* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 25th July, 2018

\+ **RSA 171/2017 & CM No.23803/2017 (for stay)**

ICICI BANK LIMITED ..... **Appellant**
Through: Mr. Punit K. Bhalla, Adv.

Versus

SATISH KUMAR SEHRAWAT ..... **Respondent**
Through: Mr. Kanwar Udai Bhan Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 24th May, 2017 in RCA-DJ-17/ 2017 of the Court of Additional District Judge, New Delhi District] of dismissal of the First Appeal under Section 96 of the CPC preferred by the appellant as a consequence of refusal to condone the delay in preferring the First Appeal against the *ex parte* judgment and decree [dated 24th November, 2015 in CS No.171/2015 (Unique ID No.02403C0187732015) of the Court of Senior Civil Judge, New Delhi District] in favour of the respondent / plaintiff / decree-holder of recovery of Rs.64,829/- with interest and of injunction, directing the withdrawal of the demand of Rs.4,35,581/- made on the respondent / plaintiff / decree-holder and restraining raising of any demand on the respondent / plaintiff / decree-holder in respect of Consumer Loan Account No.LPDEL00004139492.

2. This appeal came up first before this Court on 11th July, 2017, when notice thereof was ordered to be issued and the disbursement of the

decretal amount deposited by the appellant / defendant / judgment-debtor before the First Appellate Court restrained.

3. Suit Court record and First Appellate Court record requisitioned have been received.

4. On 24th July, 2018, a query as to the maintainability of the Second Appeal was made from the counsels. The said query has been decided vide separate order passed today in this appeal along with other connected appeals entailing the same legal question, and the Second Appeal has been held to be maintainable.

5. The counsel for the appellant / defendant / judgment-debtor and the counsel for the respondent / plaintiff / decree-holder have been heard and the Trial Court record perused.

6. Though no merit was found in any of the contentions of the counsel for the appellant / defendant / judgment-debtor but while going through the judgment of the Suit Court, it was found to record in para no.3 thereof that "Only defendant no.2 was summoned in the present matter. He was duly served with the summons through Deputy Branch Manager on 01.06.2015, but none has appeared for and on behalf of defendant no.2 despite service, hence vide order dated 02.07.2015, defendant no.2 was proceeded ex-parte."

7. This led to the perusal of the Suit Court record.

8. A perusal of the plaint filed by the respondent / plaintiff / decree-holder shows the title of the suit filed to be as follows:

"<u>In the matter of:</u>
Sh. Satish Kumar Sehrawat
S/o Late Sh. Risal Singh
R/o House no.58, Block-A,
Village Nangal Dewat, Near Spinal Hospital
Vasant Kunj, New Delhi-110070 ….Plaintiff

VERSUS

1. ICICI Bank Ltd.
Through its Chairman
Regd. Office: "Landmark", Race Course Circle
Vadodara-390007, Gujarat
2. The Manager
ICICI Bank Ltd.,
Branch at Indian Spinal Injuries Hospital
Vasant Kunj, New Delhi-110070 …. Defendants"

9. The suit came up before the Suit Court first on 20th May, 2015, when the following order was passed:

"20.05.2015

Fresh suit for recovery received. It be checked and registered.

Present: Ld. Counsel for the plaintiff.

Heard. File perused.

Issue summons for settlement to defendant no.2 on filing of PF / RC within a week for 02.07.2015.

Sd/-
(KIRAN GUPTA)
SCJ-CUM-RC: NEW DELHI
20.05.2015"

10. Though the counsel for the respondent / plaintiff / decree-holder, on enquiry had stated that the Suit Court for reasons recorded, had summoned only the defendant no.2 but a perusal of the order dated 20th May, 2015 supra shows that no reason whatsoever was given for not summoning the defendant no.1 against whom also decree was claimed. A further perusal of the order sheet of the Suit Court shows that the counsel

for the respondent / plaintiff / decree-holder also, neither on 20th May, 2015 nor on any subsequent date, applied to the Suit Court for issuance of summons to the defendant no.1 also.

11. Though the decree is only against the defendant no.2 impleaded in the suit but it cannot be lost sight of that the defendant no.1 ICICI Bank Ltd., from which also the money was sought to be recovered, was not even summoned in the suit and only the defendant no.2 who was described as "Manager of the ICICI Bank Ltd." at the branch of the said bank at Indian Spinal Injuries Hospital, Vasant Kunj, New Delhi, was summoned.

