

## HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

C. Rev. No. 170/2007

Date of decision: 30.08.2013

Renu Gupta and anr. Vs. Punjab National Bank & ors

Coram:

***HON'BLE MR. JUSTICE JANAK RAJ KOTWAL-JUDGE***

**Appearing counsel:**

For petitioner(s): Mr. P. R. Sharma, Adv.

For respondent(s): Mr. Gagan Basotra, Sr. AAG.

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|------|--|--------|
| (i)  | Whether to be reported in<br>Press, Journal/Media: | Yes    |
| (ii) | Whether to be reported in<br>Journal/Digest:       | Yes/No |

1. This Civil Revision by the plaintiffs is directed against Order dated 10.08.2007 passed by learned 1<sup>st</sup> Additional District Judge, Jammu, whereby their application for passing a decree in their favour in terms of Order 12 Rule 6 CPC has been dismissed.
2. Heard. Considered. I have perused the record.
3. Petitioners (plaintiffs) have filed a suit for mandatory injunction directing respondents (defendants) to allow the petitioners to operate locker No. 260 hired by them at Bakshi Nagar branch of respondent-Bank. It is alleged in the suit, briefly, that having hired aforesaid locker in the 1995, both the petitioners had been operating the same jointly as well as individually up to July, 1997. They have

kept their important documents in this locker. Officials of the respondent-Bank, however, did not allow petitioner No. 2 to operate the locker when he visited the Bank on 22.7.1997. He approached respondent No. 2, who too refused to allow him and gave him refusal letter stating that Vigilance Organization has stopped operation of the said locker. He also provided copy of letter No. SSP/97-494/VOJ dated 20.11.1997 containing instructions not to permit the petitioners to operate the said locker. The petitioners have also contended in their suit that refusal of the respondent- Bank to allow them operation of locker at the behest of Vigilance Organization, is illegal and wrongful as they are not involving in any criminal case. The petitioners have further contended that Vigilance Organization, Jammu has registered FIR No. 26/97 of PS/VOJ against Shri V. K. Gupta and after completing investigation presented challan against him and his wife Ms. Suman Mala in the Court of law. The detail of assets possessed by the said accused given in the said challan and documents attached thereto did not include above said locker of the petitioners and the locker has nothing to do with said Mr. V. K. Gupta or his wife. However, even after presentation of the challan, Vigilance Organization has not taken steps to withdraw the wrongful and illegal instructions issued to the respondent-Bank.

4. Respondent-Bank (defendant No. 1 & 2) in their written statement have not denied the factum of the locker having been provided on hire basis to the petitioners or that they were operating it till July, 1997. They have, however, contended that operation of the locker has been refused pursuant to the instructions issued by the Investigating Officer of FIR No. 26/97 under Section 5(2) of the Prevention of Corruption Act vide his letter dated 24.05.1997, whereby respondent-Bank has been directed not to allow the petitioners or any other person to operate the locker in question and connected bank account. Further they have contended that Sr. Superintendent of Police, Vigilance Organization, Jammu vide his letter No. SSP/97-6194/487 dated 20.11.1997 has instructed respondent-Bank to allow the petitioners to open the locker in question in presence of Investigating Officer concerned and the Bank has accordingly informed the petitioner No. 1 vide its letter dated 21.11.1997.
5. Respondent (defendant No. 3), Sr. Superintendent of Police, Vigilance Organization, Jammu, in his written statement has admitted to have registered FIR No. 26/1997 against V. K.Gupta and his wife, Suman Mala but has initially remained non-committal regarding any instruction as regards Locker No. 260 (Supra) having been issued to the respondent-Bank. However, perusal of para-wise reply in the written statement would make it clear

that respondent No. 3 has virtually denied issuing of any instruction to the respondent-Bank in this regard. Petitioners in the plaint have referred to the reason stated by the respondent-Bank about their refusal to allow petitioners operation of the locker but respondent No. 3 has termed this information as misconceived.

7. Order 10 Rule 6 CPC provides for passing of order or judgment on the basis of admissions of the parties to a suit. The Court on its own or on the application of a party may pass order or judgment on the basis of admission made by a party in the pleadings or otherwise. Supreme Court in *Uttam Singh Dutta and Co. Ltd. v. United Bank of India and ors.* AIR 2000 SC 2740 has stated the purpose of Order 12 Rule 6 as under:

“12 As to the object of the Order XII Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that “where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of the this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission in entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed”

8. In *Karam Kapahi and ors v. M/S Lal Chand Public Charitable Trust*, AIR 2010 SC 2083, their Lordships have summarized the principal underlying Order 12, Rule 6 in para 46, which reads:

“46. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under This Rule either party may get rid of so much of the rival claims about ‘which there is no controversy’”

9. Mr. P. R. Sharma, learned counsel for the petitioners would say that respondents (defendant 1 & 2) in their written statement have admitted that operation of the locker hired by the petitioners has been stopped under the instructions of the Vigilance Organization, Jammu issued in FIR No. 26/1997. Vigilance Organization in the written statement filed by respondent No. 3 has not expressly denied issuance of said instructions. Mr. Sharma would thus say that in such admitted/undisputed position, learned trial Court has fallen into error in not passing judgment in terms of Order 12 Rule 6 CPC to the extent of mandatory injunction directing the respondent-Vigilance Organization to withdraw the direction issued to the respondent-Bank and directing respondent-Bank to allow operation of locker to the petitioners.
10. Mr. Gagan Basotra, learned AAG, however, supported the order passed by learned trial Court. He would say that property having been seized in connection with the investigation of the case, petitioners should have

approached the competent criminal Court. Suit cannot be granted without framing issues and decision on the basis of evidence to be led by the parties.

