

(1984) 07 GUJ CK 0017
In the Gujarat High Court
Case No : A.F.O. No's. 132 and 151 of 1980

Chetan Textiles, Bombay

APPELLANT

Vs

Jethabhai Hirji and Co. and Others

RESPONDENT

Date of Decision : 06-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, 104, 107, 151

Citation : AIR 1985 Guj 95 : (1984) GLH 972

Hon'ble Judges : R.J. Shah, J

Bench : Single Bench

Advocate : V.P. Shah, for the Appellant; D.G. Karia and A.G., instructed by Purnanand and Co., for the Respondent

Judgement

1. These are two appeals from orders which arise out of similar orders. It is therefore proposed to dispose of both the appeals by this common judgment.

2. Appeal from order No. 132 of 1980 arises at the instance of the original plaintiff. The plaintiff had filed Special Civil Suit No. 257 of 1976 in the Court of the Civil Judge (Senior Division) Surat in respect of a money claim. Defendants Nos. 1, 2, 4 and 5 resisted the said suit as per the written statement Exhibit 14 stating therein that defendant No. 3 had expired on 1st Sept. 1975, Amongst other defences, defendants had contended that Surat Court had no jurisdiction since the cause of action had arisen in Bombay and the defendants were residing and carrying on business at Bombay. Issues in the said suit had been framed at Exhibit 17 and issue No. 2 thereof was as under :

"Whether this Court has jurisdiction to hear the suit?"

3. It appears that an application at Exhibit 58 had been preferred in the said suit by the aforesaid defendants requesting the Court to decide the said issue as a preliminary issue. By an order dated 28th Aug. 1978 the said application was rejected. It appears that thereafter evidence of the parties was recorded and ultimately judgment and order dated 29th Feb. 1980, Exhibit 157, was passed by

the Civil Judge (Senior Division), Surat in the said suit ordering that the plaint be returned to the plaintiff for presentation to the proper Court as the Court had no jurisdiction to try the suit. The aforesaid appeal No. 151 of 1980 is directed against the said judgment and. Order

4. Special Civil Suit NO. 224 of 1916 was also regarding a money claim. Defendants Nos. 1, 2 and 5 had resisted the said suit as per the written statement Exhibit 14. Issues in the said suit had been framed at Exhibit 19. Issue No. 7 thereof is as under:

"Whether the transactions were subject to Surat jurisdiction and whether money was to be paid in Surat?".

5. Defendants Nos. 1, 2 and 5 had preferred an application dated 7th Aug 1978 at Exhibit 90 in the said suit for deciding the said issue, regarding jurisdiction as a preliminary issue. The trial Court was pleased to reject the said application by an order dated 28th Aug. 1978. It appears that evidence was thereafter recorded on all the issues and ultimately by a judgment and order dated 29th Feb. 1480 at Exhibit 157 the learned Civil Judge (Senior Division) Surat had ordered that the plaint be returned to the plaintiff for presentation to the proper Court as the Court had no jurisdiction. The aforesaid Appeal No. 151 of 1980 arises out of the said order.

6. O. XIV R. 2 of the Civil P.C. provides as under:

"2. (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

O. XIV R. 2(1) clearly provides that even though it may be possible to dispose of a case on a preliminary issue the Court should pronounce its judgment on all issues subject to the provisions of sub-rule (2). Sub-rule (2) provides that if there is an issue of law only if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force, then if the Court thinks fit, it can postpone the settlement of the other issues until after that issue has been determined and the Court may thereafter deal with the suit in accordance with the decision on that issue. As stated above, the Court had not reached a conclusion that an, issue of law as contemplated by O. X IV R. 2(2)

had arisen in the present case. As a matter of fact, the Court had declined in both the matters to hear the issue of jurisdiction as a preliminary, issue and it thereafter proceeded to record evidence on all issues and hear arguments also. In the circumstances, it is clear in view of the provisions of O. XIV R. 2 of the Civil P.C. that it was not open for the Court after framing all issues and recording evidence on all issues to give a finding only on one issue and refrain from giving findings on other issues. The trial Court has obviously adopted a course, which was not permissible under the law in view of the mandate under O. XIV R. 2 of the Civil P.C. Such orders therefore cannot be permitted to subsist and have to be set aside. In this connection, it has been urged by Miss V. P. Shah, the learned Advocate for the appellants in both the cases that since evidence has been led and the trial Court has decided the issue of jurisdiction on merits, this Court should look into the merits of the case also and ignore the irregularity in procedure adopted by the trial Court. In view of the clear mandate under O. XIV R. 2 and also in view of the fact that the trial Court had declined to hear the issue of jurisdiction as a preliminary issue and also in view of the fact that the issue of jurisdiction in the present case was not an issue of law only, it is not possible to accept the said submission of Miss Shah. The spirit behind O. XIV R. 2 of the Civil P.C. is to have all issues decided at a time except where an issue of law only arises as contemplated in O. XIV R. 2 and even in the latter case Legislature has clothed the Court with discretion as stated therein. In this connection, Miss Shah had referred to *Talati Kantilal Bhumabai and Another Vs. Lalitaben*, : *Talati Kantilal Bhumabai and Another Vs. Lalitaben*, . This was an appeal before the Supreme Court from a judgment of this Court dated Mar. 5, 1971 on a preliminary point holding that the Civil Judge (Senior Division), Godhra had jurisdiction to entertain and try the suit filed by the respondent. Setting aside the finding of the learned Civil Judge that he had no jurisdiction to entertain the suit and therefore the plaint must be returned for presentation to the proper Court, the High Court had remanded the suit to the trial Court with a direction to determine the "other issues" raised in the suit in the light of the evidence on record and in accordance with law. The said order of remand passed by the High Court was confirmed and the appeal was dismissed with costs. It is difficult to see how the said judgment supports the case of the present appellants. The Supreme Court in this case has clearly observed that in view of the fact that the entire evidence in this case had been recorded by the trial Court and considering that nine years had already passed over the decision of a preliminary point, it was undesirable to dispose of the matter piecemeal and that the interests of justice required peremptorily that the trial Court should proceed to dispose of the suit on the issue which it had not yet decided. It is pertinent to quote the following observations made in the said case by the Supreme Court:

