
(2000) 07 BOM CK 0082

In the Bombay High Court

Case No : Notice of Motion No. 439 of 2000 in Suit No. 3557 of 1999

I.C.I.C.I. Ltd.

APPELLANT

Vs

Ceeta Industries Limited and Others

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 19, 31

Citation : (2001) 105 CompCas 426

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : Birendra Saraf, Sachin Chandrana and Faisal Syed, instructed by M.K. Ambalal and Co, for the Appellant; Deepak M. Thakkar, instructed by Pragna Thakkar and Co. for defendant No. 6, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—Heard counsel for the plaintiffs and the defendants. By way of this motion the petitioners sought two reliefs, (i) the leave granted by this court under Clause 12 of the Letters Patent on June 22, 1999, be revoked ; (ii) the receiver appointed by this court shall not take possession of the subject-matter of the suit.

2. Since the first question relates to or touches upon the jurisdiction of this court, I have to first decide that question. Rule 12 of the Letters Patent of this court was granted on the basis of the pleadings in para. 14 of the plaint, which says that part of cause of action arose within the territorial jurisdiction of this court. The leave of this court under Clause 12 of the Letters Patent, is required if only a part of cause of action arises in the jurisdiction of this court. Learned counsel for the defendant submits that no part of cause of action arose within the local limit of this court. Therefore, leave granted has to be revoked.

3. Normally, I would have gone into this question and examined the pleadings and the documents and if necessary directing the parties to adduce evidence. But a statute has intervened and even taken away the general jurisdiction of this

court to deal with this matter. Admittedly it is a suit filed by the bank, and the subject-matter is beyond Rs. 10 lakhs. Parliament enacted the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter called "the Act"), and Sections 17 and 18 intervened and takes away the jurisdiction of this court to entertain or decide the suit.

4. In this context, it is necessary to note that every court or Tribunal has got two kinds of jurisdiction. One is, for convenience, I may call it, general jurisdiction, It means it has got the power to adjudicate on the subject-matter of the dispute. If similar authorities or Tribunals or courts are established, having the power to deal with the similar nature of the subject-matter of the suit, then the statute will have to prescribe a territorial jurisdiction of such similar court. Section 9 of the Civil Procedure Code, 1908, gives this court the power to adjudicate upon all the nature of suits, which is of a civil nature. For facilitating further discussion it is necessary at this point to extract Section 9 :

"9. Courts to try all civil suits unless barred--The courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred."

5. Therefore, this court has conferred jurisdiction to deal with the subject-matter of the suit by virtue of Section 9 of the Civil Procedure Code. Since the dispute involved is of civil nature, Parliament and the Legislature, as the case may be, from time to time, have taken away the jurisdiction of the civil court and entrust it to some other Tribunal or quasi-judicial authority to adjudicate upon even the cases of civil nature. For example, the Industrial Disputes Act, the Co-operative Societies Act, the Rent Control Act and the Family Court Act, etc., were enacted for that purpose. Depending upon the nature of the dispute Parliament or Legislature, as the case may be, has to take away the general jurisdiction of the civil court, which is conferred otherwise on ordinary civil court u/s 9 for speedy adjudication of the dispute involved. Therefore Section 9 of the CPC itself enables that it is Parliament to make law, to take away the general jurisdiction of this court to deal with a particular class of cases. The above Act of 1993 is also enacted for that purpose. Parliament in its wisdom has carved out certain disputes to be decided by an independent Tribunal and it has been taken away from the general jurisdiction of this court. Therefore, a general jurisdiction is a prominent jurisdiction of the court and if the court lacks the jurisdiction to entertain a dispute the result is the dismissal of that proceedings. But here in this case, the question is not of general jurisdiction. As I pointed out in the opening paragraph of this order, the decision taken by this court in deciding the place of suing and granted leave under Clause 12 of the Letters Patent. Therefore, the territorial jurisdiction is always secondary vis-a-vis the general jurisdiction as I discussed above. If the courts lack in general jurisdiction to adjudicate upon the subject-matter of the dispute then it is unnecessary for this court to go into the question whether the court which lacks general jurisdiction has territorial jurisdiction. Moreover, if court is not having any territorial

