
(1972) 01 CAL CK 0007
In the Calcutta High Court
Case No : Matter No. 400 of 1971

Benarasi Prosad Sharma and Others

APPELLANT

Vs

Bhagwan Choudhury and Others

RESPONDENT

Date of Decision : 07-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : AIR 1972 Cal 291

Hon'ble Judges : S.C. Ghose, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Ghose, J.—On or about December 19, 1968, a suit was filed in this Court by the respondent, Bhagwan Choudhury, against the petitioner, Smt. Fulla Devi Sharma and Basdeo Prosad Sharma, as partners of a firm Shree Ganesh Electric Works as well as the said Shree Ganesh Electric Works inter alia for the specific performance for an alleged agreement entered into by the defendants partners of the said firm, to sell the said firm to the respondent at and for the sum of Rs. 40,000/-. In the alternative the respondent claimed in the same suit refund of the sum of Rs. 10,000/-being earnest and/or consideration paid under the said contract for sale of the said firm together with interest at 12% per annum and damages and other reliefs. The said suit has been numbered as suit No. 3243 of 1968 (Bhagwan Choudhury v. Shree Ganesh Electric Works and Ors.). The petitioner duly filed his written statement denying the contract for sale of the said business but admitting the receipt of the sum of Rs. 10,000/- as and by way of temporary accommodation.

2. The respondent in March, 1969, Bled a Money Suit being Money Suit No. 123 of 1969 in the City Civil Court for the recovery of Rs. 5,200/- alleged to have been advanced to the petitioner by the respondent. According to the petitioner, the said sum of Rs. 5200/- was a part of the aforesaid sum of Rs. 10,000/-paid as and by way of temporary accommodation. The petitioner duly filed his written

statement in the said Money Suit No. 123 of 1969 in the City Civil Court on or about 18th July, 1969, after the time to file written statement had expired and after obtaining an order from the City Civil Court condoning the delay in filing written statement. In the written statement the petitioner alleged that the said sum of Rs. 5,200/- formed part of the aforesaid sum of Rs. 10,000/-.

3. On or about 18th September, 1969, the petitioner's application for stay of the said Money Suit No. 123 of 1969 u/s 10 of the CPC in the City Civil Court was dismissed.

4. On the 11th September, 1970, hearing of the suit was adjourned by the City Civil Court at the instance of the petitioner until 12th November, 1970, and then again at the instance of the petitioner until 16th December, 1970. On 16th December, 1970, the hearing was adjourned until 29th January, 1971. On 29th January, 1971, the petitioner again applied for adjournment of the suit. The said application was dismissed and the suit was heard ex parte and decreed on 30th January, 1971.

5. On 1st March, 1971, the petitioner applied for setting aside of the ex parte decree under Order 9, Rule 13 of the Code of Civil Procedure. On the 5th June, 1971, the ex parte decree dated 30th January, 1971, was set aside and the suit was directed to be heard on 18th of June, 1971 when it was adjourned as the Learned Judge was presiding over a Sessions trial. The suit again appeared for hearing on the peremptory list on 21st July, 1971 when it was adjourned to 17th August, 1971 at the petitioner's instance. On the 17th August, 1971, it was again adjourned until 10th September, 1971, at the instance of the petitioner.

6. On the 9th September, 1971, this application was filed by the petitioner for transfer of the said Money Suit No. 123 of 1969 (Bhagwan Chowdhury v. Benarasi Prosad Sharma) pending in the City Civil Court, Calcutta to this Court for disposal thereof.

7. It is apparent from the records that the main issue involved in the said suit in the City Civil Court i. e. as to whether the payment of the said two several sums of Rs. 1000/- and Rs. 4,200/- aggregating Rs. 5,200/- formed part of the aforesaid total sum of Rs. 10,000/- being the subject-matter of the High Court Suit No. 3243 of 1968.

8. The ground for transfer of the said suit, besides the aforesaid, is stated to be the fact that the Trial Judge of the City Civil Court has dealt harshly and without discretion and that the petitioner would not get a fair trial in the City Civil Court. Except the bald allegation no particular has been furnished to corroborate or prove the aforesaid allegation that the petitioner will not get a fair trial in the City Civil Court. I am also unable to hold that a prima facie case has been made by the petitioner that the respondent instituted the said Money Suit No. 123 of 1969 in the City Civil Court mala fide or that the said suit is an abuse of the process of the Court.

9. It is true that if identical facts or issues are involved in two separate suits pending in two different tribunals of competent jurisdiction, one of them may be stayed or removed from one tribunal to the other wherein the other suit is pending in order to prevent possibility of conflicting decision on identical facts or issues by two different tribunals of competent jurisdiction. In the instant case in my opinion the Money Suit No. 123 of 1969 pending in the City Civil Court should not be transferred to this Court on the aforesaid ground of possibility of conflicting decisions by the two Courts for the reasons stated hereinafter. The said ground has not been pleaded even specifically in the instant petition.

10. From the facts stated herein-above it is clear that the petitioner participated in the said suit, filed an application u/s 10 of the CPC in the said suit for stay of the said suit and took the chance of having the said suit stayed by taking proceedings in the said suit itself. Moreover, the petitioner applied for condonation of delay in filing his written statement and obtained an order from the said Court condoning such delay and filed his written statement in the said suit. Between 11th September, 1970, and 29th January, 1971, the petitioner from time to time obtained adjournment of the hearing of the said suit in the City Civil Court. Then again, when the said suit was heard and decreed ex parte on 30th of January, 1971, as stated earlier the petitioner applied to have the said decree set aside in the said suit itself. The petitioner obtained the order in the said suit setting aside the said ex parte decree and then got the said suit adjourned from time to time from the beginning of June, 1971 until 10th September, 1971.

11. For the aforesaid reasons and specially in view of the fact that the petitioner for more than one and half years took part in different proceedings in the said suit in the City Civil Court and obtained benefit of orders of adjournment, condonation of delay in filing written statement as well as setting aside of the said ex parte decree made in the said suit by the said court, no relief should be grant-led to the petitioner as asked for.

12. For the reasons aforesaid in my opinion it would not be in the interest of justice to have the said suit removed now from the City Civil Court to this Court.

13. In the premises this application must fail and is dismissed with costs.