
(2009) 11 DEL CK 0346
In the Delhi High Court
Case No : C.R.P. No. 76 of 2009

Incom Cables Pvt. Ltd.

APPELLANT

Vs

Transport Corporation of India Ltd.

RESPONDENT

Date of Decision : 25-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 115, 151, 16, 21

Citation : (2009) 11 DEL CK 0346

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : V.L. Madan and K.K. Madan, for the Appellant; Rajesh Goyal, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This revision petition u/s 115 of the CPC has been preferred by the defendant in the suit before the trial court. The suit was filed as far back as in September, 2003 by the respondent/plaintiff for recovery of a sum of over Rs. 14 lacs. It was the averment in the plaint that the petitioner/defendant had availed the transport services of the respondent/plaintiff for transport of its goods from District Bulandshahar (U.P) to Madras, Rajkot and several other destinations. The suit was filed in the district court at Delhi averring that the petitioner/defendant company has its registered and principal place of business at Delhi and Delhi is also the Regional Office and place of business of the respondent/plaintiff. In the cause of action paragraph it was inter alia averred that the cause of action accrued when the bills were not paid by the petitioner/defendant in spite of personal visits of the respondent's/plaintiff's officials and demand notices served on the petitioner/defendant.

2. The petitioner/defendant was proceeded ex parte in the suit and an ex parte decree dated 12th January, 2004 came to be passed against it. It is informed that the same was set aside on an application being moved by the petitioner/defendant. The petitioner/defendant thereafter filed a written statement in or

about November, 2005 contesting the claim of the respondent/plaintiff. Though preliminary objections were taken in the written statement but no objection was taken as to the territorial jurisdiction of the court, though in reply to the paragraph of the plaint qua territorial jurisdiction it was denied that the courts at Delhi had jurisdiction to entertain and adjudicate the suit; it was however not denied that the petitioner/defendant had its registered office at Delhi; it was averred that cause of action did not arise in Delhi even according to the respondent/plaintiff.

3. Issues were struck in the suit first on 25th July, 2006 and on an application of the petitioner/defendant additional issues were struck on 22nd October, 2007. The petitioner/defendant did not seek any issue qua the territorial jurisdiction of the court to try the suit. It is informed that two of the witnesses of the respondent/plaintiff have already been examined and cross examined.

4. The petitioner/defendant in or about July, 2008 filed an application under Order 7 Rule 11 of the CPC seeking rejection of the plaint for the reason of the courts at Delhi not having territorial jurisdiction to try the suit. It was averred in the application that as per the plaint, registered office of the respondent/plaintiff was at Secunderabad (Andhra Pradesh); that the plaint relies upon the terms and conditions given on the reverse of the bills raised by the respondent/plaintiff; that it was inter alia a term of the said bills that the courts at Secunderabad (Andhra Pradesh) only will have jurisdiction to entertain all claims or other matters pertaining to the subject consignment or arising out of the contract of carriage; that according to the respondent/plaintiff also, the goods were transported from a destination outside Delhi to destination also out of Delhi; that the parties had in any case agreed to restrict the jurisdiction to the courts at Secunderabad (Andhra Pradesh) only and thus the courts at Delhi had no jurisdiction to entertain the suit. The trial court vide order impugned in this petition dismissed the application inter alia on the ground that the plaint could not be rejected on the ground of territorial jurisdiction and the application was in the form of a review of an earlier order dated 22nd October, 2007 of the court.

5. Aggrieved there-from, the petitioner preferred this petition. This Court on 15th May, 2009 issued notice of the petition and also stayed further proceedings in the suit before the trial court. The counsel for the respondent has appeared and the counsels have been heard.

6. At the outset, it may be stated that the petitioner has along with the petition filed merely the copy of the impugned order. Since the petition is challenging the order on application under Order 7 Rule 11 of the CPC, the petitioner was required to along with the petition at least file the copy of the plaint as well as the order dated 22nd October, 2007 of the trial court on the basis whereof the application has inter alia been dismissed. This Court cannot be expected to appreciate respective contentions without the copies of the trial court record being placed before this Court. However, since stay of proceedings before the trial court has been ordered and the counsels have been heard, the counsel for

the petitioner/defendant has during the course of hearing handed over his copy of the trial court file and on the basis whereof the observations herein above and hereinafter have been made.

7. The counsel for the petitioner has referred to New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others, and General Manager N.T.P.C. and Another Vs. Lt. Col. A.P. Singh (retd.) and Another, to contend that the location of the registered office of the petitioner/defendant within the jurisdiction of this Court would be immaterial if the cause of action had not accrued within the jurisdiction of this Court. He also relies on I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, and Sisir Kana Guha v. Ayakar Grihanirman Samabaya Samity Ltd. AIR 2002 Calcutta 247 to contend that merely because written statement has been filed and/or the issues have been framed is no ground for not entertaining an application under Order 7 Rule 11 of the CPC. Reliance is also placed on Mohan Chandra Tewari Vs. Harish Chandra Bhandari and etc., to support on the proposition that the application under Order 7 Rule 11 of the CPC can be filed at any stage.

