

(1980) 12 PAT CK 0019
In the Patna High Court
Case No : C.R. No. 721 of 1980

Jute Fibre

APPELLANT

Vs

Santosh Chandra Sawal Ram and Others

RESPONDENT

Date of Decision : 09-12-1980

Acts Referred:

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

Citation : (1981) 29 BLJR 713

Hon'ble Judges : Shivanugrah Narain, J

Bench : Single Bench

Judgement

Shivanugrah Narain, J.—On 22-4-74, M/s Santosh Chandra, Sawal Ram, a registered firm having its head quarters at Kishunganj, instituted a suit, which was numbered as Money Suit No. 43 of 1974 in the court of the Subordinate Judge, Purnea, impleading M/s. Harnath Rai Banarsi Lal, opposite party No. 2 in this case, and another firm Jute fibre, which is the petitioner before this Court, as defendants 1 and 2 to that suit and two other persons as defendants 3 and 4 alleging that they were managing the affairs of both the defendants-firm. The suit was brought for realisation of a sum of Rs. 29,411.64 from the defendants besides costs. It was alleged in the plaint that the plaintiff firm had its principal place of business at Kishunganj and dealt in various commodities including jute, and that the defendants-firms which were sister concerns and were being managed by the defendants 3 and 4 were carrying on business at Calcutta. According to the plaintiff, these defendants were working as commission agents of the plaintiff and in that capacity were selling jute despatched by the plaintiff to the defendants in the Calcutta market and they used to send accounts of the transactions to the plaintiff and make payments of the money due to the plaintiff as per the accounts. The final account sent by the defendants firm showed that the defendant No. 1 owed a sum of Rs. 17,886.37 P: and the defendant No. 2, namely, the petitioner firm owed the plaintiff a sum of Rs. 3900.17 P. The plaintiff asserted that as the defendants had not paid the said sum in spite of demands, as per business practice they were liable to pay interest thereon and

that, accordingly, the principal amount together with interest at the rate of 12 percent per annum due from these defendants to the plaintiff came to Rs. 29,411.64.

2. The suit was contested by the defendants 1 and 2 they filed separate written statements. According to the written statement of defendant No. 1, the petitioner firm (defendant No. 2) was not its sister concern and the suit was bad for misjoinder of parties and multifariousness of cause of action Besides the defence on the merits with which we are not concerned, which included a plea of set off, if the defendantst 1 and 2 were treated as sister concerns, and incorrectness of the account, the defendants raised a plea of want of territorial jurisdiction in the Court. They asserted that the contract between the parties was entered into at Calcutta, the delivery of jute was made at Calcutta and payments were to be made and were at Calcutta, according to the terms of the contract, and thus no part of the cause of action arose within the jurisdiction of the Court at Purnea. These defences were raised by defendant No 2 also, It appears that the plea of want of territorial jurisdiction was raised by the defendant No. 1 and was overruled by the Court by its order dated 7-5-1976. The Court, in seisin of the case, held that it had territorial jurisdiction to try the suit and, after ex parte hearing, passed a decree on 23-11-1976 which decree was, however, set aside and the case was set down for fresh hearing. Thereafter, defendant No. 2 filed a petition alleging that the suit was beyond the territorial jurisdiction of the Court and that the issue relating to the jurisdiction be decided in the first instance as a preliminary issue. The application was contested on behalf of the plaintiff opposite party By his order dated 13-3-1980, the third Additional Sessions judge, Purnea, who was in seisin of the case, rejected the prayer of the defendant No. 2 for trying the issue of jurisdiction as a preliminary issue. The defendant No. 2 has come up in revision to this Court against the aforesaid order.

3. The Court below has rejected the application under Order 14 Rule 2 of the CPC (hereinafter referred to as "the Code") holding that on a plain reading of the plaint, it appears prima facie that it had jurisdiction to entertain the suit as part of the cause of action arose within the jurisdiction of the Court and, therefore, the decision on the question as to the jurisdiction will require going into the question of facts also which could only be done at the time of final hearing of the suit on all issues and that the issue regarding jurisdiction, therefore, did not involve a question of law only. Order 14 Rule 2 C. P. C as amended by the amending Act of 1976 runs thus:

Rule 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.

