
(2015) 09 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1834 of 2013 (O&M)

Ajanta Soya Limited and Others

APPELLANT

Vs

T.R. Mishra and Others

RESPONDENT

Date of Decision : 04-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(i), 20, 20(c)

Citation : (2015) 09 P&H CK 0079

Hon'ble Judges : Raj Mohan Singh, J

Bench : Single Bench

Advocate : Parveen Chander Goyal, for the Appellant; Sunil Chadha, Senior Advocate and Pallavi Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Raj Mohan Singh, J—Defendant-appellants have assailed the judgment and decree dated 14.08.2012 passed by Additional District Judge, Ludhiana vide which judgment and decree dated 01.11.2010 passed by Civil Judge (Jr. Divn.) Ludhiana has been upheld.

2. Plaintiff-respondents filed a suit for recovery of Rs. 8,00,000/- on the basis of concluded contract at Ludhiana. MS fabricated material was supplied to defendants as follows:-

"(a) Vide bill No. 562 dated 28.05.2002 for Rs. 96,000/- plus sales tax @ 4% amounting to Rs. 3,840/- totalling Rs. 99,840/-.

(b) Bill No. 558 dated 11.05.2002 for Rs. 2,35,000/- plus sales tax @ 4% amounting to Rs. 9,400/- totalling Rs. 2,44,400/-.

(c) Bill No. 553 dated 24.04.2002 for Rs. 2,00,000/- plus sales tax @ 4% amounting to Rs. 8,000/- totalling Rs. 2,08,000/-.

(d) Bill No. 504 dated 12.04.2002 for Rs. 8,60,000/- plus sales tax @ 4% amount to Rs. 34,400/- totalling Rs. 8,94,400/-."

3. It has been averred by the plaintiffs that after adjusting the amount received from the defendants-respondents, a total of Rs. 6,96,640/- was due against them. Defendants admitted the legal liability and issued demand drafts of Rs. 2,00,000/- on 07.06.2002, post dated cheque of Rs. 2,50,000/- dated 20.09.2002 and assured to adjust Rs. 1,50,000/- against pumps and to pay demand draft of Rs. 1,00,000/- on the commission of boiler which was commissioned in August 2002, but no demand draft of Rs. 1,00,000/- was paid and the cheque of Rs. 2,50,000/- was also dishonoured vide memo dated 24.09.2002 as defendants stopped the payment in an illegal manner. Plaintiffs claimed that they are entitled to recover the amount with interest at the rate of Rs. 24%, but they claimed interest at the rate of Rs. 12% per annum in the suit.

4. The suit was contested by the defendants on customary issues. On merits defendants denied that any goods were supplied to them and alleged that bills referred to above are forged and fabricated. No replication was filed. On the pleadings of the parties, following issues were framed by the trial Court:-

"1) Whether the plaintiff is entitled for recover the suit amount of Rs. 8,00,000/- alongwith interest @ 12% p.a. till realisation as prayed for? OPP

2) Whether the suit of the plaintiff is not maintainable in the present form? OPD

3) Whether the jurisdiction of this Court is barred to entertain and try the suit? OPD

4) Relief."

5. Both the parties led evidence. Trial Court decreed the suit. Plaintiffs were held entitled to recover an amount of Rs. 6,96,640/- along with interest @ 6% per annum from the date it became due till final realisation of the amount.

6. It is relevant to state here that after filing the written statement, defendants lead no evidence despite availing number of opportunities. Evidence of the defendants was closed by order of the Court. The evidence of the plaintiffs remained unrebutted on record. Defendants remained unsuccessful in appeal, which was dismissed vide judgment and decree dated 14.08.2012.

7. I have heard learned counsel for both the parties.

8. T.R. Misra appeared as PW-1 and reiterated the averments made in the plaint. T.R. Misra is working in Misra Engineering Company being its proprietor. MS fabricated materials were supplied to the defendants vide the bills as mentioned in the preceding para of the judgment. He approved the aforesaid bills in his statement by getting the same exhibited as Exs. P-1 to P-14. A copy of the letter which was issued by Sh. Sushil Goyal, Managing Director of the defendant No. 2 has been exhibited as Ex. P-9 to show that the defendants paid an amount of Rs. 2,00,000/- vide DD No. 184119 dated 07.06.2002 and post dated cheque of Rs. 2,00,000/- towards part payment of the total amount. In a way defendants acknowledged the due payment towards them.

9. Learned counsel for the appellants has argued that the Court at Ludhiana has no jurisdiction as the Court at Bhiwandi (Rajasthan) has got jurisdiction to try the issue. The voluminous record Exs. P-1 to P-9 has been proved on record in the nature of bills which reveal that materials were supplied to the defendants vide these bills through Alwar Ludhiana Roadways and through Gill Cargo Movers at Ludhiana. Even Ex. P-6 finds mention the address of the consignors of Ludhiana. The goods were supplied at Ludhiana which were to be taken to Bhiwandi (Rajasthan).

