

CASE NO.:  
Appeal (civil) 2946 of 2007

PETITIONER:  
Andhra Bank

RESPONDENT:  
ABN Amro Bank N.V. and Ors

DATE OF JUDGMENT: 10/07/2007

BENCH:  
Tarun Chatterjee & Markandey Katju

JUDGMENT:  
J U D G M E N T

CIVIL APPEAL NO.2946 OF 2007  
[Arising out of SLP [C] No.10844 of 2007]  
W I T H  
CIVIL APPEAL NO. 2947 OF 2007  
[ Arising out of SLP [C] No.10845 of 2007

TARUN CHATTERJEE,

C.A.NO. 2946 OF 2007 [@ S.L.P.)No.10844 of 2007]

1. Leave granted.
2. This appeal is directed against the order dated 13th April, 2007 passed by the Special Court {Trial of Offences relating to Transactions in Securities} at Bombay in Chamber Summons No.1 of 2007 in Suit No.3 of 1998 for recovery of Rs.15,66,66,591/- with other incidental reliefs by which the application for amendment of the written statement filed at the instance of the appellant was rejected.
3. Initially the suit was filed in the High Court of Delhi and was later transferred to the Special Court at Bombay constituted under the Special Court {Trial of Offences relating to Transactions in Securities} Act 1992 where the suit is now pending decision. It has been alleged in the plaint by the respondent ABN Amro Bank that on 3rd March, 1992, the New Delhi Branch of the bank had ordered transfer of one lac numbers of 17% NPC Bonds of Rs.100/- from respondent No.2 at a price of Rs.97/- . It has been the further case of the ABM Amro bank in the plaint that the appellant had failed to deliver to the respondent bank the NPV bonds and instead on or about 18th March, 1992 respondent no.2 delivered to ABN Amro Bank the original letter of allotment No.0016 covering one lac 9% tax free IRFC bonds of the value of Rs.10 crores endorsed in blank along with contract note dated 9th March, 1992. Accordingly, the ABN Amro Bank has prayed for a decree for the amount mentioned hereinabove and for other incidental reliefs. In the written statement the appellant clearly denied the allegations made by the Bank. It is true long thereafter an application for amendment of the written statement was filed by the appellant in which the appellant sought to amend para 7 of the written statement by inserting a new para, namely, para 7A which is as follows:  
"Defendant No.1 says that the plaintiffs have admittedly agreed to purchase the said NPC bonds as also the said IRFC bonds as also allegedly paid the purchase price of the said bonds for and on behalf of their principal viz. the said Punjab Housing

Development Board who is a disclosed principal. Defendant No.1 says and submits that the suit has been filed to enforce the said alleged agreement viz for recovery of the purchase price of the said NPC bonds by the plaintiff in its personal capacity. Defendant No.1 says and submits that the plaintiff cannot personally enforce the said alleged agreement entered into by the plaintiff on behalf of its principal. In the circumstances defendant No.1 submits that the suit is not maintainable and is liable to be dismissed with costs."

4. As noted herein earlier it is this prayer for amendment of the written statement which was rejected by the Special Court by the impugned order which is now under challenge in this appeal by special leave.

5. We have heard Mr. Rohit Kapadia, learned senior counsel appearing for the appellant and Mr. S. Ganesh, learned senior counsel for the respondent. We have perused the original written statement as well as the application for amendment of the written statement. After going through the written statement and the application for amendment of the written statement, we are of the view that the amendment sought to be introduced by the appellant must be allowed. From a perusal of the impugned order of the Special Court we find basically that two grounds have been taken by the Special Court for rejecting the prayer for amendment of the written statement. The first ground is that considerable delay has been caused by the appellant in filing the application for amendment of the written statement. It is well settled that delay is no ground for refusal of prayer for amendment. Mr. Ganesh, appearing for ABN Amro Bank submits before us that by filing of such an application for amendment of the written statement which has been filed with long delay, the appellant sought to stall the hearing of the suit which has been fixed on 13th July, 2007. In response to this Mr. Kapadia, learned counsel for the appellant, submits that in the event the prayer for amendment is allowed by us his client undertakes to file the amended written statement by day after tomorrow, i.e., 12th July, 2007 before the Special Court. Since, we are of the view that delay is no ground for not allowing the prayer for amendment of the written statement and in view of the submissions made by Mr. Kapadia, we do not think that delay in filing the application for amendment of the written statement can stand in the way of allowing the prayer for amendment of the written statement. So far as the second ground is concerned, we are also of the view that while allowing an application for amendment of the pleadings, the Court cannot go into the question of merit of such amendment. The only question at the time of considering the amendment of the pleadings would be whether such amendment would be necessary for decision of the real controversy between the parties in the suit. From a perusal of the amendment application we find that the appellant in their prayer for amendment has only taken an additional defence that in view of Section 230 of the Indian Contract Act, the suit itself is not maintainable. It is well settled, as noted herein earlier, that at the time of considering the prayer for amendment of the written statement it would not be open to the Court to go into the fact whether in fact the suit in view of Section 230 of the Indian Contract Act was or is not maintainable.

