
(2000) 02 AHC CK 0115

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6318 of 2000

Fernhill Laboratories and Industrial Establishment

APPELLANT

Vs

Kanti Shanti Marketing and Others

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, Order 7 Rule 14(2)

Citation : (2000) 02 AHC CK 0115

Hon'ble Judges : Sushil Harkauli, J

Final Decision : Dismissed

Judgement

S. Harkauli, J.—Heard learned Counsel for the petitioner. The respondent No. 1 instituted a suit No. 708 of 1997 in the Civil Court, Ghaziabad against the petitioner. A copy of the plaint has been filed as Annexure3 to this writ petition. The suit has been instituted on 31/5/1997. The plaintiff is seeking a money decree regarding the money alleged to be due to the plaintiff from the defendant on account of nonpayment for the goods supplied.

2. The defendant moved an application before the trial Court that it had no territorial jurisdiction to try the suit. The application has been rejected by the trial Court and a revision by the defendant-petitioner has also been dismissed by the impugned order.

3. Learned Counsel for the petitioner has raised two contentions before me. The first contention is that the plaint should have been rejected as barred by time. In this connection, learned counsel for the petitioner has relied upon the averment in paragraph 5 of the plaint, which indicates that the money became due on 24/8/1994.

4. Apart from the fact that 31/5/1997 is within three years from 24/8/1994, it has been alleged in paragraphs 6, 7, 8 and 9 that certain payments were made on account of outstanding balance subsequent to 1994. Further, it is alleged in the plaint that the defendant had issued credit notes to the plaintiff in 1995 also. The

part payment and credit note which amount acknowledgment clearly go to show the suit has been instituted within the period of three years from the date of 1st part payment or last acknowledgment.

5. The second contention raised by the petitioner is that about territorial jurisdiction. This contention is based on two reasons advanced by learned Counsel for the petitioner. The first reason" is that in the documents filed by the defendant along with its application challenging the territorial jurisdiction it has been mentioned that the dispute would be subject to the jurisdiction of the Courts at Dadra Nagar Haveli. The second reason is that the averment in paras 14 and 15 of the plaint which states that payment was to be made at Ghaziabad to the plaintiff by the defendant are illusory and have been incorporated to create territorial jurisdiction. In support of first reason with regard to territorial jurisdiction of Ghaziabad, learned Counsel for the petitioner relied upon decision of the Supreme Court in the case of M/s Angile Insulation v. M/s Devy, AIR 1995 SC 1766. The aforesaid decision states that it is open to the parties to confine jurisdiction to one of several Courts which have jurisdiction and such agreement is not hit by Sections 23 and 28 of the Contract Act.

6. While it is correct that it is open to the parties to agree to confine their dispute to the jurisdiction of any one or more out of several courts which may have jurisdiction under Section 20, CPC to try the suit, but this question whether the parties have actually confined jurisdiction depends upon the documents which have been filed by the defendant. There is no such averment in the plaint. At the stage at which suit stands, the Court while considering the question of territorial jurisdiction has to confine to the averments in the plaint and documents filed by the plaintiff himself. At this stage the Court cannot go into evidence sought to be led by the defendant. According to the procedure prescribed under CPC at the stage of Order VII, Rule 10 and Order VII, Rule 11, the defence of the defendant is not to be examined. If after examination of the plaint and document filed by the plaintiff the Court comes to the conclusion that it has no territorial jurisdiction it must return the plaintiff under Order VII, Rule 10 and if it is found that suit is otherwise not maintainable it must reject the plaint under Order VII, Rule 11.

7. On the other hand after written statement is filed and issue is framed upon the question of territorial jurisdiction and on that issue evidence is led and the Court finds the averment in the plaint to be not correct, it would be justified at that stage to direct for return of the plaint or to dismiss the suit.

8. It is also not open to the Court to go into the correctness of the plaint averments at the stage of Order VII, Rule 10 unless those averments are inherently not capable of acceptance. In the present case, I do not find any such inherent defect in the averments so as to make them incapable of acceptance without any opposition. The plaintiff has made the averments wherein it has been stated that the money was required to be paid at Ghaziabad and nonpayment of amount at Ghaziabad has been alleged to be cause of action or

part of cause of action at least in the circumstances, on the plaint allegations Ghaziabad Court would have jurisdiction.

9. Learned Counsel for the petitioner has contended that under Order VII, Rule 14 the plaintiff must lead evidence at the very threshold when the suit is instituted to prove that the Court where the suit has been instituted has territorial jurisdiction to try the same. The said argument is not acceptable because Order VII, Rule 14 (1) applies only to the document which is the basis of suit and not to the evidence in the suit. Order VII, Rule 14 (2) is merely filing of list and not filing of document themselves. Therefore, it is not possible to accept the argument advanced that as soon as the suit is instituted the plaintiff must start leading evidence.

10. Learned Counsel for the petitioner has relied upon the following decisions:

(1) (1996) 3 SCC 443, South East Asia Shipping Co. Ltd, v. Navbharat Enterprises.

The said decision defines cause of action. It deals with the situation where the entire transaction was done at Bombay, but the bank guarantee was executed at Delhi. The Supreme Court held that execution of land guarantee was not the part of cause of action.

(2) (1994) 6 SCC 322 Bloom Dekor Limited v. Subhash Hitnatlal Desai. In this case, the Supreme Court was examining a case where the registered office of the Company was situated at one place and suit has been instituted at the place "where no cause of action arose."

(3) (1998) 2 SCC 70 LIC Limited v. Debts Recovery, Appellate Tribunal, the Supreme Court was examining a case where the cause of action was fraud and where the plaint can be rejected even after framing of issues at the stage when the matter was posted for evidence. This case does not apply to the present situation.

(4) (1994) 4 SCC 225, Morgan Stanley v. Kartick Das, the Supreme Court has observed that the suit should normally be filed where the registered office is situated. This decision does not have effect of confining the word of Section 20, CPC by making the word "where cause of action or part arose" in the said section redundant."

11. The aforesaid decisions do not apply in the present case because the cause of action, as has already been stated above is nonpayment of amount due which has been alleged to be payable at Ghaziabad in the plaint. On the plaint allegation, therefore, the Ghaziabad Court has jurisdiction. Whether the plaint allegations are correct or not will be examined by the trial Court after written statement is filed and issue is framed on that point and evidence has been led by the parties.

12. In the circumstances, the writ petition is devoid of merits and is accordingly,

dismissed. Petition dismissed.