
(2019) 12 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 4444 Of 2019

Ajay Bandu Darekar And Ors

APPELLANT

Vs

Adhikrao Baburao Deshmane And Anr

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 19, 20, 20(c), Order 7 Rule 11
Constitution Of India, 1950 — Article 227

Citation : (2019) 12 BOM CK 0018

Hon'ble Judges : N.J. Jamadar, J

Bench : Single Bench

Advocate : Rahul Shivaji Kadam, Amrut Joshi, Akhil Ashok Kupade

Final Decision : Dismissed

Judgement

1. Rule. Rule made returnable forthwith. With the consent of the Counsels for the parties, heard finally.

2. This petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order passed by the learned Civil Judge, Senior Division, Islampur on an application for rejection of plaint (Exhibit-16) in Special Civil Suit No.4 of 2016, whereby the learned Civil Judge was persuaded to reject the application preferred by the petitioners - defendants.

3. Shorn of superfluities, the background facts, necessary for the determination of this petition, can be stated as under:

(a) Defendant no.1 had made a representation to the plaintiffs that he was the power of attorney of Sou. Kalpana Devidas Bonde and Devidas Kundalik Bonde, who owned the land bearing Gat No.988 admeasuring 7 H. 41 Are ('the suit land') situated at Mouje Darvali, Taluka Mulshi, District Pune. Defendant no.1 professed to sell an area admeasuring 40 Are out of the suit land for a consideration of Rs.60,11,000/-. The plaintiffs were made to part with Rs.18,00,000/- towards consideration, in part.

(b) It transpired that defendant no.1 had no power to either represent the owners of the suit land or execute the conveyance, and the power of attorney shown to the plaintiffs was a fabricated document, to the execution of which the defendant nos.2 and 3 were shown as witnesses. As the fraud was unearthed, the plaintiffs confronted defendant no.1 and, thereupon, defendant no.1 executed a document on a stamp-paper of Rs.100/- denomination, on 14th March, 2014 and acknowledged the receipt of the consideration of Rs.18,00,000/- and assured to return the same.

(c) Defendant no.1, however, failed to repay the entire amount, and a sum of Rs.2,00,000/- remained outstanding. Defendant no.1 delivered a cheque towards repayment of the said amount. However, it was returned unencashed. Hence, the plaintiffs instituted the suit before the Civil Judge, Senior Division, Islampur, for recovery of the said amount of Rs.2,00,000/-, additional amount which was agreed to be paid to compensate the plaintiffs and, damages for the injury suffered by the plaintiffs.

(d) Defendant nos.1 and 2, preferred an application purported to be under Order VII order 11 of the Code on the ground that no part of the cause of action arose within the limits of the jurisdiction of the Court at Islampur. The suit property was located at Mouje Darvali, Taluka Mulshi, District Pune. The agreement for sale in respect of the suit property was concluded at Pune. Defendant no.1 had agreed to repay the amount which was allegedly paid by the plaintiffs, as the transaction did not materialise, at Pune. Nor the defendants reside within the jurisdiction of the Court at Islampur. Thus, the Court at Islampur had no jurisdiction and, therefore, the plaint was liable to be rejected.

(e) The learned Civil Judge, after consideration of the material on record and submissions of the parties, was persuaded to reject the application. The learned Civil Judge was of the view that the suit has not been instituted by the plaintiffs for the specific performance of the contract for sale nor for recovery of the amount thereunder. The plaintiffs have also claimed compensation for the injury caused to the plaintiffs on account of the acts and conduct of the defendants. The fact that the plaintiffs had also sought the refund of the outstanding amount was not of determinative significance. The learned Judge adverted to the provisions contained in Section 19 of the Code, and concluded that suit being essentially one for wrong to the person of the plaintiffs, the plaintiffs could legitimately institute the suit either in the Court within the local limits of which the wrong was done or where the defendants reside or carried on business or personally worked for gain. Opining that the wrong to the person of the plaintiffs was caused within the local limits of its territorial jurisdiction, the learned Civil Judge held that the Court at Islampur had jurisdiction to try the suit.