6. That apart it is permissible in law to amend a written statement of the defendant by which only an additional ground of defence has been taken.

7. In view of the reasons stated herein above we are of the view that the order of the Special Court rejecting the application

for amendment of the written statement filed by the appellant is liable to be set aside and the prayer for amendment of the written statement must be allowed. Accordingly, the application for amendment of the written statement is allowed and the impugned order is set aside. We are informed by the learned counsel for the parties appearing before us, as noted herein earlier, that the suit has been fixed for hearing on 13th July, 2007 and the parties will not seek any adjournment on that date. In that view of the matter we direct the appellant to file the amended written statement by 12th July, 2007 positively and thereafter the Special Court shall proceed with the hearing of the suit. The appeal is allowed to the extent indicated above. There will be no order as to costs.

C.A. No. 2947 of 2007 {Arising out of SLP 10845/2007}

1. Leave granted.

2. This appeal is directed against the order dated 4th May, 2007 passed by the Special Court {Trial of Offences relating to Transactions in Securities} at Bombay in Chamber Summons No.2 of 2007 in Suit No.3 of 1998 by which the Special Court has rejected the chambers summons taken out by the appellant as it was of the view that the most of the submissions made in the affidavit were also to be found in the plaint.

3. The question that arose in this appeal is whether an application of the appellant in a suit for tendering in evidence an affidavit in chief of the plaintiff containing statements which are relevant and germane to the issues involved in the suit can be rejected only on the ground that the affidavit does not contain any admission. As noted herein earlier the suit which has been filed by ABN Amro, Bank is a suit for recovery of Rs.15,66,66,591/- and for other incidental reliefs. In the suit the appellant has filed a written statement in which the appellant has clearly denied the allegations made by respondent No.1. It has further been clearly stated in the written statement that there was no privity of contract between the appellant and respondent no.1 and no transaction was even entered into between them. Although, the Special Court by an order dated 13th April, 2007 rejected the prayer for amendment of the written statement made by the appellant but by our order of this date in C.A.No.2946 of 2007 arising out of SLP No.10844/2007, the prayer for amendment of the written statement has been allowed by us. Chamber Summons No.2 of 2007 arising out of suit No.3 of 1998 was filed seeking permission to tender in evidence the affidavit of examination in chief of Suhail Chander. This application was rejected by the Special Court in respect of which this appeal by special leave has been filed.

4. We have heard learned counsel for the parties and on consideration of the material on record, we are of the view that the Special Court has acted illegally and with material irregularity in the exercise of its jurisdiction in passing the impugned order. In the facts and circumstances of the present case and also after considering the affidavit filed by the appellant, we are of the view that such a prayer of the appellant to tender in evidence of certain paragraph and affidavit in examination in chief of the appellant containing statements are relevant and germane to the issues involved in the suit and, therefore, cannot be rejected only on the ground that the same did not contain any admission. Accordingly, we set aside the impugned order and allow the appeal.

5. As noted herein earlier, we are informed by the learned counsel for the parties that the suit has been kept for hearing on 13th July, 2007 and in this view of the matter, we request the Special Court to go on with the hearing of the suit from 13th

July, 2007, as directed in C.A.No.2946 of 2007 arising out of SLP 10844/2007.

6. We make it clear that we have not gone into the merits of the suit or the amendment incorporated in the written statement. All such questions shall be taken into consideration by the Special Court at the time of disposal of the suit.

7. The appeal is allowed to the extent indicated above. There will be no order as to costs.

JUDIS