10. Defendants No. 1 and 2 gave demand draft of Rs. 2,00,000/- and post dated cheque of Rs. 2,50,000/- to the plaintiff No. 2 at Ludhiana. It has come in evidence that the cheque was handed over to the plaintiff at Ludhiana. Even the notice sent by the plaintiffs to the defendants was from Ludhiana. The documents revealed that transaction took place at Ludhiana. At the time of tendering these documents by the PW-1, no objection was made by the defendants regarding proof of execution of these documents, nor anything was put in the cross-examination of PW-1. Nothing could be extracted from the cross-examination of the PW-1 to show that these documents are forged and fabricated in any manner. No evidence has been led by the defendants to show that these documents are forged and fabricated by any stretch of imagination. It is a case of no defence by the defendants.

11. The evidence led by the plaintiffs remained unchallenged. Defendants were provided sufficient opportunities to led evidence, but despite availing number of opportunities they could not lead any evidence. Their evidence was closed by order of the Court on 29.09.2010. Learned counsel for the appellants contended that specific denial has been taken by the defendants in the written statement and there is no replication to that effect. The suit at Ludhiana was not maintainable and no findings were even given under issues No. 2 and 3.

12. In order to appreciate the jurisdiction of the Court at Ludhiana, Section 20 CPC has to be perused. The same reads as under:--

"20. Other suits to be instituted where defendants reside or cause of action arises.

Subject to the limitations aforesaid, every suit shall be instituted in Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more an one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution;

or

(c) the cause of action, wholly or in part, arises.

[Explanation].-A corporation shall be deemed to carry on business at its sole or principal office in [India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

13. As per Section 20(c) CPC suits can be instituted where cause of action wholly or in part arises. Apparently cause of action has arisen at Ludhiana in view of supply of materials at Ludhiana. Issuance of Bills at Ludhiana, presentation of demand drafts and post dated cheque of the defendants to the plaintiffs at Ludhiana. Issuance of notice by the plaintiffs to the defendants from Ludhiana. A distinction has to be drawn in view of applicability of different clauses of the Section. Reading of Section 20 CPC shows that unless a case could be brought within the ambit of clause (c), it is the convenience of the defendants which appears to be upper most in the mind of the framers of the Code. That is why clause (a) and clause (b) sought to confer the jurisdiction only on such Courts where defendants reside or carries on business. The explanation (II) in some measure, sought to take into view the convenience of the plaintiffs as well as where it happened to be pitched against Corporation having its head office located at different places.

14. Cumulative effect of interpretation gives rise to a positive case in favour of the plaintiffs that firstly preference has to be given to the cause of action as covered in Section 20(c) CPC and thereafter in case of no applicability, clauses (a) and (b) would come into operation. Reference can be made to Surinder Kumar Arora Vs. The Bengal National Textile Mills Ltd., AIR 1978 P&H 156 : (1977) 2 ILR (P&H) 761 : (1977) 79 PLR 555 of the judgment reads as under:-

"9. I am afraid this plea of the learned counsel does not carry conviction with me. If the cause of action, wholly or in part, had arisen within the jurisdiction of a given Court, then it is superfluous for the party to invoke either clause (a) or clause (b), for then the matter would squarely fall within the ambit of clause (c). It is only when the case does not fall within clause (c) that it has to be seen whether it falls within the ambit of clauses (a) or (b).

10. A plain reading of Section 20 would show that unless a case could be brought within the ambit of clause (c), it is the convenience of the defendant which appeared to be uppermost in the mind of the framers of the Code. That is why, clauses (a) and (b) sought to confer the jurisdiction only on such Courts where the defendant or the defendants resided or carried on business etc. Explanation II, in some measure, sought to take into view the convenience of the plaintiff as well where it happened to be pitched against a Corporation having, apart from its head-office, Branch Offices located at different places, for in such a case, so far as the Corporation as a defendant is concerned, it would not be inconvenienced for the reason that it happened to have its Branch Office at the place on the Courts whereof Explanation II read with clause (a) sought to confer jurisdiction

in a suit against it."

15. There is a specific mention in the bills Exs. P-1 to P-5 that only Ludhiana has the territorial jurisdiction. The bills were subject to Ludhiana jurisdiction only. If more than one place has got jurisdiction by way of any interpretation of document, then both the places have the territorial jurisdiction. In a case where purchase orders were placed by the plaintiff with the defendant at place "A" and advance payment was also made at place "A", however bill contained a condition that all the disputes were subject to jurisdiction of place "B" then it was held by our own High Court that the civil courts at places "A" and "B" have the jurisdiction to entertain and try the suit and parties were entitled to exclude jurisdiction of Court at place "A" by entering into agreement and, therefore, civil court at place "B" was held competent to try the suit. By relying upon A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, AIR 1989 SC 1239 : (1989) 2 ARBLR 340 : (1989) 2 JT 38 : (1989) 1 SCALE 633 : (1989) 2 SCC 163 : (1989) 2 SCR 1(1) : (1989) 2 UJ 80 held the aforesaid proposition. Taking stock of the situation from this angle also, it is found that Court at Ludhiana has got jurisdiction.