8. Per contra, the counsel for the respondent/plaintiff has, at the outset, contended that the petitioner/defendant has in its books of accounts shown substantial part of the amount claimed in the suit to be due to the respondent/plaintiff and thus the parties should not be allowed to indulge in legalese and a decree for the admitted amount ought to be passed immediately against the petitioner/defendant and in favour of respondent/plaintiff. He also relies upon Section 21(1) of the CPC.

9. This Court while issuing notice of the petition was swayed by the contention of the counsel for the petitioner/defendant that the law of territorial jurisdiction goes to the root of the matter. That observation has been made by the Supreme Court in Harshad Chiman Lal Modi v. D.L.F. Universal Ltd. in the context of Section 16 of the CPC and relating to suits concerning rights in the immovable property and is not applicable to the suit of the present nature for recovery of money. Else, from a reading of Section 21 of the CPC, it is apparent that a question of territorial jurisdiction does not go to the root of the matter and would not convert the proceedings, in a court which otherwise have no territorial jurisdiction, into a nullity.

10. The crux of the argument of the counsel for the petitioner/defendant is on the basis of Clause 22 in the bills raised by the respondent/plaintiff on the petitioner. On enquiry, as to how the said bills would form the basis for rejection of the plaint and for which purpose, only the averments in the plaint are to be looked at, he states that the respondent/plaintiff has in the plaint referred to the said bills and made copies thereof as annexures to the plaint and thus they would form part of the plaint and can be read. I may however notice that the petitioner/defendant has in its written statement filed before the trial court denied the said bills and averred the same to be forged and fabricated. The counsel for the respondent/plaintiff also contends that the same were required to

be signed by the petitioner/defendant but the petitioner/defendant failed to sign the same.

11. Clause 22 of the bills as set out in the petition preferred before this Court is as under:

The Competent Court in the City of Secunderabad only shall have jurisdiction in respect of all claims and or other matters pertaining to the subject consignment or arising out of their contract of Carriage.

12. A perusal thereof would show that the jurisdiction was confined to the courts at Secunderabad only for the purposes of claims and other matters pertaining to the subject consignment. The same was meant to confine the jurisdiction to the courts at Secunderabad only qua the claims made by the clients/patrons of the respondent/plaintiff and against the respondent/plaintiff. The same was not meant to cover the claims of the respondent/plaintiff against its clients/patrons for transportation charges. Moreover, Clause 22 appears to have been inserted by the respondent/plaintiff in its bills for its own advantage and nothing prevented the respondent/plaintiff from waiving the same, especially when the petitioner/defendant for nearly six years since the institution of the suit did not contest the territorial jurisdiction of the court. I am of the view that when the petitioner/defendant is itself disputing the said bills, in my view, at the late stage in the suit it would not be open to the petitioner/defendant to take the plea of territorial jurisdiction which appears to have been taken vexatiously.

13. From the averments in the plaint as noticed herein above it also appears that a case for a cause of action having arisen within the jurisdiction of the courts at Delhi has been made out. Not only is it pleaded that the petitioner/defendant has its registered office at Delhi but cause of action is also stated to have accrued when the representatives of the respondent/plaintiff visited the petitioner/defendant and demanded payment and when notices of demand were issued and remained uncomplished. In the face of the said averment, it cannot really be said that the judgments cited by the petitioner hereinabove are applicable in as much as a case of cause of action having accrued within the courts at Delhi is pleaded.

14. As far as the contention of the counsel for the respondent/plaintiff of the petitioner/defendant having admitted the liability in its books of accounts is concerned, this Court while exercising revisional jurisdiction with respect to the order on an application under Order 7 Rule 11 of the CPC would not like to make any observations on the same. It will be open to the respondent/plaintiff to make an appropriate application in this regard before the trial court.

15. I also find merit in the contention of the counsel for the respondent/plaintiff on the basis of Section 21 of the CPC. Though the counsel for the petitioner/defendant has urged that the plea in this case has been raised before the trial court only and not before the appellate or revisional court but the fact remains that the plea/objection qua the territorial jurisdiction is required to be raised prior to the settlement of issues. Admittedly no such plea was raised by the

petitioner/defendant before the trial court prior to the settlement of the issues and it is not the case that any substantial injustice would be caused to the petitioner/defendant if the suit is tried at Delhi in as much as the registered office of the petitioner/defendant is within the jurisdiction of the courts at Delhi only.

16. In the circumstances though for different reasons, no error is found in the order impugned in this petition. The petition is dismissed. The earlier order of this Court staying further proceedings in the suit before the trial court is vacated.

CM No. 7071/2009 (Under Section 151 CPC for stay).

With the dismissal of the main petition, this application has become infructuous and is disposed of.