12. The decree however is being sought to be executed, not against the Manager personally but from the defendant no.1 ICICI Bank Ltd. which was not even summoned in the suit. In fact, the then Manager, from whom recovery was sought, was not even named and it is settled position in law that no suit lies against an office. "The Manager" of a branch of the ICICI Bank, was merely an office of the defendant no.1 ICICI Bank Ltd. This appeal has been preferred by ICICI Bank Ltd. which was never summoned in the suit and against which no decree was passed.

13. The only argument of the counsel for the respondent / plaintiff / decree-holder is that he is seeking execution against the defendant no.2 only. However, on enquiry as to against which Manager the execution is being sought and whether his name has been disclosed, it is stated that the execution is directed against the office of the Manager.

14. A decree against an office is a nullity.

15. As far back as in ***The Sheriff of Bombay Vs. Hakmaji Motaji &***

Co. ILR 51 (Bombay) 749 (1926), a Division Bench of that High Court was concerned with a suit for recovery of damages filed against the "Sheriff of Bombay". The point for consideration was, whether a suit lies against the "Sheriff of Bombay". During the pendency of the suit, the Sheriff had changed three or four times and no objection as to the maintainability of the suit on this ground was initially taken. No issue also was claimed or framed on the said aspect. It was reasoned/held (i) that the Sheriff of Bombay was appointed from year to year under a statute and was not personally responsible or liable for any act which he was empowered to do; (ii) that the Sheriff was not a corporation sole; (iii) that successor Sheriffs could not be made liable for defaults of their predecessor; (iv) that generally speaking, corporation soles are ecclesiastical authorities; (v) that Sheriff of Bombay was a public officer, within the meaning of the Code of Civil Procedure (CPC), 1908, entrusted with the task of execution of judicial process; (vi) else CPC provided that the suits by or against the Government shall be instituted by or against the Secretary of State for India in Council; (vii) that a suit against a public officer could be brought only in respect of acts done by that public officer in his official capacity; (viii) the suit was intended to be against the Government and should have been brought against the Secretary of State for India in Council; (ix) for any defaults of the public officer personally, he has to be sued in his personal name and not by the name of the office; (x) that an action against the Sheriff of Bombay does not lie and the plaint should have been amended; and, (xi) the decree against the Sheriff of Bombay was a nullity.

16. In ***N.W. Ry. Administration Vs. N.W. Ry. Union, Lahore*** AIR

1933 Lah 203, the suit was filed against the 'North-Western Railway Administration' and against the 'Agent North-Western Railway'. It was held that there was nobody capable of being sued under the said name which had no existence in law and was merely a convenient nomenclature to describe the management of certain properties in possession and administration of the Secretary of State for India in Council. It was further held that the 'Agent North-Western Railway' could also not be sued as such because it amounted to a suit against the office of the Agent and not against the person or official himself. It was yet further held that Agent is not an individual and the individual was one Mr. Highet who was occupying the position of the Agent at the time of institution of the suit and against whom the suit had not been brought. It was reasoned, that an order against an office could not be enforced and the suit must be brought either against the Secretary of State as a corporation sole or against an individual personally. The Full Bench of the Andhra Pradesh High Court, in ***Sarkar-E-Aali Zaria Nazim Vs. Athar*** AIR 1957 AP 714, was concerned with a suit against the 'Director of Ecclesiastical Department'. It was held that CPC does not contemplate a suit against an office or the department but a suit either against the institution or against its officer personally for the acts for which they are personally liable. A subsequent Division Bench of the said High Court in ***J. Kuppanna Chetty, Ambati Ramayya Chetty & Co. Vs. Collector of Anantapur*** AIR 1965 AP 457 also held that except where the statute provides that a public officer is a corporation sole and can be sued in that name, ordinarily a suit against an office does not lie. It was further held that under Order VII Rule 1(c) of the CPC, if a plaintiff intends to sue persons who for the time being occupy those offices, the plaintiff must implead those persons by their individual name and if it is not so, the suit is liable to be dismissed. The High Court of Bombay, again in ***Manahem S. Yeshoova Vs. Union of India*** AIR 1960 Bom 196, held that 'Collector of Customs' being merely an office, occupied by different persons from time to time, was not a legal entity and no suit could be filed in such a name. A Division Bench of the Calcutta High Court also, in ***P.B. Shah & Co. Vs. Chief Executive Officer, Corporation of Calcutta*** AIR 1962 Cal 283 held that the 'Chief Executive Officer' or the 'Commissioner, Corporation of Calcutta' are not corporate bodies and there was no provision in the Calcutta Municipal Act, 1951 to the effect that the persons occupying those offices may sue or be sued by their official title and designation and in the absence of such a provision, the ordinary law applicable to suits must apply and which in Order VII Rule 1(c) of the CPC provides the name, parentage and address of the persons being sought to be sued being disclosed. A distinction was carved out between suits and writs and it was held that in writ petitions individuals occupying the office may not be named and relief may be claimed and granted under official designation. A subsequent Division Bench of the same High Court, in ***Messrs N. Hossain & Sons Vs. Corporation of Calcutta*** 1980 SCC OnLine Cal 89 laid down that where the defendant is described only by his official designation, amendment should be allowed. The same is the view of the High Court of Patna in ***Principal, Regional Institute of Technology, Jamshedpur Vs. Rama Kantha Singh*** AIR 1975 Patna 152.