16. In view of objection taken by the defendants, it is necessary to have a glance on para No. 5 of the plaint which reads as under:-

"5. That the contract for supply of goods was concluded at Ludhiana; all the payments were received at Ludhiana; Remaining payments were also to be received at Ludhiana; Cheque was presented at Ludhiana; plaintiffs work for gain at Ludhiana. Hence the civil courts at Ludhiana have the jurisdiction to entertain, try and decide the suit."

17. In reply to this para the written statement of the defendants reads as under:-

"5. That para No. 5 of the plaint is incorrect and false. It is incorrect that the contract for supply, payments of the same etc. were concluded at Ludhiana and the cheques presentation and work for gain at Ludhiana are all incorrect, false, vague and denied as all were concluded at Bhiwardi. Hence regarding the entertaining any try the same by this Hon"ble Court is also incorrect, false, vague and hence denied."

18. Perusal of aforesaid written statement reveals that evasive reply has been filed which was subsequently found to be false on the basis of evidence led by the plaintiffs. The execution of documents has not been objected to by the defendants by making any objection. Documents were duly exhibited without any objection of the defendants. Ex parte evidence of the plaintiffs was sufficient to dislodge the objection of the defendants in the written statement. Findings recorded under different issues much less issues No. 2 and 3 are based on evidence. Moreover onus of these issues was on the defendants. Since defendants have not led any evidence, therefore, they cannot turn around and say that these issues have been wrongly decided by the Courts below.

19. Trial Court in para 9 of the judgment has specifically given findings that onus of these issues was upon the defendants, but they have not led any evidence nor these issues were pressed by anyone appearing on their behalf, therefore, defendants, miserably failed to discharge their onus and both the issues were decided against the defendants and in favour of the plaintiffs. Such findings cannot be held to be illegal by any stretch of imagination.

20. In view of Full Bench judgment of this Court in Ganpat v. Smt. Ram Devi and others 1977, PLR Page I, framing of question of law was having no effect on the maintainability of the appeal. However, in view of amendment of Section 100 CPC, framing of substantial question of law is sine qua non for maintaining regular second appeal in this Court. Prior to amendment, the appeal could have been filed on the ground set out in clause (a) to (c) of Section 100(i) CPC. Now second appeal requires substantial question of law to be framed. The interference cannot be made only because the order is contrary to law, but when the disputed issues raised a substantial question of law. Limiting such a power in the Appellate Authority is based on public policy having roots in the maxim of "interest reipublicae ut sit finis litium".

21. Adhering to the aforesaid requirement, in grounds of appeal the appellants have formulated following questions of law:-

"i. Whether the plaintiff can take the credit of the contract entered into between the defendants and M/s. Mishra Boilers Pvt. Ltd.?

ii. Whether the absence of proof regarding the proprietorship/ownership by Sh. T.R. Mishra this suit should have been allowed?

iii. Whether the courts at Ludhiana had the territorial jurisdiction to try this suit?

iv. Whether the case in the absence of the defendant's evidence need to be remanded to the trial court for leading evidence?

v. Relief."

22. Question No. 1 has been adequately answered in the statement of PW-1 when TR Misra on being recalled for cross-examination has deposed that he is director of M/s. Misra Boilers Pvt. Ltd., and Proprietor of M/s. Misra Engineering Company. There was a contract between M/s. Misra Boiler Pvt. Ltd., and the defendants. He volunteered that it was also with M/s. Misra Engineering Company. The evidence of PW-1 went un rebutted, therefore, defendants cannot project the aforesaid fact as question of law, rather a question of fact which was duly replied and endorsed in the statement of PW-1, when recalled for cross-examination.

23. Question No. 2 has to be read in the context of question No. 1 and is also based on statement of PW-1 T.R Misra. Question No. 3 in respect of territorial jurisdiction has been discussed in preceding para with reference to Section 20(c) CPC and on the basis of precedents cited in preceding para. This question of law

also stands answered in affirmative that Court at Ludhiana has territorial jurisdiction. Question No. 4 has to be answered in negative in the absence of any evidence from the defendants, as ex parte evidence led by the plaintiffs has to be appreciated. Plaintiffs have to stand on their own legs. Overwhelming evidence adduced by the plaintiffs remain un rebutted. Court has no option except to decree the suit.

24. In view of aforesaid finding of fact recorded by both the Courts below, the alleged legal position as depicted by the appellants in formulating of substantial questions of law has to be answered for the cause of plaintiffs.

25. Taking into consideration the facts and circumstances of the case, I am of the considered view that the defendants/appellants have miserably failed to prove their case. Consequently, the appeal is found to be bereft of merits and the same is hereby dismissed, leaving the parties to bear their own costs.