

(2008) 03 BOM CK 0077
In the Bombay High Court
Case No : Suit No. 1134 of 1990

Dhaval Subodh Parekh and Hotel Subodh Parekh	APPELLANT
Vs	
Pawan Hans Ltd., a fully owned Public Sector Undertaking and Union of India (UOI)	RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20

Citation : (2008) 3 ALLMR 392 : (2008) 4 BomCR 666

Hon'ble Judges : V.C. Daga, J

Bench : Single Bench

Advocate : Sunip Sen and Alaukik Pai, instructed by Udwadia and Udeshi, for the Appellant; Nisha Valani, for Defendant No. 2, S.M. Dixit and Shubhangi Kamble, Chhaya Shah, instructed by for Defendant No. 1 and Apoorva Janvekar, for the Respondent

Judgement

V.C. Daga, J.—This suit is filed by the plaintiffs against the defendants claiming compensation in the sum of Rs. 50,00,000/-with interest thereon.

THE FACTS:

2. The factual matrix reveals that the first plaintiff is the son and the second plaintiff is the daughter of late Shri Subodh Parekh and his wife Smt. Kusumben Parekh who lost their lives while travelling in helicopter belonging to and operated by the first defendant, which crashed on 14.7.1988. The deceased couple had purchased the air tickets in Calcutta and accident took place at Katara near Vaishnodevi in the State of Jammu and Kashmir.

3. The first defendant is a statutory Corporation incorporated to operate helicopter service and inter alia, operated helicopter services between Jammu and Vaishnodevi at the time when crash took place. The second defendant is Union of India, who has issued notification under the Carriage by Air Act, 1972 limiting the liability of carriers is also a subject matter of challenge in the suit.

4. On being served with the writ of summons, defendant Nos. 1 and 2 appeared and filed their respective Written Statements. The defendant No. 2 has raised a plea in defence challenging territorial jurisdiction of this Court to entertain and try this suit contending that neither tickets were purchased nor the accident took place within the jurisdiction of this Court, as such, this Court has no jurisdiction to entertain and try the suit. In addition to this defence, a number of additional defences were raised by both the defendants. Thus, considering rival pleadings, issues were framed on 27.2.2008. One of such issues relates to the jurisdiction of this Court to entertain and try the suit. The following issue reflected in para 3 of the order dated 27.2.2008 was ordered to be tried as preliminary issue.

THE ISSUE:

WHETHER THIS COURT HAS JURISDICTION TO ENTERTAIN AND TRY THE SUIT?

RIVAL SUBMISSIONS:

5. Learned Counsel for the plaintiffs submits that this Court will have jurisdiction to entertain and try the suit in view of Section 19 of the CPC 1908 (C.P.C.) since defendant No. 1 carries on its business in Mumbai through its branch office.

6. The learned Counsel for the plaintiffs while elaborating his submission urged that the the suit is for compensation for wrong done to the persons and that the defendant No. 1 carries on the business within the local limits of jurisdiction of this Court, as such the suit can be instituted at the option of the plaintiffs in this Court. He went on to submit that the suitor has choice to select or elect the forum. He, thus, submits that the suit can be filed either within the local limits of the jurisdiction of Calcutta Court or the Court at Katara and also at the option of the plaintiffs in Mumbai where the defendant No. 1 carries on its business through his branch office.

7. Per contra, learned Counsel appearing for the defendant No. 1 submits that neither accident has taken place nor tickets were purchased within the jurisdiction of this Court and that their Head Office or Principal office is in Delhi. In his submission, mere existence of the Branch Office of defendant No. 1- Company in Mumbai cannot give jurisdiction to this Court to entertain and try the subject suit. In other words, submission is that it is not open for the plaintiffs to file the suit, wherever branches of defendant No. 1 are located for carrying on business. He, thus, prayed for rejection of the plaint.

8. Learned Counsel appearing for defendant No. 2 supported the contention canvassed by the learned Counsel appearing for defendant No. 1.

CONSIDERATION:

9. Having heard rival contentions, the factual matrix is not in dispute that the tickets were purchased in Calcutta. Air crash took place at Katara near Vaishnodevi (in the State of J and K) and location of the head office of defendant No. 1 is in Delhi and that the branch office in Mumbai.

10. It is also not in dispute that the suit is for compensation for wrong done to the persons. It is also not in dispute that wrong was done within the local limits of jurisdiction of one court and defendant No. 1 carries on business for gain within the limits of jurisdiction of another court.

