
(2009) 03 CAL CK 0104

In the Calcutta High Court

Case No : F.M.A.T. No. 206 of 2009 and C.A.N. 1366 of 2009

Adhunik Technology Private Ltd.

APPELLANT

Vs

Caretel Infotech Ltd. and Another

RESPONDENT

Date of Decision : 13-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 141, 20
Constitution of India, 1950 — Article 226, 226(2)

Citation : (2009) 03 CAL CK 0104

Hon'ble Judges : Tapan Kumar Dutt, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Shakti Nath Mukherjee, R.N. Majumdar, Subhadip Biswas and Ratul Das, for the Appellant; Pratap Chatterjee, for the Respondent No. 1, Joy Saha, Debasis Roy and Aridam Maitra, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of the defendant No. 1 in a suit for declaration and injunction and is directed against Order No. 6 dated 7th February, 2009, passed by the learned Trial Judge thereby extending the ad interim order of injunction earlier granted on 7th January, 2009 till the disposal of the application for temporary injunction. By the earlier order dated 7th January, 2009, the learned Trial Judge passed an ad interim order of injunction restraining the defendant No. 1 from interfering with, disturbing or in anyway affecting smooth functioning of the plaintiff's business. It was further ordered that the defendant No. 1 should not make any disturbance towards the business of the plaintiff in respect of the letter of intent dated 28th April, 2008 by and between the plaintiff and the Reliance BPO or terminate the same or not to act contrary thereto till 7th February, 2009.

2. In the past, against order dated 7th January, 2009, the appellant came up before this Court by preferring a first miscellaneous appeal and at that time, such first miscellaneous appeal was disposed of by directing the learned Trial Judge not to extend the ad interim order on the next date fixed for hearing before considering the written objection that would be filed by the appellant

before the Trial Court.

3. Pursuant to the liberty granted by this Court in the earlier appeal, the appellant before us filed written objection to the application for temporary injunction and in such written objection, specific point was taken that the defendant No. 2 impleaded in the suit was a fictitious person and that in fact, the agreement between the parties was never executed at the address of the defendant No. 2, as given in the cause title of the plaint. It was further pointed out that the learned Trial Judge had no territorial jurisdiction to entertain the suit and as such, on that ground alone, the ad interim order of injunction should be vacated.

4. As it appears from the order impugned herein, the learned Trial Judge did not answer the question of territorial jurisdiction raised by the appellant but after going through the written objection, decided to extend the earlier ad interim order of injunction till the disposal of the application for injunction. Being dissatisfied, the defendant No. 1 has preferred this first miscellaneous appeal.

5. At the time of hearing of the appeal, we proposed to take up the question of territorial jurisdiction of the learned Trial Judge as a preliminary issue and at that stage, the learned Counsel for the parties restricted their submissions only on the question of territorial jurisdiction of the learned Trial Judge on the basis of materials on record.

6. Accordingly, we heard the learned Counsel for the parties only on such question and proposed to answer the said question as a preliminary issue. The suit was filed by the respondent No. 1 against the appellant for declaration and permanent injunction in which one Yadavendra R. Singh residing at 40, Nimtala Ghat Street, Calcutta- 700007 was made the defendant No. 2. The prayer made in the plaint is quoted below:

(a) Declaration that the first Defendant is obliged to fulfil the terms and conditions of the Letter of Intent dated 28th April, 2008 till its expiry on 14th May, 2010;

(b) Declaration that the first Defendant has no right under the terms of the Letter of Intent to terminate, cancel and/or rescind the Letter of Intent dated April 28, 2008.

(c) Permanent injunction restraining the first Defendant from creating any obstruction, hindrances or disturbances in smooth functioning of the inbound call centre carried on from J-6, Block GP, Salt Lake City, Sector V, Kolkata -700091;

(d) The Plaintiff is also entitled to permanent injunction restraining the first Defendant from cancelling, terminating and/or rescinding the Letter of Intent dated 28th April, 2008 during the tenure of the Letter of Intent

(e) Ad interim order in terms of prayer above.

