

(2000) 05 CAL CK 0030

In the Calcutta High Court

Case No : Appeal from Ordinary Original Civil Jurisdiction, Appeal No's. 554, 555 and 556 of 1993, Suit No. 199 of 1993

Bihar State Industrial Development Corporation Ltd. and
Another

APPELLANT

Vs

Asiatic Oxygen Ltd. and Others
 Bihar Air Products
Ltd. and Another Vs Asiatic Oxygen Ltd. Ors.

RESPONDENT

Date of Decision : 18-05-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 2 Rule 2, 20, 21

Citation : (2000) 3 CALLT 499 : 104 CWN 1084

Hon'ble Judges : Vinod Kumar Gupta, J; Malay Kumar Basu, J

Bench : Division Bench

Advocate : Mr. S.B. Mookherjee, Mr. U.B. Mookherjee and T. Aich, for the Appellant; Mr. R.C. Nag, Mr. S.K. Kapoor, Senior Advs., Mr. Ratnanko Banerjee, Mr. Utpal Bose and Mr. J. Saha, for the Respondent

Judgement

V.K. Gupta, J.—By this common Judgment we propose to dispose of three Appeals together namely Appeal Nos. 554, 555 and 556 of 1993. On 14th July 1993 the learned single Judge of this Court while considering the application filed by the plaintiff/respondents for grant of an order of injunction allowed the said application and confirmed the earlier ad-inierim order as absolute.

2. Mr. S.B. Mookherjee, learned senior Advocate appearing for the Appellant Bihar States Industrial Development Corporation Ltd. (BS1DC for short) in Appeal No. 554 of 1993 has confined his challenge to the Judgment under Appeal on the limited question of jurisdiction of this Court and therefore has urged that the leave granted by the learned trial Judge in terms of Clause 12 of the Letters Patent was erroneously and misappropriately granted and that this leave should have been revoked. But the learned trial Judge instead of revoking the leave, cursorily dealt with the question of Jurisdiction by observing as under:

"So far as the jurisdiction of this Court is concerned, there was a meeting at

Great Eastern Hotel and the contract Office at Calcutta and the part of the cause of action arises within the Jurisdiction of this Court and as such this Court has Jurisdiction to entertain the application."

3. In order to decide the question about the jurisdiction of this Court and to appreciate the aforesaid contention raised by Mr. Mookherjee we have to take note of certain facts which led to the filing of the aforesaid Suit and then apply those facts to settle legal principles in order to decide whether this Court had any jurisdiction at all to entertain the Suit and to grant leave in terms of Clause 12 of the Letters Patent. Whether any part of cause of action for filing this Suit had accrued within the jurisdiction of this Court or not would thus be decided only on proper appreciation of the herein below mentioned brief facts:

4. plaintiffs Nos. 1, 2 & 3 had entered into a collaboration agreement with defendant No. 9 on 25th January, 1975 whereby defendant No. 1 Bihar Air Products Limited (BAPL for short) was to be brought into existence. As a consequence of the aforesaid collaboration agreement on 25th March, 1975 BAPL was incorporated as a Company under the Companies Act, 1956.

5. The Articles of Association of BAPL contain various provisions, one of which provided for the nomination of three Directors by the plaintiffs and three Directors by BS1DC. As per these Articles, the plaintiffs were to nominate a person of their choice for appointment as Managing Director of the Company and Respondent No. 9 was required to agree on such nomination and thereafter the Managing Director was to be appointed based on the aforesaid nomination and agreement of the parties. Accordingly from 30th October, 1975 the Respondent No. 2, S.S. Malik was appointed as the Managing Director of Respondent No. 1. Needless to say that Respondent No. 2 was the nominee of the plaintiffs and before his nomination and appointment as Managing Director of Respondent No. 1 he was working as the Branch Manager of Durgapur Unit of Asiatic Oxygen. It appears that certain disputes and differences arose between the parties leading to some developments which are not very relevant for the purpose of deciding the jurisdiction question. In the meanwhile however, on 10th August, 1990 in a meeting of the Board of Directors of BAPL held at Hotel Great Eastern, Calcutta, the appointment of Respondent No.2 as the Managing Director of BAPL was extended for a further period of 5 years. In April 1992 however, respondent No.2 appears to have fallen out of favour as far as the plaintiffs are concerned who apparently lost confidence in him. They wanted Respondent No. 2 step down from the Office of Managing Director and as per the averments contained in the plaint persuaded Respondent No.2 to agree to submit his resignation. On 23rd April, 1992 Respondent No. 2 appears to have tendered his resignation. Even though the plaintiffs Case in the Plaint is that the resignation tendered by Respondent No.2 was to come into effect Immediately but a perusal of the resignation letter suggests that there was no such stipulation in the resignation whereby It could be inferred that it was to become effective immediately. For ready reference we quote the resignation letter which reads as under:

"The Chairman Bihar Air Products Limited Patna

Dear Sir:

As you are probably aware that my wife has not been keeping well for quite some time and had to shift to my children to north for health reasons.

In the above circumstances, I find it very difficult to cope with the tension and I would request you to be relieved of my position as Managing Director and this may be treated as my resignation as per clause (2) of my agreement with the Company. As per the same clause, I am required to give six months" notice but with the above special reasons it will not be possible for me to attend after 31st May 1992 and I request that the balance period of notice may kindly be waived.

I express my sincere gratitude and thanks to all the members of the Board for their guidance and co-operation to the undersigned during the tenure as Managing Director of the Company. Once again thanking you.

Yours faithfully,

Sd/-S.S. Matik"

6. On 29th May. 1992 a meeting of the Board of Directors of BAPL was held in Patna wherein the resignation submitted by respondent No.2 on 23rd April, 1992 was withdrawn. It may be mentioned herein that on 28th May, 1992 respondent No.2 wrote a communication to the Chairman BAPL withdrawing his resignation submitted on 23rd April, 1992. We reproduce here in below the letter dated"28th May, 1992.

"The Chairman, 28th May, 1992 Bihar Air products Ltd., C/o B.S.I.D.C. Ltd. Indira Bhawan, Patna--800 001 Dear Sir,

Kindly recall the discussion held in your office chamber on 18.5.92 at BSIDC, Patna when I was persuaded not be pressed for the acceptance of my resignation as Managing Director, Bihar Air Products Ltd. and was assured of your full support and co-operation tn discharging my duties as Managing Director of the Company.

I hereby withdraw my resignation submitted vide latter dated 23.4.92 to you, accordingly.

Yours faithfully, Sd/- S.S. Mallk. "

7. Minutes of the meaning of the Board of Directors held on 29th May, 1992 at Patna in so far as these relate to the question of withdrawal of the resignation of Respondent No. 2 read as under:

"Consideration of the resignation of Shri S.S.Malik. Letter dated 22.4.92 received from Shri S.S. Mallk, addressed to the Chairman, tendering his resignation as Managing Director, Bihar Air Products Ltd. was placed before the Board.

The Chairman informed that the matter was discussed with Shri Malik and he was persuaded to withdraw his resignation, keeping in view the interest of the Company. Accordingly, Shri Mallk withdraw his resignation vide his letter dated 28.5.92.

Board considered the matter and noted with satisfaction that the resignation has been withdrawn by him vide his letter dated 28.5.92."

8. From a reading of the plaint it appears that the plaintiffs are basically aggrieved of this decision taken at the Board Meeting whereby the Board resolved to permit the respondent No. 2 to withdraw his resignation.

9. In the meanwhile it appears that the plaintiffs nominated are S.N. Dalmia as their nominee for the Office of Managing Director. The question of acceptance of the nomination of the said S.N. Dalmia however did not appear to have arisen for consideration by BS1DC because, as mentioned hereinabove Respondent No. 2's resignation was withdrawn and he continued to occupy the Office of the Managing Director of the Company and was functioning as such. It was under those circumstances that the aforesaid Suit was filed. The following reliefs were claimed by the plaintiffs in the plaint.

"The plaintiffs pray for leave under Clause 12 of the Letters Patent and Order 1, Rule 8, and Order 2, Rule 2 of the Code of Civil Procedure, 1908 and claim.

(a) Declaration that the defendant No. 2 has ceased to be a Managing Director or Director of the defendant No. 1.

(b) Perpetual Injunction restraining the defendant No. 2 from acting as and/or holding himself out to be a Managing Director or Director of the defendant No. 1.

(c) Mandatory Injunction directing the defendant No.9 to concur In the appointment of a nominee of the plaintiffs Nos. 1, 2 and 3 as the Managing Director of the defendant No. 1 in place and stead of the defendant No. 2.

