



2024:DHC:4892



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

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Judgment reserved on: 24.04.2024

Judgment pronounced on: 02.07.2024

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CM(M) 426/2022

STATE BANK OF INDIA

..... Petitioner

Through: Mr. Rajiv B. Samaiyar & Mr.
Subhasani Kumari, Advs.

versus

RAMESH KUMAR NAROOOLA & ORS.

..... Respondents

Through: Ms. Krishna Parkhani & Mr. Chandan
Mishra, Advs. for R-1.
Mr. Rajiv Kapur & Mr. Akshit Kapur,
Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The necessary facts in brief for disposal of the present petition under Article 227 of the Constitution of India are that respondent no. 1 had filed a suit for declaration and permanent injunction against the petitioner and respondent nos. 2 to 5 tilted as “*Ramesh Kumar Naroola vs. State Bank of India & Ors.*” in suit no. CS/DJ/32/2021.

2. Respondent no. 1 has averred in the suit that he was holding the credit card issued by the petitioner Bank for over 15 years. On 21.05.2020, two unauthorized payments were debited from the said credit card, a sum of Rs. 46,458.99/- was remitted to “No Broker Technologies” and on the



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same day a sum of Rs.47,104/- was again debited to the aforesaid order and remitted to “Housing.com” and in both these instances, the OTP required to authenticate the transactions was received after the amount was debited. The respondent no. 1, wrote two emails on 21.05.2020 and 23.05.2020 respectively and requested the respondents to take the necessary action on aforesaid mentioned debit entries on the credit card of respondent no. 1.

3. Acting upon the same, the credit card of respondent no. 1 was blocked and a new credit card was issued to him. It is further averment of respondent no. 1 that even before the new credit card had reached, two more payments were affected to the same payee on 24.05.2020 for a sum of Rs. 46,359/- which was remitted to “No Broker Technologies” and a sum of Rs. 48,142.13 was remitted to “Housing.com”. Respondent no. 1, thereafter sent emails to the respondent as well as to the petitioner for redressal of grievances. However, instead of redressing the grievances of respondent no. 1, the respondent no. 2 continued to make demand of payments from respondent no. 1 instead of investigating the fraud. Thereupon, respondent no. 1 sent legal notice dated 29.08.2020 to the petitioner as well as to respondent nos. 2 and 3. Respondent no. 2 duly replied to the legal notice stating that on the basis of investigation, respondent no. 2 found that transaction was performed in secured manner and the same has been validated by his SBI card details and dynamic OTP delivered at his registered mobile number.

4. Subsequent thereto, the respondent no. 1 filed the Civil Suit No. CS/DJ/32/2021 against the petitioner and respondent nos. 2 and 3. On service of summons of suit, the petitioner filed its written statement along with application under Order VII Rule 11 CPC and Order I Rule 10 CPC



read with Section 151 CPC before the learned Trial Court wherein the petitioner sought rejection of the plaint qua the petitioner or to delete the petitioner from the array of parties of the suit filed by respondent no. 1.

5. Respondent no. 1 did not prefer to file reply to the application. After hearing the arguments, vide the impugned order dated 07.03.2022, the learned Trial Court rejected the application of the petitioner. Aggrieved petitioner, thus invoked the supervisory jurisdiction of this Court to challenge the impugned order.

Submissions of the petitioner

6. Mr. Rajiv B. Samaiyar, learned counsel submitted on behalf of the petitioner that the learned Trial Court wrongly arrived at the conclusion that the petitioner is necessary party to the suit. Petitioner in the suit is neither necessary party nor a proper party. When respondent no. 1 informed the petitioner through email about the aforesaid instances, the petitioner had only forwarded the email to CEO, SBI Card and Payment Services Ltd. which is a distinct organization from the petitioner. Thus, merely by forwarding the mail of respondent no. 1 to correct organization does not establish that the petitioner is a necessary party to the suit.

7. The learned counsel further submitted that the credit card was issued to respondent no. 1 by respondent no. 2 and not by the petitioner and that petitioner is a stranger party to the suit. The petitioner cannot be forced to face the trial on the ground merely because respondent no. 1 would be incidentally affected by the presence of petitioner so as to structure its suit properly, petitioner has been arrayed as a defendant in the suit.

8. It is further submitted that there is no cause of action against the petitioner as no demand notice was issued by the petitioner to respondent



no. 1 as the petitioner is not concerned with the credit card of respondent no. 1.

9. To strengthen the arguments, the learned counsel relied upon the following judgments:-

- i) **Kasturi v. Iyyamperumal & Ors.** [Appeal (Civil) 2831/2005].
- ii) **Anil Kumar v. Shivnath** [(1995) 3 SCC 147].
- iii) **Mahadeva Rice & Oil Mills v. Chennimalai Gounder** [AIR 1968 Mad 287].
- iv) **Antony Deveraj v. Aralvaimozhi (Kurusadi) Devasahayam** [2004 (2) C.T.C 183].

Submissions of the respondents

10. Ms. Krishna Parkhani, learned counsel for the respondent no. 1 has confuted the submissions made by the counsel for petitioner by stating that the SBI Cards and Payments Services Pvt. Ltd. is a subsidiary of State Bank of India and is using the logo and name of SBI. SBI being the parent company is allowing its subsidiary to use the reputation earned by its profits.