4. Being aggrieved by and dissatisfied with the impugned order the defendants - petitioners have invoked the writ jurisdiction of this Court.

5. I have heard Mr. Kadam, the learned Counsel for the petitioners and Mr. Joshi,

the learned Counsel for the respondents - original plaintiffs, at some length. With the assistance of the learned Counsels for the parties I have perused the material on record, especially the averments in the plaint.

6. As the application was preferred by the petitioner for rejection of plaint, under Order VII Rule 11 of the Code, what really matters, and is of determinative significance, is the averments in the plaint. In view of the provisions contained in Rule 11 of Order VII the Court would be empowered to reject a plaint where it does not disclose the cause of action, the relief claimed is under valued and despite direction the valuation is not corrected within the time stipulated by the Court, is insufficiently stamped and the deficiency is not rectified within the time fixed by the Court, barred by any law, or the plaintiff fails to enclose the required copies of the plaint and fails to comply with the provisions of Rule 9. Secondly, the stage of the proceeding does not matter. The power to reject a plaint can be exercised either before registering the plaint, or after the defendant appeared before the Court and prays for rejection or any time thereafter, but before the conclusion of the trial.

7. It is also trite that the grounds raised by the defendant for the rejection of the plaint are of utility only for the purpose of ascertaining as to whether the plaint suffers from the infirmities which warrant its rejection. The averments in the application for rejection of plaint, or for that matter, the written statement are, otherwise, immaterial. The Court is duty bound to carefully examine the averments in the plaint in a meaningful manner to appreciate as to whether it does disclose a cause of action, when the non-disclosure of the cause of action is pressed into service by the defendant.

8. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman vs. Ponniamman Educational Trust represented by its Chairperson/Managing Trustee (2012) 8 SCC 706., wherein, after reference to the previous pronouncements, the following position was expounded.

"11. It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property (1998) 7 SCC 184) and Mayar (H.K.) Ltd. v. Vessel M. V. Fortune Express (2006) 3 SCC 100)."

(emphasis supplied)

9. In the said case, the Supreme Court also referred to its previous

pronouncement in the case of T. Arivandandam vs. T. V. Satyapal (1977) 4 SCC 467., wherein the necessity of a meaningful reading of the plaint was tersely enunciated. Paragraph 12 of the aforesaid judgment in the case of Church of Christ (supra) reads as under:

"12. It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal(1977) 4 SCC 467, wherein while considering the very same provision i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this Court has reminded the trial Judges with the following observations (SCC p.470, para 5)

"5. ... The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Chapter XI) and must be triggered against them."

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J. in the abovereferred decision, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code."

(emphasis supplied)

10. In the backdrop of the aforesaid legal position, reverting to the facts of the case, it appears that the territorial jurisdiction of the Civil Judge, Senior Division, Islampur, was sought to be questioned on the premise that the entire transaction between the plaintiff and defendant no.1 had occurred within the local limits of the jurisdiction of the Court at Pune, and no part of the cause of action arose within the limits of the Court at Islampur. Strictly speaking, it is not the case of the defendants that the plaint does not disclose a cause of action. At best, the case of the petitioners - defendants was that, though there was a cause of action for institution of the suit, yet, the same arose within the jurisdiction of the Court at Pune and, therefore, the plaint was liable to be rejected. Ex facie, it appears that the grounds raised by the petitioners would, if accepted, warrant return of the plaint for presentation to the proper jurisdictional Court. A case for rejection of the plaint was thus not made out.

11. Nonetheless, since the learned Civil Judge has recorded a finding that the suit being one for a wrong to the person of the plaintiffs, the provision contained in

Section 19 of the Code would come into play and the plaintiffs had the option to institute the suit where the cause of action arose or the defendants were residing or gainfully working, the legality and correctness of this approach of the learned Civil Judge warrants consideration.