(d) Mandatory Injunction directing the defendants Nos. 1 and 3 to.9 and their servants, agents, assign and nominees to appoint the nominee of the plaintiffs Nos. 1, 2 and 3 as the Managing Director of the Defendant No. 1.

(e) The purported business and/or resolutions allegedly transacted in the Board Meeting of the defendant No. 1 held on 29 May. 1992 and relating to the resignation of the defendant No. 2, formation of Committee of Management and operation of the Bank account be directed to be delivered up and cancelled.

(f) Perpetual injunction restraining the defendants their servants and agents from acting upon or giving any effect or further effect to the purported business and/or resolutions allegedly transacted in the Board Meeting of the defendant No. 1 held on 29 May, 1992 and relating to the resignation of the defendant No. 2 formation of management committee and operation of the Bank account.

(g) perpetual Injunction restraining the defendants their servants, agents,

assigns and nominees from holding any Board meeting of the defendant No. 1 without first appointing the nominee of the plaintiff Nos. 1, 2 and 3 as the Managing Director of the defendant No. 1.

(h) Declaration that the formation of the purported management committee is malafide, motivated and void.

(i) perpetual injunction restraining the defendants, their servants, agents, assigns and nominees from holding any meeting of the purported management committee.

(J) Declaration that the alleged Board meetings of the defendant No. 1 dated 23 September, 1992 and 30 March 1993 and all the proceedings of the purported management committee including dated 31 July, 1992 and 19 September, 1992 are illegal, null and void.

(k) The purported minutes of the alleged Board meetings of the defendant No. 1 dated 24 September, 1992, 16 December 1992, 23 December 1992 and 30 March, 1993 and all proceedings of the purported management committee including dated 31 July, 1992 and 19 September, 1992 be directed to be delivered up and cancelled.

(l) Perpetual injunction restraining the defendants, their servants and agents from acting upon or giving any effect or further effect to the alleged board minutes dated 24 September, 1992, 16 December, 1992, 23 December 1992 and 30 March, 1993 and all proceedings of the purported management committee including dated 31 July, 1992 and 19 September, 1992 or any purported resolution and decision contained therein.

(m) An enquiry into loss and damages suffered by the plaintiffs and decree for such amount as may be found due upon such enquiry.

(n) Receiver.

(o) Injunction.

(p) Attachment.

(q) Costs.

(r) Further and other reliefs."

10. As will be seen from a perusal of various prayers in the plaint, the entire Suit of the plaintiffs revolved around the so-called illegality in the meeting held on 29th May, 1993 at Patna and the so-called illegality in the withdrawal of the resignation of the Respondent No. 2 from the Office of Managing Director of the Company and his continuance as such after 29th May, 1992. The meetings of the Board of Directors, mention whereof has been made in prayers (J) and (k) basically and primarily are offshoots of the same dispute between the parties. But as we have already observed and as we shall presently notice, the gravamen of the plaint revolved around the meeting held on 29th May, 1992 at Patna.

11. Mr. Kapoor, learned senior advocate appearing for the plaintiffs has urged two Important points In support of his argument that this Court had the jurisdiction because a part of cause of action had arisen within the jurisdiction of this Court and therefore leave In terms of Clause 12 of the Letters Patent was rightly granted and on that basis no case is made out for revocation of the leave. The first point urged by Mr. Kapoor is that the agreement between the parties on 25th January, 1975 was executed in Calcutta: because as far as the plaintiffs are concerned, they had put their signatures on this agreement In Calcutta even though signatures on behalf of BSIDC and others might have been put on the agreement in Patna. The execution of the agreement in Calcutta therefore according to Mr. Kapoor, gave the plaintiffs a part of cause of action because it is this basic document which is at the root of the starting point of controversies between the Parties. Mr. Kapoor in support of his contention has relied upon a judgment of the Supreme Court in the Case of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem,

12. The other point urged in support of the aforesaid contention is that the notice for the meeting to be held on 29th May, 1992 was received by the plaintiffs in Calcutta and it is from Calcutta that the plaintiffs sent a communication asking for the postponement of the meeting. According to Mr. Kapoor, receipt of notice at Calcutta of the proposed Board Meeting was another instance of a part of cause of action having arisen within the territory of this Court. In support of his contention Mr. Kapoor has relied upon a judgment of this Court in the case of Bimal Singh Kothari and Another Vs. Muir Mills Co. Ltd. and Others,

