquishment of part of claim.**— Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) **Omission to sue for one of several reliefs.**— A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any reliefs so omitted.”

9. The scope of the above-mentioned provisions came up for consideration before this Court in several cases. The earliest one dealt by the Privy Council was reported in **Naba Kumar Hazra v. Radhashyam Mahish** AIR 1931 PC 229 wherein the Privy Council held that the plaintiff cannot be permitted to draw the defendant to court twice for the same cause by splitting up the claim and suing, in the first instance, in respect of a part of claim only. In **Sidramappa v. Rajashetty and Others** (1970) 1 SCC 186 this Court held that if the cause of action on

the basis of which the previous suit was brought, does not form the foundation of subsequent suit and in the earlier suit the plaintiff could not have claimed the relief which he sought in the subsequent suit, the latter, namely, the subsequent suit, will not be barred by the rule contained in Order 2 Rule 2, CPC. In **Gurbux Singh v. Bhooralal** AIR 1964 SC 1810 the scope of the above-mentioned provision was further explained as under:

“In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (i) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar.”

10. In **Sandeep Polymers (P) Ltd.**'s case (supra), the above-mentioned principles were reiterated and this Court held as under:

“Under Order 2 Rule 1 of the Code which contains provisions of mandatory nature, the requirement is that the plaintiffs are duty-bound to claim the entire relief. The suit has to be so framed as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 2 further enjoins on the plaintiff to include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards.

11. The above-mentioned decisions categorically lay down the law that if a plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action, the plaintiff cannot split up the claim so as to omit one part to the claim and sue for the other. If the cause of action is same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2, CPC is based on the cardinal principle that defendant should not be vexed twice for the same cause.

12. Order 2 Rule 2, CPC, therefore, requires the unity of all claims based on the same cause of action

in one suit, it does not contemplate unity of distinct and separate cause of action. On the above-mentioned legal principle, let us examine whether the High Court has correctly applied the legal principle in the instant case.

13. We have gone through the complaints and the averments contained in both the suits *in extenso* and also the reliefs claimed in both the suits. Respondents had availed of various credit facilities from the State Bank of India. It had an export order from M/s Medipharma Company, France who had opened two Letters of Credit. The first Letter of Credit was opened with CDN and second Letter of Credit was opened with BNP. The date of issue of first Letter of Credit by CDN was 16.01.2001 and it was to expire on 10.04.2001. Similarly, second Letter of Credit opened with BNP was issued on 16.01.2001 and was to expire on 30.04.2001. On 20.03.2001, proceeds of the export deal were paid by the bank honouring the bills of exchange against the

Letter of Credit opened with CDN and credited the same to the account of the respondent on the understanding that in case the relevant documents were accepted by the opening owner/issuing bank for any reason whatsoever, the respondent was liable to repay to the bank, without demur or demand, the amount of the bills/documents along with overdue interest and other charges. Other clauses were also incorporated so as to safeguard the interest of the bank. On 28.03.2001, the bank honoured the bills of exchange against the LC opened with BNP subject to the various conditions. The amount was credited to the account of the respondent subject to realization of LC. Since the amount of the LC was not received with the issuing bank on 01.05.2001, the amount was debited to the account of the respondent on account of non-receipt of LC from CDN. Similarly, the amount of LC having not received from the issuing bank by 14.06.2001, the amount was debited to the account of the respondent for non-receipt of LC from BNP.

14. The bank sent various letters to the respondent to regularize the accounts. Since the accounts were not regularized, the bank decided not to grant further facility. The respondent then on receipt of the payment from the foreign buyer and having failed to take any steps to realize the payment from the buyer or issuing bank, filed a complaint on 30.09.2001 with the Banking Ombudsman against the bank on account of reversing the entry on non-receipt of payment of LCs. The complaint filed by the respondent was, however, later withdrawn. The bank's stand is that closure of account was done on 20.03.2002 due to the fault of the respondent on non-regularization of their accounts i.e. after non-receipt of payment of LC, the amount became irregular and remained so continuously. Let us now examine the averments contained in paragraph 37 of the subsequent suit No.288/03/04 of 2003 in the above perspective. Paragraph 37 is extracted hereinbelow for easy reference:

“37. That the cause of action to file the present suit accrued in favour of the plaintiff and against the Defendants on all those occasions when the Defendants wrote various letters to the Plaintiff threatening initiate or actually initiating action against the Plaintiff in relation to various credit facilities which were being enjoyed by the Plaintiff. The cause of action to file the present suit accrued further in favour of the Plaintiff and against the Defendants on all those occasions when the Defendants actually initiated action against the Plaintiff in relation to various credit facilities, which were being enjoyed by the plaintiff and thereby did not provide the said facilities to the Plaintiff. The cause of action further accrued when the Defendants wrote letter dated 20.03.2002 to the Plaintiff conveying their decision to unilaterally and illegally rescind and contract between the parties and thereby stopping all credit facilities to the Plaintiff. The cause of action accrued further when on 26.3.2002, the general Manager (Commercial) of the Defendant No.1 did not intervene to stop the arbitrary and illegal action of the concerned officers of the Industrial Finance Branch. The cause of action accrued further when prior to filing of the suit, the Plaintiff through its counsel, issued and served upon the Defendants a legal notice dated 24.12.2002. The cause of action is still continuing and subsisting.”

15. When we go through the above quoted paragraph it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit

was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit. The closure of account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularizing their accounts i.e. after non-receipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. Order 2 Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Respondent is not entitled to split the cause of action into parts by filing separate suits. We find, as such, that respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-rule 2 of Order 2 Rule 2, CPC. The object of Order 2 Rule 2 is to avoid

multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in Order 2 Rule 2, CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits.

16. We are, therefore, of the view that the High Court has committed an error in reversing the order dated 10.05.2005, passed by the District Court, allowing the application under Order 7 Rule 11, CPC. The appeals are accordingly allowed and the judgment of the High Court is set aside. However, there will be no order as to costs.

JUDGMENT.....J.
(K.S. Radhakrishnan)

.....J.
(A.K. Sikri)

New Delhi
November 22, 2013