12. To begin with, it may be apposite to note the substance of the averments in the plaint. The plaint proceeds on the premise that pursuant to the representations of the defendants, the plaintiffs had parted with an amount of Rs.18,00,000/- towards part consideration for the sale of the suit land. The defendants had acknowledged the receipt of the said amount by executing a receipt dated 14th March, 2014. Out of the said amount, an amount of Rs.16,00,000/- was repaid to the plaintiffs. A cheque drawn towards the balance amount of Rs.2,00,000/-, on the IDBI Bank, was returned unencashed twice when presented at the payees bank at Islampur. The plaintiffs were made to pursue the matter and visit Pune and suffer physical pain and mental agony. The defendants, thus, agreed to pay an additional amount of Rs.1,50,000/-. However, the defendants did not honour their commitment and harassed the plaintiffs. Hence, the plaintiffs were constrained to institute the suit for recovery of the amount so agreed to be paid, the interest for utilization of the amount of Rs.18,00,000/- for a considerable period by the defendants, and for the damages for the physical and mental harassment caused to the plaintiffs. As the defendants had acknowledged the receipt of the amount by executing a receipt, within the jurisdiction of the Court at Islampur, it was averred that the Court had the jurisdiction to entertain and try the suit.

13. In the backdrop of the aforesaid averments the learned Civil Judge was of the view that the suit was also for compensation for wrong to the person of the plaintiffs and, thus, the plaintiffs had the option to choose the Court in which the suit could be instituted under Section 19 of the Code. Sections 19 and 20 of the Code read as under:

"Section 19. Suits for compensation for wrongs to person or movables.

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Section 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 a 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 than 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 works for gain, as aforesaid, acquiesce in such institution; or

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

14. On a plain reading, it becomes evident that Section 19 specifically deals with a suit for compensation for wrong done to the person or to movable property. The later part of Section 19 indicates that, in a given case, where the wrong was done within the local limits of jurisdiction of one Court and the defendants reside or carry on business or personally work for gain, within the local limits of the jurisdiction of the another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts. For the applicability of the later part of Section 19, two conditions must co-exist. One, the wrong to the person or movable property must have been done within the local limits of the jurisdiction of one Court. Two, the defendant, who is alleged to have caused such wrong, must reside or carry on business etc. within the local limits of the jurisdiction of the another Court. If these twin conditions are satisfied the plaintiff has the option to sue the defendant in the Court at either of those places.

15. The second condition of the residence or presence of the defendant is, in a sense, objective and does not present much difficulty. The phrase "if the wrong was done", however, has an element of subjectivity and the facts of the given case have a bearing on its import. The words "wrong done", if properly construed, do not appear to have been used in a restricted sense. The said words are required to be so construed as to subsume in its fold even the consequences of the wrongful action and thereby afford the aggrieved party the choice of forum to seek the relief. It viewed through this prism, the phrase 'wrong done' includes the act which is wrongful and the consequences it entails upon the person who is affected by the said wrong and the place where those consequences ensued.

16. Section 20, on the other hand, is of residuary nature. It begins with the words "Subject to the limitations aforesaid". If a case is covered by Section 19, then it may exclude the applicability of the residuary provision under Section 20 as it would then constitute a 'limitation' referred to by the words 'Subject to the limitations aforesaid'.

17. The aforesaid aspect was considered by this Court in the case of State of Maharashtra (Original Defendant) vs. Sarvodaya Industries, Akola 1974 MhLJ 967., wherein it was alleged that the plaintiffs had suffered loss at Akola district, where they were carrying on business, on account of an order, passed by the Collector, of prohibiting movement of the raw material outside the Akola district. This Court held that the damage that was suffered by the plaintiff was the part of cause of action i.e. the wrong done and that it arose within the jurisdiction of

Akola district. Though, the complaint of the plaintiff was against the action of defendant no.2 (Collector), being without the limits of the Akola Court, it follows that as the plaintiff was affected by that action for all purposes in his business within the jurisdiction of that Court, all the requirements of Section 19 of the Code were fully answered and the suit was properly laid in Akola Court.