13. In so far as the first contention of Mr. Kapoor is concerned we find that the judgment of the Supreme Court in the case of A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem (supra) is not at all applicable to the facts of our case and that this Judgment is totally distinguishable. In A.B.C. Laminart Pvt. Ltd. and Another v. A.P. Agencies, Salem their Lordships were dealing with the question relating to a suit for breach of contract since the dispute in that case revolved around the supply or non-supply of certain goods forming the subject matter of a contract agreement between the parties. Para-15 of the judgment which deals with this question being very relevant for our purpose is reproduced hereunder. It reads thus:

"In the matter of a contract there may arise causes of action of various kinds. In a suit for damages for breach of contract the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its Intimation result in a contract and hence a suit can

be filed in a Court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have (been) performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving Jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears. The above are some of the connecting factors."

14. Where a collaboration agreement between the parties was entered into in Calcutta or not is not at all relevant as far as the disputes forming the subject matter of the present Suit are concerned. The alleged illegalities or Irregularities in the Board Meeting held on 29th May, 1992 have nothing to do with the performance, compliance or breach of the aforesaid collaboration agreement. The proceedings of the Board Meeting held on 29th May, 1992 can thus be termed in a way to be independent of the aforesaid agreement since the proceedings are conducted in accordance with the provisions of the Companies Act, 1956 and applicable Rules and Regulations. Merely because the agreement was entered into between the parties at Calcutta sometime in the year 1975 would not by itself be considered as a part of cause of action in respect of a dispute relating to a decision taken in a meeting of the Board of Directors held on 29th May, 1992 at Patna.

15. In so far as the other question relating to the service of notice at Calcutta is concerned, we once again do not find ourselves in agreement with the submission of Mr. Kapoor and the Judgment of this Court relied upon by him is also of no help to him. In that Judgment their Lordships were basically considering the question of misrepresentation being suffered by the aggrieved party in the notice received by him of the meeting proposed to be held at Kanpur. The cause of action in that Case, or a part of it was not the notice itself. It was the misrepresentation which of course was contained in the notice. If in a given case a plaintiff challenges the legality or the validity of a notice, either based on some defect in the notice or because the plaintiff claims that some misrepresentation is contained in the notice, we can say that the place where the notice was received by the plaintiff could be considered as an Instance of a part of cause of action having arisen there. In the present case however, what we find is that the plaintiff did not challenge the legality or the validity of the notice as such. It is not the plaintiff's case that the notice as received was either defective or that it was not in accordance with the provisions of the Companies Act or that it contained any misrepresentation. The plaintiff was trying to base their case of

accrual of part of cause of action only. Because according to them they received the notice at Calcutta of the holding of the meeting at Patna. We are firmly of the view that receipt of notice by Itself would not amount to accrual of a part of cause of action at a place where the notice was received.

16. Based on what we have discussed, we are firmly of the opinion that no part of cause of action had accrued within the Jurisdiction of this Court and therefore this Court should not have entertained the suits nor should have granted any leave in terms of Clause 12 of Letters Patent and on that reckoning we have no doubt whatsoever that the leave erroneously granted should have subsequently been revoked.

17. In these Appeals we have considered the limited question of jurisdiction. We have not gone into any other question. This judgment therefore should not be construed as any expression of opinion by us with regard to any point of controversy touching upon the merits of the case.

The judgment of the learned single Judge accordingly is set aside. The appeals are allowed. The plaint be returned to the plaintiffs/respondents.

No order as to costs. Later:

After this judgment was pronounced, Mr. Kapoor made an oral prayer before us for staying the operation of the Judgment for some time, or for granting some interim protection to his clients so as to enable them to file Appeal against this Judgment before the Hon''ble Supreme Court. On consideration of the oral prayer, we decline to grant any such relief, particularly because we are allowing the appeals on the question of lack of Jurisdiction as far as this Court is concerned.

Let xerox copy of this judgment, duly countersigned by the Assistant Registrar of this Court, be given to the parties upon their undertaking to apply for and obtain certified copy of the same upon usual undertaking,

M.K. Basu J.

18. I agree.

19. Appeals allowed