(f) Injunction;

- (g) Receiver;
- (h) Attachment;
- (i) Costs;
- (j) Further and other relief.

7. The case made out by the plaintiff in the plaint may be summed up thus:

a) The plaintiff in its usual course of business entered into negotiation with Reliance BPO Pvt. Ltd. (hereinafter referred to as Reliance) for Inbound Voice Activity in Kolkata. Upon such negotiation being finalised, the terms were translated in the form of a letter of intent dated 11th March, 2008, issued by the Reliance in favour of the plaintiff.

b) After the execution of the letter of intent between the plaintiff and Reliance, the first defendant approached the plaintiff through the second defendant with a proposal to carry out the Inbound Activity from its location at J-6, Block GP, Salt Lake City, Sector V, Kolkata-700091.

c) After protracted negotiation, the plaintiff and the first defendant agreed to enter into an agreement whereby the first defendant was required to handle inbound voice calls for customer support of Reliance's prepaid and postpaid for Eastern Region of Calcutta.

d) The second defendant acted as intermediary between the plaintiff and the first defendant and a letter of intent was executed between the parties at the office of the second defendant on 28th April, 2008.

e) The letter of intent dated 28th April, 2008, between the plaintiff and the first defendant specifically provided that the tenure of the agreement would be for a period of 2 years from the service commencement date, namely, 15th May, 2008, unless renewed by the plaintiff by giving 30 days' notice. It was further provided in the said letter of intent that the same could be terminated by the plaintiff by giving 30 days' notice to the first defendant.

f) Pursuant to the said letter of intent, the first defendant was required to deploy contractors, adequate number of agents of the quality monitoring executives, managers and other personnel for smooth operation of inbound voice calls in terms of the letter of intent. The first defendant was absolutely responsible for all matter in relation to agent and other staff members that were required to be deployed by them for the purpose of execution of the letter of intent. In terms of the said contract for the service to be rendered by the first defendant, the plaintiff was required to pay @ 1.25 paise per billable minute in addition to the service tax applicable.

g) Pursuant to the said letter of intent the first defendant started operation from its premises situated at J-6, Block GP, Salt Lake City, Sector V, Calcutta- 700091.

h) In terms of the letter of intent, the first defendant was required to handle

inbound voice calls for a period of 2 years from 15th May, 2008.

i) In spite of the specific understanding between the parties the first defendant failed and neglected to perform the obligations in terms of the agreement and committed the following breaches indicated below:

i) The first defendant failed to recruit personnel to man and operate the workstations;

ii) The first defendant failed and neglected to apply for and obtain the necessary statutory sanction/approval for its activity;

iii) The first defendant failed and neglected to pay for the electricity charges for the premises;

iv) The first defendant approached Reliance direct in a covert and surreptitious manner to induce Reliance to issue a letter of intent direct in its favour.

j) Finding no other alternative and in order to fulfil its obligation in terms of letter of intent with Reliance, the plaintiff was constrained to take steps which otherwise was the obligation of the first defendant and the plaintiff deployed and/or recruited more than 800 members of personnel for smooth operation of the subject matter of contract.

k) The plaintiff also applied for and obtained in its name, the necessary sanction and permission from the Government of India, Ministry of Communication and Information Technology.

l) The letter of intent between the plaintiff and the first defendant was executed at 40, Nimtala Ghat Street, P.S. Jorabagan, within the jurisdiction of the Court and the cause of action arose on 5th January, 2008 when the first defendant sought to interfere with the smooth running and functioning of the inbound call centre and made effort to cancel the letter of intent. Hence the suit.

8. In connection with the said suit, the plaintiff came up with an application for temporary injunction on the selfsame allegations made in the plaint thereby praying for an order of temporary injunction restraining the defendant No. 1 from interfering with, disturbing and/or in anyway affecting the smooth functioning of the plaintiff's business from premises No. J-6, Block GP, Salt Lake City, Sector-V, Calcutta-700091 and from cancelling, terminating and/or revoking the letter of intent dated 28th April, 2008.

9. As indicated earlier, the learned Trial Judge initially granted ad interim order of injunction and after filing of written objection and in spite of taking question of territorial jurisdiction of the Trial Court extended the ad interim order of injunction.