18. The nature of the provisions of Sections 19 and 20 and interplay between them was expounded by this Court, as under:

"13. Provisions of Section 19 are specific in subject and clear in its operation. Firstly, it governs a suit seeking restitutive reliefs of compensation on the basis of wrong done to the person or to movable property. Secondly it offers and furnishes option or choice if the conditions indicated by the qualifying clause are satisfied in that wrong complained of was done within the local limit of one Court while the defendant in fact resides or carries on business within the local limits of jurisdiction of another Court. Unless both these conditions together are available no question of option or choice for forum can conceivably arise. The conjunction "and" in the qualifying clause is very much indicative of this result. Leaving aside the cases where these conditions together are not available, the matters of such suit are still governed by other provisions of the Code. It is noticeable that in the body of Section 19 the phrase "the cause of action, wholly or in part" has not been used and it only finds place in Section 20 of the Code. In a suit for compensation "wrong done" or "complained of" is the cause of action by which Code understands and contemplates all the bundle of necessary facts capable on proof of sustaining the relief claimed. Compensation clearly posits or injury resulting in loss and damage. Mere injury on wrong without anything more would not suffice to sustain the claim for compensation. It is clear that the phrase "wrong done" is not used in any narrow sense but has to be understood in all its amplitude so as to afford forum and necessary relief. That clearly takes in both cause and effect. Injury or act actual wrong may occur at place 'A' but its effect may be felt at places other than 'A' and may affect places 'B' or 'C'. Act or actions taking place at a given place may still give rise to results affecting persons or property at places quite different and at all these places and for all those effects, cause would arise seeking compensation. Without resultant loss or its proof restitutive justice may not afford any relief nor there could be any remedy in vacuum. Thus the phraseology used by Section 19 about "the wrong done" would clearly take in not only the initial action complained off but its resultant effect.

14. Putting the matter in terms of Section 20(c) the resultant damage would surely be the part of cause of action and would feedback the answer for jurisdiction. Assuming, therefore, that both Sections are to be read together the same would indicate a overlapping which is not at all attributable to such legislative scheme. It is enough to answer that Section 19, which deals with cases of compensation for wrong done to the person or movable property, is wide enough to take in those places where plaintiff or person complaining actually suffered the loss because of the alleged wrongful act notwithstanding the place

of such wrongful act clearly furnishing place of action. The phrase "wrong done" is indicative of completed action as stated supra and is wide enough to take in the results as the basis for the purposes of restitution. The Court within whose local jurisdiction damage was caused or suffered or sustained would clearly answer the requirements of Section 19 for the purposes of suits mentioned therein. The matters of option afforded are not relevant nor decisive for this purpose nor the provisions of section 20(c). The extract of provisions of the sections 20 (supra) by its opening part indicates that section 19 is striated as limitation upon the generality of the provisions of Section 20 itself. Reading both sections together if a case is not squarely answered by the earlier sections then it may still be answered by Section 20 itself. It's term are thus residuary. Turning to suits for compensations, if any narrow constructions to be placed on the phrase "wrong done" available in Section 19 then the matter still can be answered by Section 20(c) of the Code. For then Section 19 would indicate and only operate as "part of cause of action" having in mind only the initial act or cause indicated by "wrong done" and not its effect and though the latter as of necessity must be established to have relief, for that reliance will have to be placed on the intendments of clause 20(c) of the Code. Such dichotomy is not indicated nor such exercise necessary for in the structure of Section to itself both parts of cause of action, i.e., the initial act and its effect are capable of being worked out. Therefore, by its contemplation a suit fled in a Court within the local limits of whose jurisdiction the damage was suffered would still uphold its jurisdiction."

