

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 12995 OF 2016

Prakash Laxman Kundurkar

...Petitioner

Versus

ICICI Bank Ltd.

...Respondent

....

Mr.V.Y. Sanglikar, Advocate for the Petitioner.

Ms.Vrushali U. Kabare, Advocate for the Respondent.

....

CORAM : R. G. KETKAR, J.

DATE : 12th JANUARY, 2017

P.C.

1. Heard Mr. V.Y. Sanglikar, learned Counsel for the petitioner and Ms.Vrushali Kabare, learned Counsel for the respondent, at length.

2. Rule. Ms.Kabare waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 2.5.2016 passed by

the learned Judge, City Civil Court, Mumbai in Notice of Motion No.675/2016 in BCC Suit No.9269/1994. By that order, the learned trial Judge rejected the Notice of Motion taken out by the plaintiff under Section 65 of the Indian Evidence Act, 1872 (for short, 'Act') for leading secondary evidence. Now in the present petition, the dispute is only in respect of documents at Sr.Nos.2, 6, 7, 12, 15 and 16. In pursuance of the order dated 23.12.2016, the respondent-defendant has made affidavit of Mr.Shankar Appanna Kumbhar, working as Consultant with the respondent.

4. Mr. Sanglikar submitted that as far as documents at Sr. Nos.6, 7 and 12 are concerned, the respondent/defendant has accepted these documents. The controversy, therefore, is only in respect of documents at Sr. Nos.2, 15 and 16. As far as document at Sr. No.2 is concerned, that is letter dated 19.10.1992 addressed by the plaintiff to the Assistant General Manager, The Sangli Bank Ltd. Bombay. The Sangli Bank Ltd. was amalgamated into the respondent/defendant under the Scheme of Amalgamation sanctioned by the Reserve Bank of India on 19.4.2005. In my opinion, this letter is not relevant for deciding the controversy between the parties. This leaves me to

documents at Sr. Nos.15 & 16. Perusal of written statement of the defendant shows that they have not disputed the existence as also the contents of these documents. Paragraph-16 of the written statement reads thus :

“16] With reference to para 20 and 21 of the Plaint, the contentions made therein are false and baseless and are nothing but after thoughts. The Defendant states that it was already informed to the Plaintiff that his resignation will not be accepted till the completion of disciplinary action initiated against the Plaintiff and therefore said enquiry was conducted by the Defendant Bank against the Plaintiff. The Defendant further states that the Chairman of the Defendant Bank never promised to the Plaintiff about settlement of his dues infact the Plaintiff made several attempts through his letters dated 11.08.1994 and 15.10.1994 to the Defendant Bank to stop the enquiry proceedings initiated against him.”

5. While dismissing the Notice of Motion, the learned trial Judge referred to the notice issued by the plaintiff under Section 66 of the Act for production of the documents. The defendant did not respond to this notice. At the same time, the defendant also did not file reply opposing the motion. The learned trial Judge observed that from the affidavit in support of the Motion, it is clear that the documents were either executed or received by

Sangli Bank Ltd. and not by the defendant. As such, the question of production of these documents by the defendant does not arise.

6. Mr. Sanglikar invited my attention to clause (c) of Part III of Scheme of Amalgamation, which is to the following effect :

“(c) All suits, actions and legal and other proceedings by or against the Transferor Bank pending and/or arising on or before the Effective Date shall be transferred in the name of the Transferee Bank and shall be continued and be enforced by or against the Transferee Bank as effectually and in the same manner and to the same extent as if the same had been pending and/or arisen by or against the Transferee Bank.”

7. Mr.Sanglikar, therefore, submitted that having regard to the assertions made in paragraph-16 of the written statement read with clause (c) of Part III of the Scheme of Amalgamation, it cannot be said that the documents at Sr. Nos.15 & 16 were not received by the Bank.

8. I have perused the affidavit-in-reply filed by Mr.Shankar Appanna Kumbhar and in particular paragraphs-8 and 9 thereof. Paragraphs-8 & 9 read thus :

“8. With reference to the document at Sr.No.15 of the compilation of documents. I say that, the same appears to be a typed copy of the letter dated 11.08.1994 addressed by the Petitioner to the Chairman of Sangli Bank Ltd. I say that, I have thoroughly checked the records available with the Respondent of the present Suit received from the Sangli Bank Ltd. however, the letter dated 11.08.1994 not found in the records available with the Respondent Bank. I say that, the typed copy of the letter dated 11.08.1994 does not contain the signature of the Petitioner and acknowledgment of the Sangli Bank Ltd. and thus in the absence of Original letter in the record of the Respondents it is doubtful whether the letter was received by the Sangli Bank Ltd. and the contents of the typed copy are same or not.

9. With reference to the document at Sr. No.16 of the compilation of documents. I say that, the same appears to be a typed copy of the letter dated 15.10.1994 addressed by the Petitioner to the Chairman of the Sangli Bank Ltd. I say that, I have thoroughly checked the records available with the Respondent of the present Suit as received from the Sangli Bank Ltd. however, the letter dated 15.10.1994 not found in the records available with the Respondent Bank. I say that, the typed copy of the letter dated 11.08.1994 does not contain signature of the Petitioner and acknowledgment of the Sangli Bank Ltd. and thus in the absence of Original letter in the record of the Respondent it is doubtful whether the letter was received by the Sangli Bank Ltd. and the contents of the typed copy are same or not.”

9. After taking instructions from Mr. Shankar Appanna Kumbhar, who is present in Court in person, Ms.Kabare prays

for deletion of paragraphs-8 and 9 from the affidavit. On the motion made by Ms.Kabare, leave to delete paragraphs-8 & 9 is granted. Amendment shall be carried out forthwith.

10. Perusal of paragraph-16, extracted hereinabove, clearly shows that the defendant has not disputed existence and contents of the letter dated 11.8.1994 and 15.10.1994. In view thereof, the learned trial Judge was not justified in dismissing the Motion. Hence, the impugned order is set aside permitting the plaintiff to lead secondary evidence in respect of documents at Sr.Nos.6, 7, 12, 15 and 16, subject to proof of contents thereof. Rule is made absolute in aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)