(1987) 12 MP CK 0028

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 256 of 1981

Deora P.U. Cabncon Mfg. Co. (P.) Ltd. — APPELLANT

Vs

Maharashtra State Electricity Board and Another — RESPONDENT

Date of Decision : 07-12-1987

Acts Referred:

Citation : (1991) 70 CompCas 220

Hon'ble Judges : R.K. Verma, J

Bench : Single Bench

Advocate : S.C. Consal, for the Appellant; A.N. Khan, for the Respondent

Final Decision : Allowed

Judgement

R.K. Verma, J.—This is an appeal filed by the plaintiff against the order dated September 25, 1981, passed by the tenth Additional Judge to the Court of the District Judge, Indore, in Civil Suit No. 55-A of 1980 whereby the learned trial court has decided the two preliminary issues regarding valuation of suit and the jurisdiction of the court against the plaintiff and has, consequently, directed return of the plaint for presentation in a proper court having jurisdiction.

2. The plaintiff-appellant obtained contracts for supply of conductors and aluminium wires to the respondent-Maharashtra State Electricity Board (for short, "the MSEB") pursuant to acceptance of their tenders (exhibit D-1 and exhibit D-3), etc. The plaintiff was required to furnish a bank guarantee for Rs. 50,000 to the MSEB by way of security in accordance with the conditions of the tender for due performance of the contract for supply of the goods aforesaid. Accordingly, at the instance of the plaintiff, the respondent, Bank of Baroda, Indore Branch, furnished to the respondent-MSEB a bank guarantee for Rs. 50,000. The plaintiff firm, Deora P. U. Cabncon Mfg. Co. Pvt. Ltd., could not supply the goods for reasons stated in para 5 of the plaint and requested the defendant-respondent MSEB to return the bank guarantee. The respondent-MSEB, instead of acceding to the request of the plaintiff, sought to enforce the

bank guarantee by writing a letter, exhibit P-19, to the respondent, Bank of Baroda, Indore Branch. The plaintiff, therefore, filed the instant suit for an injunction restraining the defendant-respondent, MSEB, from recovering the amount of the bank guarantee and restraining the defendant-respondent, Bank of Baroda, from making payment of the amount under the bank guarantee.

3. The defendant-MSEB, in their written statement, alleged that the plaintiff had committed breach of the conditions of contract and further pleaded that the cause of action did not arise at Indore and as such the trial court at Indore had no jurisdiction. It was further pleaded in the written statement that the plaintiff ought to pay court-fees on Rs. 50,000, the amount of the bank guarantee in respect of which injunction is sought.

4. The trial court, accordingly, framed two preliminary issues and, by the impugned order, has decided each of them against the plaintiff. The two issues framed by the trial court and the finding recorded thereon are as follows :

?- D;k ;g okn mfpr :i ls eqY;kafdr gS\\ -------- ughaA

2- D;k bl U;k;ky; dks bl okn dh lquokbZ dk {ks=kf/kdkj gS\\ -------- ughaA

5. The learned trial court, thus, held that it had no jurisdiction to try the suit and that the suit has been undervalued. But the learned trial court, instead of demanding the deficit court-fees, directed return of the plaint to the plaintiff for proper presentation in the court having jurisdiction.

6. Being aggrieved by the order of the learned trial court, the plaintiff-appellant has filed this appeal.

7. The defendant-respondent, MSEB, sought to enforce the bank guarantee for non-fulfilment of the contract by the plaintiff-appellant by addressing a letter (exhibit P-19), dated September 22, 1979, to the Bank of Baroda, Indore. The money under guarantee was to be paid by the Indore branch of the bank in case of enforcement of guarantee. The demand by the MSEB for encashing the bank guarantee of Rs. 50,000 has been made to the guarantor, Bank of Baroda at Indore.

8. Learned counsel for the plaintiff-appellant has submitted that the money under the bank guarantee was to be debited to the account of the plaintiff with the Bank of Baroda, Indore branch. The defendant-respondent, MSEB, has, by letter (exhibit P-19) dated September 22, 1979, addressed to the Bank of Baroda at Indore, informed about non-fulfilment of the contract and has asked for enforcement of the bank guarantee. A copy of this letter has also been endorsed to the plaintiff-appellant. The defendant branch of the Bank of Baroda against whom also the plaintiff has sought injunction is located at Indore.