11. A plain reading of the Order 12 Rule 6 CPC would show that if some facts involved in a civil suit are admitted in pleadings or otherwise, Court can pass judgment and decree partially or finally as far as possible on the basis of such admitted facts. Perusal of the pleadings would show that respondent-Bank has admitted refusing operation of locker No. 260 to the petitioners under the instructions issued by the Vigilance Organization, Jammu. In para 9 of the plaint, petitioners have contended that respondent (defendant No.1), that is, Manager of the concerned Bank refused operation of the locker and instead handed over to petitioner (plaintiff No. 2) letter dated 20.11.1997 containing instructions to the Bank not to permit the petitioners to operate the said locker.
12. In reply to para No. 9, respondent-Bank in its written statement has stated that the reasons for not allowing petitioners to operate the locker are contained in the letter referred to by the petitioners. In reply to para 5 of the plaint, respondent-Bank has contended that “defendants were restrained by the State Vigilance Organization to allow the plaintiffs or any person to operate the locker as well as the account maintained by

the plaintiffs with the bank of answering defendants". In reply to para 4, respondent-Bank clearly stated that Vigilance Organization has registered FIR No. 26/1997 under Section 5 (2) of the Prevention of Corruption Act against one Sh. V. K. Gupta, Assistant Conservators of Forest and that vide his letter dated 24.05.1997, Investigating Officer had directed the Bank not to allow the plaintiffs (petitioners) or any other person to operate the locker No. 260 and locker account No. 206 and account No. 301/1 FDR. It is, thus, admitted as far as respondent-Bank (defendant No. 1 & 2) is concerned, they have refused operation of the locker No. 260 by the petitioners under the instructions issued by the Investigating Officer of FIR No. 26/1997 of Vigilance Organization, Jammu. This admission with sufficient implications contain further admission that said locker has been hired by the petitioners from the respondent-Bank.

13. It needs to be pointed out that respondent No. 3 in his written statement has carefully avoided to admit or deny whether locker is case property vis a vis FIR No. 26/1997 and whether the Vigilance Organization has issued instructions to the respondent-Bank. Respondent No. 3's reply to paras 4 & 9 is that their contents are misconceived, whereas para 5 has been denied for want of knowledge.

14. In the backdrop of the pleadings of the parties, observation by the learned trial Court in the impugned order that question whether petitioners (plaintiffs) were operating the locker prior to its seizer is required to be determined by the Court, that written statements filed by respondents (defendant 3 & 4) do not show that they have admitted the claim of the petitioners and that legal and factual aspects are to be adjudicated upon by the Court and therefore, dismissal of the application cannot be held as proper exercise of the jurisdiction by the Id. Court.
15. Question for determination for the trial Court at trial predominantly would be whether Vigilance Organization has issued instructions for disallowing the operation of locker No. 260 to the petitioner and whether instructions, if issued, should continue even after the completion of investigation and presentation of challan against accused in the said FIR in question.
16. As far as the first question is concerned, matter should not be allowed to stretch to the extent of recording evidence in this regard. Respondent-Vigilance Organization should have come forward with clear stand in this regard. Respondent No. 3 in his reply should have stated whether the locker was or not the case property in the above FIR whether such instructions have been issued or not. If issuance of instructions is denied, matter would come to



an end because in that case the Vigilance Organization would be out of picture and defiance of the respondent-Bal would fall. If, however, issuance of instructions is admitted, the Court straightway should take up the question whether such instructions should continue after filing of charge sheet and after disposal of case by the trial Court, if the case has been disposed of.

17. Proper and appropriate course to be adopted by the learned trial Court should have been to examine respondent No. 3 in terms of Order 10 CPC to ascertain reply to the facts which have not been specifically replied and to decide the application moved by the petitioners in light of the stand taken by respondent No. 3.
18. Perusal of minutes recorded in the trial Court file would show that at no stage learned trial Court has resorted to recording of the statements of the parties in terms of Order 10 of the Code. Instead learned trial Court after completion of pleadings, straightway framed preliminary issue as regard maintainability of the suit. This issue was decided in favour of the plaintiffs vide order dated 16.05.2005 and said order was upheld by this Court in revision petition No. 97/2005 vide order dated 31.1.2006. The case thereafter was straightway listed for framing issues but before framing issues, application under Order

12 Rule 6 CPC came to be moved by the plaintiffs and the matter is here before this Court.

- 19 For the aforementioned reasons, this revision petition is allowed, impugned order dated 10.08.2007 passed by the 1<sup>st</sup> Addl. District Judge, Jammu is set aside and learned trial Court is directed to decide the application afresh after recording the statement of respondent No. 3 in terms of Order 10 Rule 1 CPC, having regard to the observations made above.
20. Record of the trial Court be remitted back along with copy of this order.

**(Janak Raj Kotwal)**  
**Judge**

Jammu:  
30.08.2013  
*Karam\**