
(1991) 07 GUJ CK 0034
In the Gujarat High Court

Gujarat Housing Board

APPELLANT

Vs

Navnirman Mazoor Bandhkam Sahakari Mandli Ltd.

RESPONDENT

Date of Decision : 09-07-1991

Acts Referred:

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

Citation : (1992) 1 GLR 155

Hon'ble Judges : M.S. Parikh, J

Bench : Single Bench

Judgement

M.S. Parikh, J.—The petitioner filed Civil Suit No. 328 of 1985, Civil Suit No. 329 of 1985 and Civil Suit No. 330 of 1985 against the respondent for obtaining relief of damages on the allegation that respondent committed breach of the contract between the parties. In all the 3 suits the respondent-defendent gave applications as per the particulars appearing in the respective orders for raising the issue of limitation as a preliminary issue. The applications given for raising preliminary issue in the respective suits came to be granted by the trial Court which ordered the issue of limitation to be raised as a preliminary issue. It is against the said orders that the petitioner has come in revision before this Court in the respective revision applications.

2. Heard the learned Advocates. Mrs. K.A. Mehta, learned Advocate for the petitioner referred to the provision contained in Order 14 Rule 2 of the CPC which reads as under:

2. Court to pronounce judgment on all issues:

(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.

3. She also relied upon the authority contained in the case of Major S.S. Khanna Vs. Brig. F.J. Dillon, . On a plain reading of the provision quoted above and as held by the Supreme Court in the aforesaid authority, it is clear that where issues both of law and fact arise in the same suit, the jurisdiction to try the issues of law apart from the issues of fact may be exercised only where in the opinion of Court the whole suit may be disposed of on the issue of law alone. Now in the instant case, what the trial Court has done is to refer to some of the dates from the plaint as the dates on which the cause of action had arisen in favour of the plaintiff-petitioner. While dealing with application for raising a preliminary issue, the averments contained in the plaint as a whole should be taken into consideration. Besides it appears from the averments contained in the plaint that the issue of limitation is dependent upon the facts to be established and in that case certainly the issue of limitation also would be a question of law as well as fact. If that is so, the issue of limitation in the facts and circumstances of the case before the trial Court, could not have been ordered to be raised as a preliminary issue. On a reference to the cause of action para the trial Court could have visualised this situation.

4. Mr. B.T. Rao, learned Advocate for the respondent submitted that on going through the final bill prepared by the petitioner to claim damages, the respondent could have been in a position to file a counterclaim. He was not sure whether the respondent had in fact filed a counter-claim in each of the suits or not. In any case, when the final bill referred to by the petitioner-plaintiff in the respective suits was a subject-matter of dispute between the parties, the respondent in the respective suit could not have prayed for raising of the issue of limitation as a preliminary issue. In any case the trial Court has exercised the jurisdiction not vested in trial Court with reference to Order 14 Rule 2 of the Code of Civil Procedure. Hence, the impugned order in the respective suits directing the issue of limitation to be raised as a preliminary issue deserves to be quashed and set aside. Order accordingly.

5. Rule is made absolute with no order as to costs. The trial Court is directed to proceed with the hearing of the suit after framing all the issues both of facts and law and proceed with the recording of the evidence as expeditiously as possible and dispose of all the three suits within a period of six months from the receipt of the writ of this order.