It is manifest that Order 14 Rule 2 of the Code requires the Court to pronounce judgment on all the issues subject to the provision of Sub-rule (2), which concerns upon the Court a jurisdiction to try a particular issue first provided-

(a) the case or any part thereof may be disposed of on that issue;

(b) that issue is one of law only and

(c) that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force.

It is, therefore, clear that except in cases covered by Sub-rule (2), the Court is bound to pronounce judgment on all the issues. And to come within the exception to Sub-rule (1) carved out by Sub-rule (2), One of the essential conditions that the issue must fulfil is that it must be "issue of law only". The expression "issue of law only" occurred in Order 14 Rule 2 of the Code, as stood prior to the amendment by the amending Act of 1976, which provided that "if the Court was of opinion that the case or any part thereof may be disposed of on the issue of law only, it shall try those issues first." The expression "issue of law only" under Order 14, Rule 2 of the Code, as it stood prior to the aforesaid amendment, was construed by the Supreme Court in *Major S.S. Khanna Vs. Brig. F.J. Dillon*, . Delivering the opinion of the Supreme Court in that case *Shah, J.* as he then was, observed:

The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lopsided trial of the suit

It is, therefore, manifest that "issues of law" mean pure questions of law and do not comprehend within its ambit mixed issues of law and fact, and that the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues even though that preliminary issue may relate to the jurisdiction of the Court.

4. Mr. B.P. Rajgarhia, at first, attempted to argue on the basis of the decision in *Ramdayal Umraomal Partnership Firm, Raipur Vs. Pannalal Jagannathji*

Partnership Firm, Mandsaur, , that a mixed issue of law and fact can in certain cases also be decided as preliminary issue, but that decision of the Madhya Pradesh High Court was reversed by a Full Bench of that Court Ramdayal Umraomal Vs. Pannalal Jagannathji, , in which the principle was reiterated that an issue of jurisdiction also can be tried as preliminary issue only if it can be disposed of without recording any evidence. The question for decision, therefore, is whether the Court was right in holding that the issue of the jurisdiction in the present case could not be decided without deciding some questions of fact only.

5. Sri Rajgarhia argues that the question of jurisdiction in this case is a question of law only as it is patent upon the face of the averments in the plaint itself that no part of the cause of action arose within the territorial jurisdiction of Purnea Court and, therefore, the Court had no jurisdiction to try the suit. If it were so patent, then of course, the question of jurisdiction would be one of law only. But having gone through the plaint, I am unable to agree that on the basis of the averments made in the plaint, it cannot be maintained that any part of the cause of action arose within the jurisdiction of the Purnea Court. It is clearly recited in paragraph 3 of the plaint that the defendant acting as the commission agents of the plaintiff used to sell jute in Calcutta market and they "used to send the accounts of all such transactions to the plaintiff from time to time and also used to send money due from them to the plaintiff" It was also averred in paragraph 4 of the plaint that "the defendant No. 1 sent the final account to the plaintiff on Asarh Sudi 2 Sambat 2028 and on Sawan Badi 14 Sambat 2028". It is also stated in paragraph 7 of the plaint that ""the cause of action arose to the plaintiffs within the jurisdiction of this Court on Asadh Sudi 2 Sambat 2028 (corresponding to 24th June. 1971) when the defendants stated the accounts of the plaintiff in writing and thereafter."

6. Thus, according to the averments in the plaint, the defendants used to send the account of the transactions to the plaintiff and also used to send money due from them to the plaintiff. It is of course not expressly stated where the accounts or the money were sent, but as they were sent to the plaintiff and the plaintiff admittedly resides and does business at Kishunganj in the district of Purnea, it can reasonably be held that according to the plaintiff, the defendants used to send money and the accounts, to the plaintiff at Kishunganj and that the final accounts, as stated in paragraph 4 of the plaint, were also sent to Kishunganj. It is also clear from the averments, as implicit therein, that the plaintiff scrutinised the accounts at Kishunganj. According to the plaint, therefore, the place where the accounts used to be sent and payments used to be made to the plaintiff in respect of the transactions between the parties was Kishunganj within the jurisdiction of the Court at Purnea and that the accounts were also settled at that place. Atleast such a case can be said to be involved in the plaint.

