
(2007) 01 OHC CK 0043
In the Orissa High Court

Ashwini Ku. Bohidar

APPELLANT

Vs

Satyendranath Dash and Others

RESPONDENT

Date of Decision : 18-01-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20

Citation : (2007) CLT 663 Supp : (2007) 1 OLR 283 : (2007) 1 OLR 207 :
(2007) OLR 283

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The question which needs to be determined in this writ petition is as to whether the parties, by an agreement, can confer a jurisdiction on a Court which it otherwise lacks.

2. Bereft of unnecessary details, the short facts leading to filing of the present writ petition are as follows:

The opposite parties, employees of State Bank of India as plaintiffs, filed Civil Suit No. 57 of 2003 before the learned Civil Judge (J.D.), Sambalpur praying for the following reliefs:

I. The election and publication of the result of the office bearers of State Bank of India Staff Association, Sambalpur unit held 29.3.2003 be declared null and void; and

II. The voters' list published on 26.3.2003 be declared as incomplete.

3. The defendants appeared in the Court and filed their written statement taking the stand that the Civil Court at Sambalpur had no jurisdiction to entertain the suit in view of Clause-55 of the Rules and Constitution of the SBI Staff Association (hereinafter referred to as the "Rules") which enumerates that no civil suit shall be maintainable at any centre other than the centre where the circle-headquarters of the association situates.

4. On the basis of the pleadings, the Court below framed seven issues for adjudicating the suit. Issue No. 7 reads as follows:

Whether in view of Clause-55 of ,Rules and Constitution of SBI Staff Association, the jurisdiction of this Court is ousted ?

On the basis of a petition filed by the defendants, the said issue was taken up for preliminary hearing. The trial Court, by order dated 1.9.2004, relying upon Clause-55 of the Rules, came to the conclusion that Bhubaneswar being the Circle Headquarter and Calcutta being the place of Registered Office, the suit could only be filed at either of the said two places. Thus, the suit filed at Sambalpur, which place was only a unit of the circle, was held not maintainable. Consequently, the plaint was returned back to the plaintiffs as per the provisions of Order-7, Rule-10 of the CPC.

5. Being aggrieved, the plaintiffs preferred an appeal, which was registered as FAO No. 138/2 of 2004/05. The said appeal was heard and disposed of by the Additional District Judge, Sambalpur, vide judgment dated 12.9.2006. The Appellate Court, after discussing the facts and referring to Clause-55 of the Rules, observed that the averments made in the plaint revealed that all allegations were made against respondents 1 and 2, who were office bearers of State Bank of India Staff Association, Sambalpur. Respondent No. 3 had been impleaded to the suit being a proper party, the cause of action having arisen at Sambalpur and the main relief claimed in the suit being against respondents 1 and 2, who were admittedly employees of State Bank of India, Sambalpur Branch, the Court at Sambalpur had the jurisdiction to try the suit. It was further held that an agreement between the parties could not confer jurisdiction upon a Court which did not possess the same. Relying upon the ratio of the decision in the case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, as well as other decisions, the Appellate Court held that the cause of action for filing the suit having arisen at Sambalpur and as no other Court except the Court at Sambalpur had jurisdiction to entertain the suit as per Section 20 of the CPC, Clause-55 of the Rules not come to the aid of the respondents. With the aforesaid observation, the appellate Court allowed the appeal and set aside the order of trial Court with direction to the said Court to proceed to dispose of the suit by giving findings on all the issues. The said judgment is assailed in this writ petition.

6. According to the learned Counsel for the petitioner, the Appellate Court acted illegally and with material irregularity in not coming to the conclusion that in view of Clause-55 of the Rules, the suit was maintainable only at the places where the Registered Office/Circle Headquarters of the Association situate. In the case at hand, the suit ought to have been filed either at Bhubaneswar or at Calcutta, and the suit filed at Sambalpur was not maintainable. He further strenuously submits that the dispute in the suit related to an election held in the year 2003. Three years having already passed in the meantime, and the decree that may be passed in the suit now, would be inoperative due to efflux of time,

the suit itself had become infructuous and, even on that ground the suit ought to have been dismissed.

7. Dr. Rath, learned Counsel appearing for the opposite parties, on the other hand, submitted that the sole dispute among the parties is with regard to preparation of voters' list. Till a decision is rendered by a competent Court either upholding or rejecting the allegation with regard to irregularities committed during preparation of voters' list, the cause of action survives and thus the submission that the suit had become infructuous is not tenable. According to the learned Counsel if two or more Courts have jurisdiction to entertain a suit, then by agreement, parties can opt to file the suit in one of such Courts, thereby ousting the jurisdiction of other Courts. In other words, according to him, even if a Court lacks initial jurisdiction to try a suit, by agreement such jurisdiction can be conferred upon the said Court. He, in substance, submitted that the Appellate Court having rightly analyzed the materials available and the law on the point, and the conclusions arrived at by it just, proper and in consonance with the ratio of the decision of the Supreme Court in the case of *A.B.C. Laminart Pvt. (supra)*, it is a fit case where this Writ Petition may be dismissed in limine.

8. I have heard learned Counsel for the parties at length and have also perused the pleadings and the relevant clause, i.e. Clause-55 of the Rules quoted in extenso by the trial Court in its order. A Court has to always keep in mind that there is difference between a Court lacking initial jurisdiction on account of some statute or other; and two or more Courts having jurisdiction, but the parties through agreement having decided to seek remedy in any one of the said Courts.

9. Law is well settled that a party is bound either by provisions of their own Constitution, statutory provisions or any rule or the terms of any contract which is not against the public policy (See *Shriram City Union Finance Corporation Ltd. v. Rama Mishra* 94 (2002) CLT 409 (SC) : 2001 (I) OLR 164 (SC) . It is open to the parties, for their convenience, to fix the jurisdiction on any competent Court to adjudicate their disputes. In other words, if one or more Courts have jurisdiction to try a suit, it is open to the parties to choose any one of the said Courts competent to decide the disputes by agreement. Such eventuality will occur only when two or more Courts have, under the Code of Civil Procedure, jurisdiction to try a suit or proceeding. However, in a case where only one Court has jurisdiction to try the suit in consonance with the provision of Code of Civil Procedure, by agreement the parties cannot confer jurisdiction on another Court which lacks the initial jurisdiction. This view of mine also finds support from the decision of this Court in the case of *Patnalk Industries (Pvt.) Ltd. v. Kalinga Iron Works and Anr.* reported in 1984 (1) OLR 532.

10. In the case at hand, as has been rightly observed by the Appellate Court, the entire allegations are against defendants 1 and 2. The cause of action, as would be evident from the pleadings, arose at Sambalpur and the voters list was also prepared at Sambalpur. Thus no other Court has the jurisdiction to decide the dispute. Even otherwise, whether a Court has jurisdiction or not depends on the

facts of a particular case. Thus issue No. 7 Involved mixed questions of fact and law and could not be decided as a preliminary issue, as has been held by the appellate Court.

11. In view of the narrations made above, I find no infirmity or illegality in the conclusion arrived at by the Appellate Court and also find no reasons to interfere with its order impugned. The writ petition is accordingly disposed of directing the trial Court to decide all the issues on merit without being influenced by any of the observations made either by the Appellate Court, or this Court. So far as the contention as to the suit having become infructuous is concerned, liberty is granted to the defendants to take the said plea before the trial Court, by filing appropriate petition which shall be decided on its own merit, and strictly in consonance with law.