jurisdiction the result is not the dismissal of the suit itself as in the case of lack of general jurisdiction. If a court lacks territorial jurisdiction, that court cannot dismiss the suit but the court must advise the client or litigant to go to a particular court having territorial and general jurisdiction, as is spelt out under Order 7, Rule 10, in the CPC also. Order 7, Rule 10, stipulates that if a litigant approaches the court but it is having no territorial jurisdiction but for a general jurisdiction the court has to return the plaint for re-presentation of the case before the proper court having territorial jurisdiction. But that is not the case where the courts lack general jurisdiction. If the court lacks general jurisdiction to entertain the subject-matter of the dispute itself, the court did not have any option except to dismiss the suit. It is in this context that I find that the territorial jurisdiction is always a secondary jurisdiction. In this context, we have to examine at this juncture whether particularly, in the light of Sections 17 and 18 of the Act, it is necessary on the part of this court to decide whether the leave granted by this court was proper or not, since, according to me as on today this court lacks jurisdiction even to entertain the subject-matter of the suit.

6. As I indicated earlier, the power of this court to entertain this case has been taken away by the intervening statute and given to the DRT. In that context it is unnecessary for me to examine whether the leave granted by this court under Clause 12 of the Letters Patent was correct or not.

7. Learned counsel for the defendant brought to my notice an enactment of 1936, which is called The Decrees and Orders Validating Act, 1936, Learned counsel drew my attention to the particular Section 2 which reads as follows :

"2. Certain decrees and orders not to be called in question.--No decree passed or order made by the High Court of Judicature at Fort William in Bengal ; the High Court of Judicature at Madras or the High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction under Clause 12 of its Letters Patent, or by the High Court of Judicature at Rangoon. In the exercise of its original civil jurisdiction under Clause 10 of its Letters Patent, shall be called in question in any proceedings before any other court on the ground that the High Court passing the decree or making the order had no jurisdiction to pass or make the decree or order."

8. Learned counsel strenuously argued in view of this provision that only this court can go into the question of jurisdiction under Clause 12 of the Letters Patent. The answer to this argument is already contained in paragraph mentioned above. Clause 12 deals with only territorial jurisdiction and in the light of Sections 17 and 18 of the above Act even the general jurisdiction had enabled the court to grant Clause 12 of the Letters Patent, has been taken away. Therefore, in the light of this provision Section 2 has become practicably redundant.

9. At this context, learned counsel for the plaintiff brought to my notice the overriding effect of Section 34 of the Act which says that notwithstanding

anything inconsistent herewith contained in any other law for the time being in force has taken away all the powers of this court even powers conferred by this Act 5 of 1936. Learned counsel for the plaintiff also brought to my notice the effect of Section 34 giving overriding effect in the Family Courts Act which was dealt with by a Full Bench of this court in Notice of Motion No. 3254 of 1999 in Romila Jaidev Shroof v. Jaidev Rajnikant Shroff (Suit No. 5885 of 1999). The Full Bench was examining the scope of Section 20 of the Family Court Act which is a verbatim reproduction of Section 34 of this Act. In that judgment in paragraph 27, the Full Bench observed thus :

"Letters Patent would be included in expression any law for the time being in force, and would certainly be covered the expression instrument. The overriding effect given to the Act is thus confined not only to the CPC but also to the Evidence Act. The Evidence Act is also an instrument having effect by virtue of law. Looking to the provision of the restricted right of an advocate to appear in a matter obviously, the Advocates Act of 1961, also has effect to that extent."

10. In view of the above discussion, I find that this court lacks general jurisdiction to entertain the subject-matter of the suit and it has to be transferred to the DRT. In view of the finding of question No. 1, the consideration of question No. 2, issuing the direction to the receiver does not arise at all.

11. In this context, learned counsel for the defendant submits that a difficult situation arose where he cannot raise the aspect of territorial jurisdiction of the Tribunal also, I do not think the apprehension entertained by learned counsel for the defendant is genuine because Section 19 of the Act provides the territorial jurisdiction of the Tribunal. On transfer of the suit to the DRT of Bombay the defendant can very well raise the objection regarding the territorial jurisdiction of the Tribunal to which it was transferred, and the Tribunal can very well decide that question u/s 19 of the Act.

12. In view of the matter, I dismiss the notice of motion and direct the office to transfer the suit forthwith to the DRT.

13. P. A. to issue ordinary-copy of this order authenticated by the associate of this court.