10. In the written objection to the application for temporary injunction, the appellant admitted the existence of the letter of intent between the plaintiff and the defendant No. 1 but denied the participation of or the role of the defendant

No. 2 in the matter of execution of the agreement or lis between the plaintiff and the defendant No. 1. It was the specific defence that the trial Court had no territorial jurisdiction to entertain the suit as neither the plaintiff nor the defendant No. 1 resided or carried on any business within the territorial jurisdiction of the trial Court and that the suit was bad for misjoinder of the defendant No. 2 who was a stranger to the defendant No. 1 and that with a view to create jurisdiction, the said defendant No. 2 had been made a party to the suit.

11. The defendant No. 1 after admitting the subsistence to the agreement between the parties alleged violation of the terms of the agreement at the instance of the plaintiff.

12. As pointed out earlier, this Court in the past, directed the learned Trial Judge that before considering the prayer for extension of the ad interim injunction on the next day fixed, it should take into consideration the written objection filed by the defendant No. 1.

13. Therefore, the preliminary question that arises for consideration before us is whether in spite of the specific defence as regards the lack of territorial jurisdiction of the Trial Court taken in the written objection to the application for temporary injunction, the learned Trial Judge erred in law in ignoring such question altogether.

14. We are quite alive to the position of law that simply because the trial court committed a mistake in not considering a direction given by this Court, a litigant should not suffer and that in an appeal against the order of the Trial Court alleging such mistake, the respondent can justify existence of the territorial jurisdiction of the Court from the materials on record.

15. We, therefore, called upon Mr. Chatterjee, the learned senior advocate for the plaintiff/respondent to convince us that on the basis of materials before the Court below, the existence of the territorial jurisdiction of the Trial Court to entertain the suit had been prima facie established.

16. Mr. Chatterjee, at the outset, submitted before us that we should, at this stage, accept the statements made in the plaint to be true and on that basis prima facie arrive at the conclusion as to whether the learned Trial Judge had the territorial jurisdiction to entertain the suit. According to Mr. Chatterjee, the expression "cause of action" means every fact which will be necessary for the plaintiff to prove, if traversed, in order to support his right to judgement in the suit. Mr. Chatterjee contends that his client alleged that the contract, the violation of which had been alleged, was executed within the jurisdiction of the Trial Court and thus, at least a part of cause of action accrued within the jurisdiction of the Trial Court although the place of business is admittedly beyond the territorial limit of the Trial Court and the parties also did not stay or carried on their business within the territorial jurisdiction of the Trial Court. According to Mr. Chatterjee, at this stage, the Court should not enter into the question whether the contract was really signed at the office of the defendant No. 2 as the

said question is a disputed question of fact. In support of his contention Mr. Chatterjee strongly relies upon the decision of the Privy Council in the case of Mohammad Khalil Khan and Ors. v. Mahbub Ali Mian and Ors. reported in AIR 1949 PC 78 and of a learned single Judge of this Court in the case of Jaharlal Pagalia Vs. Union of India (UOI), .

17. Before we proceed to prima facie answer the question of lack of territorial jurisdiction of the learned Trial Judge, we should bear in mind the decision of the three-judges-bench of the Supreme Court in the case of Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another, where the Apex Court while dealing with the question of territorial jurisdiction of the High Court in entertaining a writ-application under Article 226 of the Constitution of India made the following observations:

Although in view of Section 141 of the CPC the provisions thereof would not apply to a writ proceeding, the phraseology used in Section 20(c) of the CPC and Clause (2) of Article 226, being in pari materia, the decisions of this Court rendered on interpretation of Section 200(c) of C.P.C. shall apply to the writ proceedings also. Before proceeding to discuss the matter further it may be pointed out that the entire bundle of facts pleaded need not constitute a cause of action as what is necessary to be proved before the petitioner can obtain a decree is the material facts. The expression material facts is also known as integral facts.