(emphasis supplied)

19. A useful reference can also be made to another judgment of this Court in the case of Khandchand Pokarda (defendant) vs. Harumal D. Varma 1965 MhLJ 143., where a complaint was fled against the plaintiff (accused) alleging criminal misappropriation and criminal breach of trust in the Court of Presidency Magistrate, Bombay and summons was served on him at Pune. After the complaint was dismissed, the plaintiff instituted the suit for damages for malicious prosecution in the Court at Pune. On objection to the jurisdiction of the Court at Pune being taken by the defendant (complainant) this Court held that the fact that summons in the criminal case was served on the plaintiff at Pune gave jurisdiction to Pune Court to try the suit.

20. This Court referred to the provisions of Section 19 of the Code and, inter alia, observed as under:

"3. What is required under section 19 of the Civil Procedure Code is that the wrong to the person must have been done to the plaintiff within the local limits of the jurisdiction of the Court in which the suit to recover damages for the said wrong is instituted and in a given case a wrong may consist of a series of acts. It is clear that a malicious prosecution is in essence a malicious abuse of the process of the criminal Court, and if such abuse of the process of the criminal Court is made at a particular place by serving that process upon the person, who

was maliciously prosecuted, the wrong could be said to have been done at the place where the person was served with the summons. It is one thing to say that it is not necessary for the plaintiff claiming damages for malicious prosecution, to establish that he was actually served with the summons in the criminal case, but it is quite a different thing to say that the service of summons, if one has been done, cannot be regarded as part of the prosecution. If the essence of the malicious prosecution is a malicious abuse of the process of the criminal Court then it is obvious that service of the said process of the criminal Court upon a person will be a part of the prosecution. It is, therefore, clear that the Court within the local limits of whose jurisdiction that part of the wrong was done will have jurisdiction to entertain the suit for malicious prosecution. In my view, therefore, the learned trial Judge was right in taking the view that the summons in the criminal case having been served upon the plaintiff at Poona, he had jurisdiction to entertain the suit under section 19 of the Civil Procedure Code."

(emphasis supplied)

21. The pronouncement in the case of Sarvodaya (supra) was followed by another learned Single Judge of this Court in the case of Mallikarjun Transport vs. Dr. Babasaheb Ambedkar Sahakari Sakhar Karkhana Ltd., Keshegaon, Osmanabad 2010(5) MhLJ 547., to uphold the territorial jurisdiction of the Court at Aurangabad, even though the vehicles were detained at Osmanabad, on account of which, the plaintiff therein had suffered loss in its business at Aurangabad.

22. In the light of the aforesaid legal position, readverting to the facts of the case, it is indubitable that the plaintiffs are neither seeking the specific performance of the contract for sale nor the refund of the amount thereunder. The plaintiffs have based their claim on the acknowledgment of liability, and agreement to pay, the said amount, which was allegedly made within the limits of the Court at Islampur. It is the plaintiffs further claim that on account of the failure and refusal of defendant no.1 to pay the balance amount and the additional amount, agreed to be paid towards the compensation, the plaintiffs suffered physical and mental harassment, pain and agony within the local limits of the jurisdiction of the Court at Islampur. Thus, the twin conditions of the plaintiffs having suffered wrong within the jurisdiction of the Court at Islampur and the defendants residing at a place beyond the local limits of the jurisdiction of the Court at Islampur, are satisfied.

23. Whether the plaintiffs, in fact, suffered injury and loss and are entitled to compensation for the same are the matters for adjudication. However, it cannot be said that the claim of the plaintiffs of having suffered the wrong within the local limits of the jurisdiction of the Court at Islampur is not disclosed by the averments in the plaint.

24. In this view of the matter, the learned Civil Judge was justified in recording a

finding that Section 19 of the Code governed the situation at hand and, thus, the institution of the suit at Islampur, in exercise of the option contained therein, was in order.

25. For the foregoing reasons, no interference is warranted in the impugned order in exercise of the extra-ordinary jurisdiction. Hence, the following order.

: O r d e r :

The petition stands dismissed.

There shall be no order as to costs.

Rule stands dscharged.