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**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Order: December 08, 2008*

+ **RFA 497/2006**

GRACURE PHARMACEUTICALS LTD. .... Appellant  
Through: Mr. Pawan Kumar, Advocate  
Mr. Ravi Bassi, Advocate

versus

THE STATE BANK OF INDIA & ORS. .... Respondents  
Through: Mr. Rajiv Kapur, Adv. with  
Mr. Nitish, Advocate for SBI

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MR. JUSTICE J.R.MIDHA**

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**Pradeep Nandrajog, J. (Oral)**

1. Heard learned counsel for the parties.
2. Vide impugned order dated 10.5.2006 suit filed by the appellant seeking damages in sum of Rs.3,09,000/- has been held to be barred under Order 2 Rule 2 of the Code of Civil Procedure.
3. It is not in dispute that the appellant had filed a suit for recovery of Rs.44,30,994/- having 4 distinct heads being:-

- A. Rs.31,28,421/-
- B. Rs.10,15,955/-
- C. Rs. 2,64,618/-
- D. Rs. 22,000/-

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Total: Rs.44,30,994/-

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4. The material allegations in the said suit were that the appellant was a customer of State Bank of India and was availing various credit facilities from the bank. That two letters of credit were negotiated through the bank for which goods were exported and requisite applications submitted to the bank for realization of the dues. It was alleged that the officers of the bank remained negligent in not realizing the dues covered by the letter of credit resulting in the foreign buyer receiving the consignments and no money flowing to the coffers of the appellant. Stating that after the appellant move the ‘Banking Ombudsman’, the officers of the bank could recover the money due under only one export transaction; it was stated that money due under the other export consignment in sum of Rs.31,28,421/- was recoverable by the appellant. Interest on said sum for the pre-suit period was claimed at Rs.10,15,955/-. Pertaining to the export consignment for which the money was subsequently realized by the bank and credited in the account

of the appellant, loss of interest in sum of Rs.2,64,618/- was claimed. Rs.22,000/- were claimed as lawyer's fee who served pre-suit notice.

5. A second suit was filed in which after narrating the facts which were pleaded in the earlier suit, as the backdrop facts of the action in the second suit, it was stated that due to the fact that the appellant had approached the 'Banking Ombudsman', the officers of the bank and in particular the Deputy General Manager, Sh.D.S.Dass and the Chief Manager Sh.W.V.G. Venkata Ramana became inimical towards the appellant resulting in a malicious action on their part to withdraw the facilities granted by the bank to the appellant; stating that the same was a tortuous act, damages were claimed not only against the bank but even against the tortfeasors.

6. The second suit which sought damages in sum of Rs.3,09,000/- has been held to be barred under Order 2 Rule 2 of the Code of Civil Procedure.

7. The reasoning of the learned Trial Judge is, to quote:-

"I find that paragraph no.1 if these two plaints are identical. Similarly, the contents of para 5, para 6, para 7, para8, para 9 and para 10 of the present suit are almost identical to para 4, para 10, para 12, para 13, para 16 and para 19 of the suit pending disposal before the Hon'ble High Court. There may be a few minor variations here and there. The facts justifying the filing of the two suits are almost identical. The case of the Plaintiff is that it is a public limited

company. It was enjoying cash credit limit vide account no.01600005374 from the Industrial Finance Branch of Defendant no.1. In the suit bearing no.1145/03 which is pending disposal before the Hon'ble High Court, it was alleged by the Plaintiff that "to cover up its negligence, deficiency in private services and failure to perform contractual and professional obligations, the Defendant illegally and wrongfully debited the account of the Plaintiff on 01.05.01 for the amount of Rs.31,28,421/- and on 14.6.01 for the amount of Rs.30,91,185/-. Since the Defendant has give the credit of Rs.30,91,185/-, therefore, it is claiming interest on this amount. The Plaintiff had claimed Rs.41,44,376/- with interest. In the present suit the Plaintiff is claiming the damages from the Defendants."

8. Learned Trial Judge has held that a meaningful reading of the two plaints would make it evident that the cause of action for the second suit had accrued when the first suit was filed.

9. Unfortunately, the learned Trial Judge has failed to appreciate the legislative intent under Order 2 Rule 2 of the Code of Civil Procedure.

10. Order 2 Rule 2 is aimed at avoiding multiplicity of suits in respect of the same cause of action. The rule is based on the principle that a party should not be vexed twice for the one and the same cause of action.

11. It is apparent that the emphasis is on the cause of action and not on various causes which may flow from the acts of the parties.

12. As explained by the privy counsel in the decision

reported as 26 IC 228 Payana Vs. Pannalal the rule under Order 2 Rule 2 has to be applied with caution for the reason claims which are otherwise legitimate may result in the same being jettisoned. It was held that the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one of the same action, of different causes of action, even though they arise from the same transaction.

13. If one peruses Rule 3 of Order 2, one would notice that it is at the option of the plaintiff to unite in the same suit several causes of action. Meaning thereby that joinder of causes of action is at the option of the plaintiff and not a compulsion of law. Further, where joinder of causes of action may embarrass the trial or delay the same, exercising power under Rule 6 of Order 2, it is open to the Court to order that separate suits would be filed pertaining to different causes of action which may accrue on the same transaction.

14. In this case it is important to note that the earlier suit was founded on a cause of action pertaining to the contract between the parties. The second suit was on an entirely different footing being the malicious action of the officers of the bank to withdraw the credit facilities because of their animus emanating from the action of the appellant to lodge a complaint before the 'Ombudsman Banking'.

15. We allow the appeal.

16. Impugned order, which has to be treated as a decree in terms of sub-Section 2 of Section 2 of the Code of Civil Procedure, is set aside.
17. The order is dated 10.5.2006 in suit No.288/2003-04.
18. The suit is restored.
19. The parties shall appear before the learned District and Sessions Judge at Tis Hazari on 18.12.2008. Successor Court would be identified before whom the parties shall appear. Learned Trial Judge shall decide the suit on merits and in accordance with law.
20. TCR be returned forthwith through a special messenger.
21. No costs.
22. Copy of this order be supplied dasti to learned counsel for the parties.

**PRADEEP NANDRAJOG, J.**

**J.R.MIDHA, J.**

**DECEMBER 08, 2008  
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