18. Therefore, at this stage we should consider whether on the basis of "material facts" or "integral facts" pleaded in the plaint which are required to be proved by the plaintiff in order to get the relief claimed by assuming those to be true, any part of cause of action had arisen within the territorial limit of the Trial Court. Merely because the plaintiff has pleaded some unnecessary incident which allegedly occurred within the jurisdiction of the Court, for such irrelevant fact, the Trial Court would not be vested with the jurisdiction. The present case is based on the allegation of breach of letter of intent between the plaintiff and the defendant No. 1. In such a case, if the defendant denied the very existence of such agreement, the place of execution of such agreement would have become a relevant fact. This Court, in the past, directed the learned Trial Judge to consider the written objection of the defendant No. 1 before extending the ad interim injunction any further. In the written objection, the defendant No. 1 has admitted the existence of the alleged agreement between the parties but has blamed the plaintiff for its violation and has alleged lack of territorial jurisdiction of the Trial Court as the alleged violation, if at all, occurred at the Salt Lake beyond the territorial limit of the Trial Court. Therefore, in view of the admitted existence of the agreement between the parties, the alleged place of execution of the agreement loses its importance for giving ultimate relief to the plaintiff.

19. We, therefore, find that the learned Trial Judge ought to have held that in the facts of the present case, as it stands after the admission by the defendant No. 1 of the existence of the agreement between the parties, no material or integral

fact had been taken place within the territorial limit of the Trial Court and as such, the Trial Court prima facie had no jurisdiction to entertain the suit as no part of cause of action for filing the suit had accrued within its limit. Even if we do not take into consideration the admission of the defendant No. 1 about the existence of the letter of intent between the parties in the written objection to the application for temporary injunction and solely rely upon the plaint case, it would appear that the plaintiff nowhere alleged that the defendant No. 1 at any point of time ever denied the very existence of the letter of intent between the parties and on the other hand by relying upon the said agreement alleged violation of the terms of the agreement and specifically apprehended that the defendant No. 1 may at any time terminate the said agreement and was actually creating impediment in running business from the premises at the Salt Lake which is admittedly beyond the jurisdiction of the Trial Court. Even the agreement between the parties relied upon by the plaintiff in the plaint and the application for temporary injunction on the face of it falsifies the case that the same was executed within the jurisdiction of the Trial Court because it is acknowledged by signing on the duplicate copy sent by the plaintiff to the defendant No. 1 through post where both are in New Delhi. Therefore, even on the basis of plaint averments, the alleged place of execution of the agreement is inconsequential and such fact, even if is taken to be true, is not a material fact so as to confer jurisdiction of the learned Trial Judge.

20. In a recent decision of the Supreme Court in the case of Eastern Coalfields Ltd. and Others Vs. Kalyan Banerjee, , the said court repeated what has been stated earlier in the following terms:

Cause of action", for the purpose of Article 226(2) of the Constitution of India, for all intent and purport, must be assigned the same meaning as envisaged u/s 20(c) of the Code of Civil Procedure. It means a bundle of facts which are required to be proved. The entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is material facts whereupon a writ petition can be allowed.

21. We, therefore, find that in the facts of the present case where the existence of the agreement between the parties is admitted by the parties, and not even alleged to have been denied by the defendant No. 1 by making any such statement in the plaint, for the purpose of getting relief in the suit, its alleged place of execution is not relevant and the plaintiff could not aver any material statement in pleading from which it can be shown that any part of the cause of action, as defined by the Supreme Court in the above two cases, has accrued within the territorial limit of the Trial Court.

22. As regards the two decisions cited by Mr. Chatterjee, in our opinion, the definition of cause of action mentioned therein should be read subject to the observations of the Supreme Court in the above two cases quoted by us.

23. We, therefore, set aside the order passed by the learned Trial Judge on the

ground that the plaintiff had prima facie failed to prove that any part of cause of action had arisen within the territorial limit of the learned Trial Judge and the said court should have refused to extend the interim order any further on that ground alone. Appeal is thus allowed and the order impugned is set aside. The interim order passed earlier stands vacated. We make it clear that we have not gone into the merit of the dispute.

24. In the facts and circumstances, there will be, however, no order as to costs.