
(2002) 06 BOM CK 0046

In the Bombay High Court

Case No : Civil Revision Application No. 708 of 2002

Balasaheb S. Landge

APPELLANT

Vs

Gurudayal Singh Mander and Others

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 24
Contract Act, 1872 — Section 28

Citation : (2002) 4 ALLMR 62 : (2003) 1 ARBLR 181 : (2002) 50 BLJR 2532 :
(2002) 4 MhLj 562

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : Ani, V. Anturkar, for the Appellant; Respondent Nos. 13 and 19 served, for the Respondent

Final Decision : Allowed

Judgement

R.M.S. Khandeparkar, J.—Heard Advocate for the applicant. None present for the respondents, though served. Notice was issued for final disposal of the matter at the admission stage and the respondents have chosen to remain absent.

2. The applicant challenges the order, dated 4-3-2002, passed by the trial Court in R. C. Suit No. 63 of 2001, dismissing the objection raised by the applicant regarding jurisdiction of the Court at Pune to entertain and try the suit. The objection was mainly on the ground that the parties having agreed for exclusive jurisdiction of the Court at New Delhi, it is not permissible for the plaintiff (respondent No. 1 herein) to file the suit in the Court at Pune.

3. The suit has been filed for declaration that the election of the defendant No. 1 to the post of President and the consequent nomination of the defendant Nos. 2 to 15 as the office bearers and of the defendant Nos. 16 to 24 as the members of the executive committee of the defendant No. 29 in the special meeting of the general council of the defendant No. 29 at Pune on 18-4-2001 are all illegal and

ultra vires the provisions of the Constitution of the defendant No. 29 and as such are liable to be set aside, and further for permanent injunction to restrain the defendant Nos. 1 to 24 from claiming themselves or acting as the office bearers/members of the executive committee of the defendant No. 29. Pursuant to the service of summons, the defendants filed an application u/s 9A of the Code of Civil Procedure, 1908, raising preliminary objection regarding the territorial jurisdiction of the Court at Pune to entertain and try the suit, filed by the respondent-plaintiff. The trial Court, by the impugned order, rejected the said objection and hence the present petition.

4. While assailing the impugned order, the learned Advocate for the applicant submitted that though the preliminary objection regarding jurisdiction was raised on various counts, the trial Court considering the fact that there was an agreement between the parties for the exclusive jurisdiction of the Court at New Delhi in relation to the suits to be filed against the defendant No. 29, the trial Court ought to have held that the Court at Pune has no jurisdiction to entertain the suit. In the regard, reliance is placed in the decisions of the Apex Court in the matters of *Globe Transport Corporation Vs. Triveni Engineering Works and Another*, and *M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company*, , as well as the decision of the Andhra Pradesh High Court in the matter of *Sponge Iron India Ltd. Vs. Andhra Steel Corporation Ltd.*, .

5. The pleadings in the plaint are clearly to the effect that all the members/units affiliated to WFI are bound by the terms contained in the Constitution of the defendant No. 29 and on account of various acts on the part of the respondents, alleged in the plaint, it is the case of the plaintiff that his rights under the Constitution of WFI are affected and prejudiced and that those acts are ultra vires of the provisions contained in the Constitution of WFI. It is also not in dispute that Article XXIV under the heading Miscellaneous and Clause (h) thereof provides that.

"The federation may sue or be sued in the name of Secretary General WFI. A law suit can only be filed at New Delhi, Headquarters of WFI."

6. The Apex Court in the matter of *Globe Transport Corporation (supra)* has clearly observed that it is now settled law that though it is not competent to the parties by agreement to invest a Court with jurisdiction which it does not otherwise possess but if there are more than one forum where a suit can be filed, it is open to the parties by agreement to select a particular forum and exclude the other forums in regard to claims which one party may have against the other under a contract.

7. The Division Bench of the Andhra Pradesh High Court while considering a similar point and while dealing with the clause "this order in all respects shall be subject to the jurisdiction of the Bangalore Courts" observed that "This condition does not, in our opinion, oust the jurisdiction of any other Court than Bangalore,..... in the absence of the words "only" or "alone" does not have the

effect of ousting any other Court of its jurisdiction which it otherwise had."

8. Considering Article 24(h) of the Constitution of WFI, the defendant No. 29, and admittedly the suit being essentially filed on the ground that there is violation of the provisions of the Constitution of WFI in the process of election of the defendants for various posts of the executive committee of the WFI, apparently it is the case of the plaintiff himself that all the members are bound by the provisions of the Constitution of WFI in the matter of election of the executive committee of the defendant No. 29. Certainly, the plaintiff is not excluded from complying with the provisions of Article 24(h) of the Constitution of WFI dealing with the matter of filing of suits against the defendant No. 29. Being so, and as the law being very clear on the point of jurisdiction to entertain the suit in cases where the parties have selected on forum and excluded other, and in the case in hand the cause of action having said to have arisen on account of the alleged violation of the process of election to the executive committee of the defendant No. 29 at Pune, the Courts at New Delhi as well as Pune will have jurisdiction to entertain such a suit, but on account of Article 24(h) it will stand restricted to the Courts at New Delhi, to the exclusion of the Court at Pune.

9. It is not the case of the plaintiff that the clause relating to exclusive jurisdiction of the Courts at New Delhi was not voluntarily accepted by the plaintiff or that it will cause irreparable loss or prejudice to the plaintiff if the plaintiff is compelled to file the suit at New Delhi and no such issue was sought to be raised before the trial court while dealing with the point of jurisdiction of the Court at Pune.

10. The law being well settled on the issue which was sought to be raised and considering the phraseology of Article 24(h) it is to be held that in case of any suit complaining of violation of the provisions of the Constitution of WFI, such suit has necessarily to be filed in a Court at New Delhi irrespective of the fact that the cause of action may arise at any other place in the country and being so, the Court at Pune will have no jurisdiction to entertain the present suit,

11. A perusal of the impugned order discloses that the Court below though was fully aware of the Article 24(h) has held that the Court at Pune has jurisdiction to entertain the suit on the ground that the defendant No. 29 is a formal party and no relief is asked against the defendant No. 29, thereby totally ignoring the fact that the suit is essentially to enforce the rights stated to have arisen under the provisions of the Constitution of WFI and on the ground that there has been violation of the procedure in the matter of election of the executive committee of the defendant No. 29 and therefore any decision in the suit will have direct bearing and effect on the management of the defendant No. 29. That apart, it is not the case of the plaintiff anywhere in the plaint that the defendant No. 29 has been joined as a formal party. Apparently, therefore, the trial Court had passed the impugned order in improper exercise of its jurisdiction and contrary to the materials on record.

12. For the reasons stated above, the impugned order cannot be sustained and is liable to be set aside and it is held that the Court at Pune has no jurisdiction to entertain the suit in question and the jurisdiction to entertain the said suit vests in the Court at New Delhi and therefore the plaint is liable to be returned to the plaintiff to be presented in the Court having competent jurisdiction to entertain the same at New Delhi.

13. Hence revision application succeeds. The impugned order is hereby set aside. The trial Court is directed to return the plaint to the plaintiff to be presented in the Court of competent jurisdiction. The revision application is disposed of accordingly with no order as to costs.