11. In order to address the question raised, it is necessary to turn to the text of Section 19 of the C.P.C., which reads as u/s 19. Suits for compensation for wrongs to person or movables.

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

12. The above Section 19 of C.P.C. gives an option to the suitor to institute a suit in either of the courts referred therein. Now, a limited question which falls for consideration is -as to whether the location of the branch office, other than the head office could be said to be a place wherein the defendant No. 1 carries on business?

13. The question similar to one above fell for consideration in the case of Haveli Shah and Anr. v. Khan Saheb Shaikh Painsa Khan AIR 1926 P C 88. In that case, wrong was committed in Persia and the defendant was ordinarily resident in the Punjab but carried on business at Quetta, the Court on the text of Section 19 held that the defendant could be sued in Quetta though the cause of action took place in Persia.

14. The Apex Court in the case of Globe Transport Corporation Vs. Triveni Engineering Works and Another, has taken an identical view, wherein facts stated are more or less similar. In that case, goods were entrusted by the consignor to the appellant for carrying from Baroda under the consignment issued by the appellant, the goods were to be carried to Naini. The truck in which the goods were carried met with an accident, as a result of which the goods were damaged and since the goods were delivered to the first respondent who was the endorsee of the consignment note, in damaged condition, the respondents filed a suit claiming damages for the loss suffered by the first respondent.

15. The consignment note contained various terms and conditions of the carriage and one of the terms and conditions that was set out in Clause 17 which read "the Court in Jaipur City alone shall have jurisdiction in respect of all claims and matters arising under the consignment of the goods entrusted for transportation". Notwithstanding this term of the Contract of Carriage, the suit was filed by the respondents in the Court of the Civil Judge, Allahabad which had jurisdiction over Naini, being a place where goods were to be delivered and were in fact delivered to the first respondent.

16. The appellant, raised an objection before the Court of the Civil Judge,

Allahabad contending that the Court had no jurisdiction to entertain the suit since the Court in Jaipur City alone had jurisdiction by reason of the term embodied in Clause 17 of the Contract of Carriage.

17. The answer made by the respondents to this preliminary objection was that a part of the cause of action had arisen in Naini which was within the jurisdiction of the Court of Civil Judge, Allahabad and that Court had, therefore, jurisdiction to entertain the suit and Clause 17 did not have the effect of ousting the jurisdiction of the Court of Civil Judge, Allahabad, because the Court in Jaipur City had no inherent jurisdiction to entertain the suit and it was not competent to the parties by agreement to confer on the Court jurisdiction which it did not possess.

18. The Trial Court had rejected the preliminary objection of the appellant and held that since a part of the cause of action had arisen in Naini, the Court had jurisdiction to entertain the suit. In revision application, the High Court agreed with the view taken by the Trial Court holding that since no part of the cause of action had arisen in Jaipur, the Clause 17 of the Contract of Carriage was ineffectual.

19. The appellant thereupon preferred the appeal by special leave before the Apex Court.

20. The Apex Court observed that it is a settled law that it is not competent to the parties by agreement to invest a court with jurisdiction which it does not otherwise possess but if there are more than one forums where a suit can be filed, it is open to the parties to select a particular forum and exclude the other forums in regard to claims which one party may have against the other under a contract. The Court was also pleased to hold that no part of cause of action arose for the suit in the city of Jaipur, and, therefore, jurisdiction of the Court in Jaipur City could not be invoked on the ground that cause of action or part of cause of action has arisen in Jaipur. However, the Court ruled that since the defendant carried on business in the City of Jaipur that the suit ought to have been filed in the Court at Jaipur in view of Section 19 of the C.P.C. The relevant observations are as under:

...the jurisdiction of a court whether u/s 19 or Section 20 of the CPC can also be invoked on the ground that the defendant resides or carries on business or personally works for gain within the jurisdiction of the court and here it could not be disputed that the appellant does carry on business in the City of Jaipur and if that be so, there can be no doubt that the Court in Jaipur City would have jurisdiction to entertain the suit filed by the respondents against the appellant.

21. On the above backdrop, keeping in mind the law laid down by the Privy Council, as well as the Apex Court, if one turns to the facts of the case in hand, it is no doubt true that no part of cause of action arose within the jurisdiction of this Court, however, considering nature of the suit and that the defendant carries on business in the City of Mumbai this Court would have jurisdiction to entertain and try the subject suit for compensation.

22. Thus, in my considered view, the issue framed has to be answered in favour of the plaintiff and against the defendants.

23. In the result, preliminary issue stands answered accordingly. Order accordingly. Suit to proceed further in accordance with Law.