

(2011) 08 BOM CK 0173
In the Bombay High Court
Case No : Civil Rev. Application No. 74 of 2011

Hindustan Petroleum Corporation Ltd., Khapri	APPELLANT
Vs	
Ramgopal Soni	RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 115(1), 20

Citation : (2012) 2 BomCR 215 : (2011) 5 MhLj 944

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

Bench : Single Bench

Advocate : P. D. Meghe, for the Appellant; S. R. Deshpande, for the Respondent

Final Decision : Allowed

Judgement

R. K. Deshpande, J.—Admit. Heard finally by consent of the learned counsels appearing for the parties.

2. This civil revision application challenges the order dated 29-10-2010 passed by the learned Civil Judge, Junior Division, Dharni, rejecting the objection filed by the applicant/defendant regarding territorial jurisdiction of the Civil Court at Dharni to entertain, try and decide Regular Civil Suit No. 21 of 2010 claiming the relief of declaration and permanent injunction in the mandatory form.

3. Shri Deshpande, the learned counsel appearing for the non-applicant/ plaintiff, has raised a preliminary objection as to the maintainability of this civil revision application. He submits that if this civil revision application is allowed by this Court, then the proceedings of Regular Civil Suit No. 21 of 2010 pending before the trial Court would not be finally disposed of, as contemplated by the proviso to section 115(1) of the Civil Procedure Code. According to him, at the most, this Court would pass an order, as contemplated by Order 7, Rule 10 of the CPC for return of plaint for its presentation before the proper Court, and it cannot be termed as a "disposal of the suit" within the meaning of the proviso to section 115(1) of the Civil Procedure Code. He submits that the term "finally disposed of

the suit" used in the proviso to section 115(1) means "dismissal of the suit" or "passing of a decree in favour of plaintiff".

4. The proviso to section 115(1) of the CPC being relevant, is reproduced below :

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

Under the aforesaid provision, the High Court cannot vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceedings, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. The Legislature has consciously used the term "finally disposed of the suit" and the words "dismissal" or "passing of decree in favour of plaintiff" are not used. The word "disposal" also includes the disposal of other proceedings and it would include the disposal of the suit as per Order 7, Rule 10 of the Civil Procedure Code. If this civil revision application is allowed, then the suit is required to be disposed of in accordance with Order 7, Rule 10 of the Civil Procedure Code, and so far as the Court at Dharni is concerned, the proceedings of the suit would come to an end. In view of this, the objection that the present civil revision application is not maintainable, is rejected.

5. On the merits of the matter, the relief of quashing the rejection letter bearing reference No. NLRO/MBI/LPG, dated 5-11-2009 issued under the signature of Shri M. B. Ingole is claimed, and the declaration is sought that the said rejection letter is inoperative and non-est in the eyes of law. The further relief is claimed that the non-applicant/plaintiff be held entitled for distributorship of LPG for township of Dharni, District Amravati. The mandatory injunction is claimed that the non-applicant/plaintiff is entitled for distributorship. The prohibitory injunction is also claimed against the applicant/ defendant from committing breach of its own policy, promise and representation. Para 17 regarding cause of action contained in the plaint is reproduced below :

17. That, the cause of action arose within the jurisdiction of this Hon''ble Court as dealership is pertaining to township at Dharani, so also it is to function at Dharani and hence the Hon''ble Court has jurisdiction to try the suit with cause of action having arisen herein as above. When plaintiff read the advertisement in "Lokmat" firstly on 6-9-2007 thereafter when plaintiff gets the letter of rejection on 5-11-2001 and on 8-7-2010 when plaintiff withdraw writ and continued till today.

The applicant/defendant has submitted its reply to para 17 quoted above, as under:

23. As to paragraph 17 : It is denied that cause of action for present suit arose within jurisdiction of this Hon''ble Court merely because dealership pertain to

township at Dharni. It is necessary to appreciate that by settled principles in respect of cause of action and by no stretch of imagination, it can be said that the cause of action for the present suit arose at Dharni. In fact, the entire process of selection as well as rejection took place at Nagpur. Hence in the humble submission of this defendant, this Hon"ble Court has no jurisdiction to entertain present suit and on this count alone, suit is liable to be dismissed.

6. The trial Court has recorded the findings in para 7 of its order as under :

7. Now in this suit the LPG distributor will have to be allotted in Dharni Tahsil area, which came under jurisdiction of this Court. The Senior officers of the defendant visited Dharni on 2nd and 3rd May, 2008 for physical verification of establishment developed by the plaintiff. In the visit for physical verification, site was inspected, show room was visited and they also visited bankers to check the funds and banking arrangement of the plaintiff. The defendant has not specifically denied these aspects. Moreover, it is contention of the defendant itself that on verification of bank account of the plaintiff, during visit of field verification committee, it was found that there were Rs. 1021807/- in his saving bank account on 8-7-2008 against what he had mentioned in the application as Rs. 2031807/-. These aspects clearly show that part of cause of action has also arisen in the jurisdiction of Dharni Civil Court.

This is how the Court has held that the part of cause of action has arisen at Dharni and the Civil Court at Dharni has jurisdiction to entertain, try and decide the suit. The cause of action, as is disclosed in para 17 of the plaint, is the cancellation of dealership by the letter dated 5-11-2011, impugned in the suit. It is not in dispute that the action for cancellation of dealership was taken at Nagpur and the order of cancellation was issued from the office of the applicant/defendant at Nagpur. Thus, the cause of action arose at Nagpur.

7. It is not in dispute that the advertisement inviting the applications for dealership was issued from Nagpur. The Head Office of the applicant/defendant is located at Nagpur. The application for dealership was submitted at Nagpur. The interviews were held at Nagpur. The letter of selection was also issued from Nagpur. Simply because some inspection was conducted at Dharni and the dealership of the non-applicant/plaintiff is at Dharni, that would not furnish a cause of action for filing the suit. Similarly, the place of business of dealership also would not confer the jurisdiction to the Civil Court at Dharni. The cause of action arises out of cancellation of dealership and the order of cancellation was issued and despatched from Nagpur. The receipt of communication to cancel, at Dharni, will not the furnish cause of action at Dharni. In view of this, no part of cause of action arises within the territorial limits of Dharni and the Civil Court at Dharni shall not, therefore, have territorial jurisdiction to entertain, try and decide the suit. In the absence of any part of cause of action within the territorial jurisdiction of the Civil Court at Dharni, the matter will be governed by section 20(a) and (b) of the Civil Procedure Code, as the applicant/defendant has its Head Office at Nagpur and it is the Civil Court at Nagpur, which shall have

territorial jurisdiction to entertain, try and decide the said suit.

8. In view of this, the trial Court has committed an error in holding that the Civil Court at Dharni has jurisdiction to entertain, try and decide the suit. The impugned order cannot, therefore, be sustained. The same will have to be quashed and set aside.

9. In the result, the civil revision application is allowed. The order dated 29-10-2010 passed by the learned Civil Judge, Junior Division, Dharni, is hereby quashed and set aside. The trial Court shall proceed to dispose of the matter in terms of Order 7, Rule 10 of the Civil Procedure Code. No order as to costs.