
(1922) 02 CAL CK 0039
In the Calcutta High Court

Bengal and North-Western Railway Co. Ltd.	APPELLANT
Vs	
Sadaram Bhairudan	RESPONDENT

Date of Decision : 17-02-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3
Letters Patent Act, 1865 — Clause 12

Citation : AIR 1922 Cal 500 : 70 Ind. Cas. 229

Hon'ble Judges : Thomas Richardson, J; John Woodroffe, J

Bench : Division Bench

Judgement

John Woodroffe, J.—This is a suit for the recovery of the value of 2 bales of piece goods alleged to have been delivered on the 7th April 1918 at Jagannath Ghat in Calcutta to the River Steam Navigation Co., Ltd., and the India General Steam Navigation and Railway Co., Ltd., for carriage, despatch and delivery by transmission to Bhuptiahi, a station on the Bengal and North-Western Railway, and which, it is said have not been delivered to the consignee at Bhuptiahi.

2. I need not go into the facts of the case so far as they affect the merits, because the point which has been argued before us is a question of jurisdiction, and in the view I take of the case it is unnecessary to deal with the question on the merits.

3. There is no question that the Court had jurisdiction as against the River Steamer Company. The question before us is whether it had jurisdiction against the Bengal and North-Western Railway Co., Ltd., the defendant-appellants, to whom I will refer as the Railway Company.

4. The learned Judge has held upon this point of jurisdiction that there is no doubt that when the goods were delivered in Calcutta for transmission to Bhuptiahi, there was, so far as the plaintiff firm was concerned, only one transaction; and he says that, that being so and this Court having undoubted jurisdiction to enquire into all matters relating to the carriage of the goods to Paleeza Ghat, Order I, Rule 3, Civil Procedure Code, comes into play so far as the

Railway Company are concerned. He was, therefore, of opinion that the Railway Company were properly joined as defendants in this suit. He has dismissed the suit against the Steamer Company and given judgment against the Railway Company for a sum of Rs. 3,627. The argument on behalf of the plaintiff-respondent has been that as the Court has jurisdiction over the suit, because it has jurisdiction as regards the Steamer Company, it must be taken that there is no longer any question of jurisdiction but one of procedure only, and Order I, Rule 3, justifies the decision which has been passed, namely, a decree against the Railway Company, the cause of action against which arose out of the jurisdiction. To this argument I cannot agree. There is no doubt that the cause of action against the Railway Company arose out of the jurisdiction from whatever point of view we may regard it. This is admittedly so, if the Steamer Company is regarded as the agent of the plaintiff to hand over the goods to the Railway Company at Paleeza Ghat outside the jurisdiction. This is also admittedly so, if the action is regarded as an action in tort to recover the plaintiffs' goods from the Railway Company to whom they had been delivered; and, I think the cause of action equally arises out of the jurisdiction on the argument that the course of business in carrying the goods throughout constituted a cause of action arising in Calcutta. This, I think, cannot be maintained. The fact that the Court has jurisdiction against the Steamer Company does not give jurisdiction against the Railway Company. The fallacy of the argument, it appears to me, lies in the use of the words "the Court has jurisdiction over the suit." Such jurisdiction as the Court has is over the suit as regards the Steamer Company. This does not give jurisdiction over the Railway Company, and, in my opinion, Order I, Rule 3, has no bearing on the case. That rule of the Order is a provision which relates to a joinder of parties: and it assumes the existence of a suit in a proper forum, the Court having jurisdiction to try the suit. If the Court has such jurisdiction, then Order 1, Rule 3 may come into play.

5. No case has been cited to us in support of the plaintiff-respondent's contention: and, so far as it goes, the decision in *Krishna Kishore De v. Amar Nath Khetry* 56 Ind. Cas. 532 : 47 C. 770 : 31 C.L.J. 272 : 24 C.W.N. 633 appears to be against that contention.