7. Mr. Rajgarhia strongly contends that though part of the cause of action arises where money due under the contract is payable, no part of the cause of action arises at the place where payment of money in pursuance of the contract is

made. He contended that, unless the contrary is proved or clearly indicated, the accounting and payment by a commission agent must be done at the place where business is transacted and no part of the cause of action occurred at Kishunganj merely because certain payments were made at Kishunganj. In support of his contention, he placed reliance on the decision in *Shah Ganpat Pasu and Co. Vs. Gulzarilal Bhaiyalal and Another*, , and on the decision of a learned single Judge of this Court in *Meghrqj Sanchialal v. Malpani Rice and Oil Mills* 1975 P.L.J.R. 271. In the second case, it was observed by H.L. Agarwal, J. as follows:

In the absence of any express or implied contract regarding the place where the money would be payable between the parties, simply for the reason that certain payment is made at any particular place, no part of the cause of action would be deemed to accrue to the plaintiff at that place unless the plaintiff relied upon the said payment to prove the plea of an implied contract to make the payment at said place, and the Court on the materials placed by him, comes to such a conclusion.

It is, therefore, clear that no part of the cause of action accrues at a place merely because certain payment is made at that place, but this is so only in absence of any express or implied contract regarding the place where money would be payable between the parties, and the plaintiff can rely upon the payment at a certain place to prove a plea of implied contract to make payment at the said place. In *Baidyanath Mandal and Others Vs. The Coal Purchase and Inspection Agency (P.) Ltd. in Liquidation*, , a Bench of this Court held that though the plaintiff had not adduced any evidence on the point as to what were the terms of the contract regarding the place where payment was to be made under the contract, the fact that the bills used to be sent to the plaintiff at its Dhansar Office and payments also used to be made to the plaintiff there, showed that there was an implied contract between the parties that payment would be made to the plaintiff-company at Dhansar. In these circumstances, I am not able to hold that on the averment in the plaint of payment at Kishunganj, the plaintiff is debarred from maintaining that according to the terms of the contract between the parties, the accounts had to be sent and payments had to be made to the plaintiff at Kishunganj within the jurisdiction of the Court. I may also state that as the plaintiff is suing on the basis of the accounts, the plea that the accounts were settled at Kishunganj when they were scrutinised and were found correct by the plaintiff can also be maintained on the basis of the averments made in the plaint. The rule that ordinarily payment by a commission agent must be done at the place where business is transacted, as laid down in *Shah Ganpat Pasu and Co. v. Gulzarilal Bhaiyalal* (supra) and other cases is thus, of no avail to the petitioner.

8. The argument that it is patent on the averments of the plaint that the Court has no territorial jurisdiction to entertain the suit must, therefore, fail and if this argument fails, the conclusion of the learned Subordinate Judge that the issue as to the jurisdiction involves mixed issue of law and fact cannot be faulted.

Whether according to the terms of the contract, express or implied the accounting had to be done and payments made, to the plaintiff in respect of the transactions, which were the subject-matter of the contract, and if the accounts were settled at Kishunganj, all involve determination of questions of fact. The prayer for deciding the issue in regard to territorial jurisdiction as a preliminary issue was, therefore, rightly rejected.

9. I need not state that though the prayer has been rejected, this does not disentitle the Court from holding at the conclusion of the trial that the Court had no jurisdiction to try the suit, if on the basis of the facts, pleaded in the written statement and proved at the hearing the Court comes to the conclusion that no part of the cause of action accrued within the jurisdiction of this Court.

10. In the result, there is no merit in the application and it is, accordingly, dismissed with costs. Hearing fee Rs, 50/-.