9. The aforesaid facts make it abundantly clear that the bank guarantee was furnished by the Indore branch of the Bank of Baroda and it is sought to be encashed at Indore by the said branch debiting the amount of the bank

guarantee to the account of the plaintiff. In the circumstances, a part of the cause of action has arisen at Indore. There can be no doubt, therefore, that the Indore court has jurisdiction to try the suit. The finding of the learned trial court on the preliminary issue of jurisdiction is patently erroneous and is liable to be reversed.

10. As regards the question of court-fee payable and valuation of the suit referred to above as preliminary issue No. 1, the learned trial court has held that the suit has not been properly valued. The contention of the plaintiff-appellant that Section 7(iv)(c) of the Court Fees Act is attracted for valuation of the relief of injunction for the purposes of court-fees has been negatived by the learned trial court but it has been held that the plaintiff should pay court-fees on Rs. 50,000 which is the amount of the bank guarantee sought to be enforced by the defendant-MSEB and in respect whereof an injunction has been sought by the plaintiff.

11. The present suit in effect is a suit for a declaration and injunction--declaration that the bank guarantee is not enforceable in the circumstances of the case and injunction to restrain the defendants from enforcing the bank guarantee.

12. In a Division Bench decision of this court in Badrilal Bholaram Vs. State of Madhya Pradesh and Another, ; it has been held that the plaintiff has liberty to put the valuation for court-fees u/s 7(iv)(c) of the Court Fees Act, but the valuation should not be arbitrary and if the relief sought has real money value, then that will be the valuation for court-fees. The relevant observations are reproduced hereunder (pp. 9, 10 of AIR 1964 MP) :

"If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of Section 7 is considered, it would be clear that, in respect of suits falling under Sub-section (iv), a. departure has been made and liberty has been given to the plaintiff to value his claim for the purposes of court-fees.

There are cases where there is a difference between the value of the thing affected by the action and the value of the relief sought in respect thereof. But, speaking generally, where the relief sought itself has a real money value which can be objectively ascertained, that value is the value of . the relief and any other value ascribed to it is arbitrary and unreasonable. Where a plaintiff is sought to be made liable either under a deed or a decree for a specified amount and he seeks to avoid that liability, the value of the relief is the extent of loss, to which but for the suit he would be subjected and from which he wants to be relieved."

13. In the instant case, the plaintiff seeks, in effect, a declaration that the bank guarantee is not legally enforceable and, therefore, the defendants be restrained by an injunction from encashing the bank guarantee of Rs. 50,000 which stands furnished to the defendant-MSEB. The relief of injunction sought has a real

money value of Rs. 50,000. This case is covered by Section 7(iv)(c), but the valuation for the purpose of court-fees shall necessarily be Rs. 50,000 as per the decision cited above.

14. In another decision of this court in Mangilal Jain v. M. P. Electricity Board, Jabalpur [1977] MPWN 480, where an injunction was sought for restraining the defendants from disconnecting the installation of the plaintiff as the plaintiff was not liable to pay the demand bill served upon him, reiving on Badrilal''s case [1963] JLJ 674 (MP), it was held that the relief claimed was for avoidance of liability under the demand bill and as such ad valorem court-fees on the amount of liability sought to be avoided was payable u/s 7(iv)(c) of the Court Fees Act.

15. The valuation of the suit for the purpose of jurisdiction and court-fees must be the same u/s 8 of the Suits'' Valuation Act and, therefore, the valuation of the suit for the purpose of jurisdiction must also be Rs. 50,000.

16. The learned trial court of the Additional Judge to the Court of the District Judge will, therefore, have jurisdiction, both territorial and pecuniary. Consequently, the direction made for return of the plaint for proper presentation in the appropriate court contained in the impugned order is hereby set aside. The plaintiff is allowed to amend the valuation for the purpose of court-fees at Rs. 50,000 instead of Rs. 300 as has been stated in the plaint and to pay the deficit court-fees within two months from the date of this order.

17. In the result, this appeal is allowed. The impugned order dated September 25, 198f, passed by the trial court is set aside. The plaintiff-appellant is allowed two months'' time from the date of this order to make up the deficit court-fees after amending the valuation for the purpose of court-fees as observed hereinabove.

18. In the circumstances, there shall, however, be no order as to costs of this appeal.