6. It is said that, to hold otherwise, that is to say, that there was no jurisdiction, would place the plaintiff in a position of great difficulty; and indeed it is suggested that it would be impossible for him to bring two separate suits. I am not sure at all that the difficulty alleged actually in fact exists. But even if it did that would not affect the, question before us, namely, whether in fact or in law this Court had jurisdiction in the suit as against the Railway Company.

7. In my opinion the issue whether this Court had jurisdiction to try this case against the Railway Company should be decided in the negative.

8. The appeal, therefore, succeeds on this question and it is unnecessary to go into the merits. The appellant who has succeeded in this appeal will get the costs of this appeal as also his costs in the First Court from the plaintiff-respondent.

The appellant will pay the costs of the Steamer Company, respondent of the appeal. We do not make the order which we have been asked to make by the appellant that he do recover the costs so paid to the Steamer Company, from the plaintiff-respondent. As regards the cross-objections they are not pressed and are dismissed, and the plaintiff-respondent who took them must pay the costs both of the appellant and of the other respondent. The order made by the First Court as regards the costs of the Steamer Company will stand.

Richardson, J.

9. I agree. The goods were carried from Calcutta to Paleeza Ghat by the Steamer Company and then by the Railway Company from Paleeza Ghat to Bhuptiahi.

10. There is no course of business or agreement established between the two carrying Companies under which it would be possible to treat the Steamer Company as so that the contract to carry the goods to their ultimate destination at Bhuptiahi would be a contract entered into in Calcutta by the Steamer Company on its own behalf and on behalf of the Railway Company. The forwarding notes of "the Steamer Company show that the goods were accepted by the Steamer Company to be carried from Jagannath Ghat to Paleeza Ghat for Bhuptiahi. The notes, however, contain two clauses or instructions to which our attention has been drawn, as follows:

(i) If goods refused by they Railway, to remain at River Terminus at shipper's entire risk as regards damage or deterioration.

And (ii) Please forward...by rail from Paleeza Ghat at shipper's and consignee's risk and expense, Steadier Agent to sign Railway notes and necessary risk notes on my behalf" (i.e., on behalf of the consignor).

11. The oral evidence is, that the Railway Company treat the Steamer Company as they would any other member of the public. It appears, therefore, that the contract with the Steamer Company was to carry the goods to Paleeza Ghat and then as agents of the consignor to make them over to the Railway Company to be carried to Bhuptiahi. That being so, on the materials placed before us in this case, I am unable to say that the cause of action against the Railway Company arose in Calcutta within the local limits of the original jurisdiction of this Court.

12. Mr. Zorab's main argument, as I understand it, is that once you have a suit properly instituted on the Original Side on a cause of action arising within the local limits of the jurisdiction, then the Court having jurisdiction over that suit would also have jurisdiction to exercise such powers as those conferred by Order 1, Rule 3, of the CPC relating to the joinder of defendants, even though the cause of action against defendants joined, as he e in the alternative, might be an entirely distinct and separate cause of action arising wholly outside the jurisdiction. No authorities were cited in support of this, contention; and though the contention seems to have found favour with the learned Judge at the trial, with much respect, I am unable to accede to it. Rules defining the jurisdiction of

the Court, must be distinguished. from rules regulating the procedure of the Court in respect of causes of, action within the jurisdiction.

13. Mr. Zorab endeavoured to reinforce his position on the ground of convenience. No doubt, if the relevant statutory provision was of doubtful or ambiguous import, the argument from convenience might be of assistance. But in the present case no doubt or ambiguity exists with regard to the meaning of the language of Clause 12 of the letters Patent, such as would justify a recourse to this argument. Nor am I satisfied that the inconvenience suggested might not in some way be obviated. The resources of pleading would not seem to be unequal to the framing of separate claims in separate suits against the two companies, and no doubt some procedure is available by which an order could be obtained for the trial of both suits by the same Court.

14. In the result, I agree that the appeal of the Railway Company succeeds on the preliminary ground that, as the suit was framed, the Court had no jurisdiction to try the claim against that Company.