"We must, however, clarify that the dismissal of this appeal will not preclude the appellants from raising the question of jurisdiction or any other question which has been concluded by the judgment of the High Court, in any appeal which the appellants may file in this Court hereafter. If the suit is dismissed, there will be

no occasion for the appellants to challenge the finding on the question, whether the amount had been kept by the respondent with the appellants by way of deposit or was in the nature of a loan or on the question of jurisdiction. On the other hand, if the suit is decreed, appellants have a statutory right to challenge the decree of the trial Court by filing an appeal in the High Court. But since the High Court has already decided the preliminary question of jurisdiction, the appellants cannot be allowed to reopen that question in the appeal before the High Court. The question of jurisdiction must be treated as finally concluded so far the trial Court and the High Court are concerned. If, however, the appellants fail in the High Court, it would be open to them, by filing an appeal in this Court, to challenge the decree of the High Court on all points decided against them including the points decided by the High Court by its judgment dated Mar 5, 1973. In other words, so far as this Court is concerned the question of jurisdiction must be treated as open, despite the dismissal of this appeal,"

In view of the aforesaid observations, if the trial Court in the present case after remand dismisses the suit it will be open to the appellants plaintiffs to submit on merits regarding the issue of jurisdiction as well as on the merits of the other issues in the appeal that may be taken to the High Court against the judgment and decree passed by the trial Court after remand in both the cases. It is made clear in these appeals that this Court at this stage has not entered into the merits of the finding regarding jurisdiction.

7. It was next submitted by the learned Advocate for the appellants putting reliance on Ss. 104 and 107 of the Civil P.C. that it is not open to this Court to remand the matters without setting aside the findings since evidence has been led in both the matters on the issue of jurisdiction. There is nothing in either of the said sections which prevents the Court from remanding the matter after setting aside the orders of returning the complaints for purposes of recording findings on all the remaining issues and disposing of the suits thereafter according to law. Moreover, the aforesaid observations made by the Supreme Court in *Talati Kantilal Bhumbhai and Another Vs. Lalitaben*, clearly show that there is no force in this submission of Miss Shah.

8. A reference was also made by Miss Shah to *Soni, Soni Vrajilal Jethalal Vs. Soni Jadavji Govindji and Others*, and it was submitted that in the present case the Court should exercise its inherent power under S. 151, CPC. Reliance was put on the following observations of the Court in the said case:

"It appears well settled that no procedural irregularity can come in the way of justice being done. Conversely all procedure has been devised to advance justice and not to retard the same. Where there is no express bar of any express provision of the Civil P.C. fettering the Court's power or precluding the Court from doing something, the Court, to advance substantial justice can and must interfere so as to set aside the procedural irregularity to achieve the desired primary object for which the Court exists, namely, to do justice between the parties."

As stated above, there is an express bar under O. XIV R. 2 precluding the trial Court from taking the course on which it had embarked. So far as this Court is concerned in addition the aforesaid observations of the Supreme Court in *Talati Kantilal Bhumabai and Another Vs. Lalitaben*, make it amply clear that there is hardly any scope for resorting to the inherent powers under S. 151, CPC in cases such as the present.

9. No other submission were made before me.

10. In the result, both the appeals against" orders are allowed. The order returning the plaint in each case is hereby set aside and the trial Court is directed to record its findings after hearing the parties on all the issues except that of jurisdiction on the evidence on record and then dispose of the suit in accordance with law. As th6 suits are of the year 1976, writ should go to the trial Court forthwith and the suits should be disposed of by the trial Court latest by 14th Sept. 1984. In the circumstances of the case there will be no order as to costs regarding the present appeals.

11. Appeals allowed.