11. The learned counsel drew the attention of the Court to the annual report for the year 2021-22 of the petitioner Bank, which depicts that SBI owns 69.20% shareholding in SBI Cards and Payment Services Ltd. Even the chairman of SBI and SBI Cards and Payments Services Ltd. are the same and hence it means that SBI bank also plays vital role in the operations of SBI Cards and Payment Services Ltd. Therefore, claims of being a distinct organization, merely forwarding the mail to correct organization, not being a necessary party are baseless assertions.



12. It is submitted by the learned counsel for the respondent no. 1 that the argument of the petitioner that there is no cause of action against the petitioner is misleading so as to evade from their responsibility. In consonance of RBI Circular, unauthorized transaction was reported to petitioner i.e., SBI Bank and the card which was used to perform such transactions belonged to respondent no. 2, i.e., SBI Cards & Payments Services Pvt. Ltd. and therefore, it is both the petitioner no. 1 and respondent no. 2 who failed to perform their obligations in treating the aforesaid transactions as per the standard protocol specified by the RBI Circulars and they both are mutually liable.

13. It is further submitted that the representatives of respondent no. 2 had requested for the reversal of the amount and the details of beneficiary for internal investigation from “No Broker Technologies” vide email dated 22.05.2020 which was provided on 23.05.2020 and the said email also provided that the recipient account has been marked as fraud but, the same was never shared with the respondent no. 1. The respondent no. 1 came to know about the said email only when it was filed along with the written statement by the defendant no. 5/“No Broker Technologies” in the suit. Respondent no. 4 also filed the details of the remitter and the beneficiaries with its application under Order I Rule 10 CPC. However, even after the receipt of the said information, petitioner and the respondent no. 2 were adamant to not treat the aforesaid transactions as fraud and abstained from conducting further inquiry, even after the receipt of the details.

14. The learned counsel for the respondent no. 1 has relied upon following judgment to support her contentions.



i) **Anil Kumar v. Shiv Nath** [1995 (3) SCC 147].

15. The learned counsel thus supported the impugned order and submitted that the present petition be dismissed with exemplary cost in favour of the respondent no. 1.

Reasons and Conclusions

16. Having heard the learned counsels on both the sides, this Court has also perused the material on record as well as the impugned order.

17. While disposing of the application moved on behalf of the petitioner, the learned Trial Court has merely relied upon the pleadings of the parties without exploring the documents, specifically the form filled by respondent no. 1 for issuance of credit card facility to him.

18. The impugned order is detailed hereinbelow”-

“Another application filed by the defendant No. 1 under Order VII Rule 11 of CPC and under Order I Rule 10 of CPC r/w Section 151 of CPC has been argued today by Ld. counsel for defendant No. 1 and Ld. Counsel for plaintiff and it is stated that present application qua defendant No. 1 is not maintainable as the defendant No.1 is not necessary party.

Per contra, Ld. Counsel for plaintiff has argued that SBI Cards is subsidiary of SBI with whom the plaintiff has maintained bank account on the basis of which the plaintiff was issued a credit card.

Hence, it cannot be said that the suit of the plaintiff is without cause of action or that the defendant No. 1 is not a necessary party in the present suit.

It is clear that the present suit has been filed seeking primary relief against the defendant No.2. A perusal of record reveals that issuance of credit card to the plaintiff has not been denied by the defendant No.2 and 3 in the written statement. The defendant No. 1 in para No. 6 and 7 of written statement has admitted that the communication received from the plaintiff was communicated by them to the defendant No.2 and 3.

It is clear that considering the fact that the plaintiff seeks declaration of not being liable to pay the amount sought to be recovered from him by defendant No.2 and 3, it cannot be said that case of the plaintiff is without any cause of action or the defendant No.2 is not necessary party of the present suit. Hence, the application of the



defendant No. 1 under Order VII Rule 11 of CPC and under Order I Rule 10 of CPC *r/w* Section 151 of CPC is hereby dismissed.”

19. Before adjudicating an application under Order I Rule 10 CPC, it is required to be considered whether such a party which is sought to be impleaded or deleted is either necessary or proper party to decide the lis. In **Global Ground (India) Employees Union vs. Lufthansa German Airlines** [(2019) 15 SCC 273], the Hon’ble Supreme Court observed as under:-

“The expressions "necessary" or "proper" parties have been considered time and again and explained in several decisions. The two expressions have separate and different connotations. It is fairly well settled that necessary party, is one without whom no order can be made effectively. Similarly, a proper party is one in whose absence an effective order can be made but whose presence is necessary for complete and final decision on the question involved in the proceedings.”

20. It is essential to ascertain from the documents that the contract for issuance of credit card was executed between which of the parties so as to make out the necessary party in the suit. In order to determine whether the petitioner is a necessary or proper party in the suit, it was necessary for the learned Trial Court to consider the application form for issuance of the credit card etc. which would delineate the actual parties who had entered into the contract. Moreover, the learned Trial Court has not considered whether SBI Cards & Payments Services Pvt. Ltd. being the subsidiary of State Bank of India, the holding company, is subordinate to the holding company or not and about the share holding of the SBI in SBI Cards & Payments Services Pvt. Ltd.

21. Accordingly, the matter is remanded back to the learned Trial Court to re-consider the application under Order VII Rule 11 and Order I Rule 10



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read with Section 151 CPC moved by the petitioner before the learned Trial Court after affording an opportunity to the parties to address arguments afresh. The learned Trial Court to dispose of the application within four weeks from today.

22. Consequently, the petition stands disposed of.

SHALINDER KAUR, J.

JULY 02, 2024
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