

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 42/2015 & C.M. No.5507/2015**
RAJESH AGGARWAL

..... Petitioner

Through Mr. Bharat Gupta and Mr. Varun
Tyagi, Advs.

versus

M/S SINGHAL COTTON TEXTILES PVT LTD

..... Respondent

Through Mr.Narender Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **06.04.2016**

The petitioner is aggrieved by the order dated 20.12.2014 wherein the prayer made by him in his application filed by him under Order 2 Rule 2 read with Order 7 Rule 11 of the CPC had been dismissed.

Record shows that the present suit is a suit for recovery of Rs.17 lacs. This suit is based on a transaction of 18.05.2011. Contention of the plaintiff is that the defendant had requested him for a loan of Rs.35 lacs. On 18.05.2011, he had paid him a sum of Rs.17 lacs by way of a cheque. This amount has not been repaid. The suit was accordingly filed.

In the course of proceedings, the defendant had moved the aforementioned application. Submission was that the present suit is barred by the provisions of Order 2 Rule 2 of the CPC as the cause of action qua this suit has already arisen when the earlier suit had been filed by the plaintiff which was a suit

for recovery of Rs.17,00,800/-. The suit for recovery of Rs.17,00,800/- is admittedly qua a transaction which had occurred on 21.05.2011. The contents of that suit disclose that the defendant had requested the plaintiff for a loan of Rs.35 lacs and a sum of Rs.17,00,800/- was paid by him on 21.05.2011 which amount not having been repaid by the defendant, the said suit was filed.

Learned counsel for the petitioner submits that the averments contained in both the suits disclose that it was a common transaction which had taken place as the defendant had demanded a loan of Rs.35 lacs from the plaintiff and even though the two cheques of Rs.17 lacs (dated 18.05.2011) and Rs.17,00,800/- (dated 21.05.2011) had been issued yet since the averments in the plaint disclose that it was a single transaction based upon a cumulative loan demanded by the defendant of Rs.35 lacs bar of Order II Rule 2 would operate. To support this submission, learned counsel for the petitioner has placed reliance upon a document dated 17.08.2012 which is a demand notice sent by the plaintiff to the defendant wherein a common demand of Rs.35 lacs had been made from the defendant; in this demand notice, it had been stated that a sum of Rs.17,00,800/- had been paid to the defendant on one date and another amount of Rs.17 lacs had been paid on another date and thus the demand notice had demanded a cumulative amount of Rs.35 lacs from the defendant. Submission of the learned counsel for the petitioner thus being that the second suit is clearly barred by the provisions of Order 2 Rule 2 of the CPC. Learned counsel for the petitioner in support of his submission has placed reliance upon a judgment of the Apex Court

reported as AIR 2014 SC 731 State Bank of India Vs. Gracure Pharmaceuticals Ltd.

Per contra, learned counsel for the respondent has placed reliance upon a judgment of a Bench of this Court reported as 179 (2011) DLT 375 Sanjeev Behl Vs. Silvertone Motors Pvt. Ltd.. Submission is that the two transactions are distinct and different as is evident from the contents of the two complaints. Necessary would it be to extract the provisions of Order 2 Rule 2 of the CPC which reads herein as under:-

“2. Suit to include the whole claim.- (1) Every suit shall include the whole of the claim which the plaintiff is 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 relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.- A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due

for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.”

The Supreme Court in AIR 1964 SC 1810 Gurbux Singh Vs. Bhooralal had laid down a ratio that for a concept of bar under Order 2 Rule 2 of the CPC to succeed, the defendant must show that the second suit was in respect of the same cause of action and he had omitted to sue for that relief in the first suit.

The averments contains in the first suit clearly show that the first suit had been filed for the recovery of Rs.17,00,800/-. This was based on a transaction which was dated 21.05.2011. Limitation for the purpose of this transaction would commence from 21.05.2011. Cause of action has been detailed in para 10. It specifically recorded that the loan had been disbursed by the plaintiff to the defendant on 21.05.2011 and on 17.08.2012, the loan was demanded back; money was not paid. Legal notice dated 09.11.2012 was sent to the defendant. The second suit was premised on a transaction which was dated 18.05.2011. A sum of Rs.17 lacs had been advanced by the plaintiff to the defendant on that date. Limitation would commence from that date. Paragraph containing the cause of action has so specifically averred.

The two transactions are distinct and different. The first transaction in the suit related to a loan of Rs.17,00,800/- dated 21.05.2011. The second transaction related to a loan advanced by the plaintiff to the defendant on 18.05.2011; this loan amount was Rs.17 lacs. Even though a common demand notice was sent, it would amount to two different transactions for

which the bar of Order 2 Rule 2 of the CPC is not applicable. Admittedly two separate legal notices had also been sent for the two separate transactions. The impugned order had noted the facts in the correct perspective.

The impression 'cause of action' in the context of bar of Order 2 Rule 2 of the CPC means all those facts which the plaintiff in order to obtain a judgment would have to prove if disputed by the defendant. The two loan transactions in the instant case are two distinct and two separate transactions. Although admittedly the defendant had demanded a loan of Rs.35 lacs from the plaintiff but the plaintiff on two different occasions had disbursed this loan; Rs.17 lacs was disbursed on 18.05.2011 and Rs.17,00,800/- was disbursed on 21.05.2011.

The intent of the legislature in incorporating the bar of Order 2 Rule 2 of the CPC is that no party would be vexed twice for the same cause of action. This Court is of the view that the cause of action for the two distinct transactions was separate and different.

In this background the impugned order holding that the bar of Order 2 Rule 2 of the CPC would not be applicable suffers from no infirmity. Petition is without any merit. Dismissed with costs quantified at Rs.10,000/-.

INDERMEET KAUR, J

APRIL 06, 2016

A