17. As far as this Court is concerned, in ***V. Rajaraman Vs. Hindustan Brown Boveri Ltd.*** ILR 1974 (1) Del 398, it was held that a suit filed in

the name of "Shri V. Rajaraman, Liquidator, Globe United Engineering and Foundry Company Ltd." was not in the correct form; a company in liquidation retains its corporate powers including the power to sue, although such powers must be exercised through the liquidator; a suit on behalf of the company in liquidation ought to be instituted in the name and on behalf of the company and not in the name of the liquidator. Reliance was placed on ***Joint Liquidators of the City Bank of Lahore Ltd. Vs. Pandit Shiv Sharma*** AIR 1951 P&H 144.

18. Supreme Court, in ***Chief Conservator of Forests, Govt. of M.P. Vs. Collector*** (2003) 3 SCC 472 held that an officer of Government cannot maintain a petition in the name of his post and that in suits by or against Government, State concerned is a necessary party. It was explained, (i) that a legal entity i.e. a natural person or an artificial person can sue or be sued in his/its own name; (ii) it is not merely a procedural formality but is essentially a matter of substance and considerable significance; (iii) it is for this reason only that special provisions have been made in the Constitution and the Code of Civil Procedure as to how the Central Government or the Government or State may be sued; (iv) so also, there are special provisions in regard to other juristic persons specifying as to how they can sue or be sued have been made; and, (v) that in a *lis* dealing with property of a State, the State is a necessary party and should be impleaded.

19. What has been held qua State/Government equally applies to juristic persons, as the appellant ICICI Bank Limited is. While Order XXVII of the CPC deals with suits by or against the Government or

public officer in their official capacity, Order XXIX of the CPC deals with suit by or against corporations and Rule 2 thereunder requires service of notice on the corporation by addressing it to the corporate at the registered office of the corporation. Though the respondent/plaintiff correctly impleaded ICICI Bank Limited at the address of its registered office as defendant no.1, but the Suit Court, in ignorance of the law aforesaid, deleted the defendant no.1 and did not order issue of summons to the defendant no.1 and the counsel for the appellant/defendant also did not protest.

20. Once the name of the appellant/defendant had been deleted and no summons were issued to it, the decree passed against an office of the appellant/defendant cannot be enforced against the appellant/defendant.

21. Thus the decree impugned in the present appeal is found to be a nullity and in gross violation of the procedure prescribed by law for disposal of suit.

22. In view of the aforesaid, need for framing any substantial question of law is not felt as the same is writ large.

23. Accordingly, the impugned order dated 24th May, 2017 and the judgment and decree dated 24th November, 2015 are set aside and the suit restored to the original position to be tried from inception.

24. The counsel for the appellant / defendant accepts summons of the suit and is bound down to file written statement within 30 days from today.

25. The parties to appear before the Senior Civil Judge, New Delhi

District, Patiala House Courts, New Delhi on 5th September, 2018.

26. The Suit Court file and the First Appellate Court file received in this Court be returned forthwith.

27. The amount deposited by the appellant / defendant / judgment-debtor in the First Appellate Court to be remitted to the Suit Court together with interest accrued thereon and to remain in the custody of the Suit Court and to be kept in a maximum interest bearing account and to be disbursed in accordance with the final judgment in the suit.

28. No costs, since the appellant / defendant failed to take the plea on which the appeal has been decided in favour of the appellant.

29. Decree sheet be drawn up.

30. A copy of this judgment be forwarded to the Committee of the Inspecting Judges of the learned Suit Judge who deleted defendant no.1.

RAJIV SAHAI ENDLAW, J

JULY 25, 2018
'gsr'/pp..