
(1994) 07 MAD CK 0118
In the Madras High Court
Case No : C.R.P. No. 1593 of 1994

Larsen and Toubro Limited

APPELLANT

Vs

R. Sivakumar

RESPONDENT

Date of Decision : 28-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115, 21, 21(1)
Constitution of India, 1950 — Article 227
Contract Act, 1872 — Section 28

Citation : (1994) 07 MAD CK 0118

Hon'ble Judges : Pratap Singh, J

Bench : Single Bench

Advocate : A.L. Somayaji, for the Appellant; M.S. Umapathy, for the Respondent

Judgement

Pratap Singh, J.—This Civil Revision Petition filed under Article 227 of the Constitution of India, is directed against the order passed in I. A. 4235/94 in O. S. 2121/94 on the file of V Assistant Judge, City Civil Court, Madras. Short facts are: The respondent R. Sivakumar had filed the suit against the petitioner Larsen and Toubro Ltd., in O. S. 2121/94 for a declaration that order of the defendant dated 5.2.94 transferring the plaintiff from the defendant factory-workshop at Manapakkam village to Kandla-Bhatinda job site as illegal and mala fide and for consequently injunction restraining the defendant from giving effect to the said order dt. 5.2.94. He also filed I.A. 4235/94 under Order 39 Rule 1 and 2 C.P.C., praying for ad-interim injunction till the disposal of the suit, restraining the respondent from giving effect to the order of the respondent dt. 5.2.94. After enquiry, the learned Assistant Judge, City Civil Court, Madras had allowed the petition. Aggrieved by that order, the respondent in the Court below, has come forward with this petition.

2. Mr. Somayaji, the learned Senior Counsel appearing for the petitioner, would submit that the Court below does not have jurisdiction to try the case and consequently, to pass the impugned order that objection to the jurisdiction of the

Court was taken before the Court that the Court below had erroneously held that it has got jurisdiction and had passed the interim order and it is liable to be set aside. He would further submit that the court below relied upon the clause in the promotion order Ex. P8; wherein it is stated that this contract shall be subject to the jurisdiction of and be determined by a Court of competent jurisdiction in Madras only that cause of action for this suit arose at Manapakkam, which is within the jurisdiction of the District Munsif Court, Poonamallee, and that the City Civil Court, Madras does not have jurisdiction over the suit claim. While so, parties cannot confer jurisdiction on the Court at Madras He would add that the reliance upon this clause, by the court below is wrong. Per contra, Mr. Umapathy, the Learned Counsel appearing for the respondent, would submit that parties can waive an objection to the jurisdiction and in this case, by virtue of Ex. P8 issued by the respondent, they have waived such a right to object and so they cannot object to the jurisdiction of the City Civil Court, Madras. He would further submit that Section 21, Code of Civil Procedure, 1908, as amended, contains three requirements for that section to apply, which includes consequent failure of justice" and in this case there was no failure of justice because of the Court below exercising jurisdiction in this case and so this objection is not tenable.

3. I have carefully considered that submission made by the Learned Counsel. To consider this objection, the relevant clause in Ex. P8 promotion order need be extracted. It reads as follows:

Any dispute between yourself and the Company concerning with or relating to or arising out of this contract shall be subject to the jurisdiction of and be determined by a court of competent jurisdiction in Madras only.

The undoubted fact is that the respondent was working at Manapakkam, at the time, when the transfer order was made. Manapakkam is within the jurisdiction of District Munsif's Court, Poonamallee. Now the suit is filed at City Civil Court at Madras. The above clause is pressed into service by the respondent. Now the question that falls for consideration is whether the City Civil Court at Madras will have the jurisdiction to try the suit, in view of the above clause.

4. Section 21 (1) of CPC is relevant and it needs extraction. It reads as follows:

No objection as to place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

In the instant case, objection has been taken even at the earliest opportunity. So the first requirement is satisfied. The second requirement does not arise in this case; because it is in the stage of enquiry in an interlocutory application. The third requirement is as follows:

Unless there has been consequent failure of justice.

In this case, the objection is taken with regard to jurisdiction. There is no

complaint that there will be a consequent failure of justice, in case the trial Court took up the matter for decision. So the third requirement is absent in this case. But the important thing to be noted is that Section 21 (1) C.P.C. is applicable only in a case when the appellate court or revisional court had occasion to consider the question of jurisdiction. This is not a case like that. The High Court exercising jurisdiction under Article 227 of the Constitution of India is exercising powers under Article 227 and not as an appellate court or a revisional court. Taking that view of the matter, I am clear that the requirements of Section 21 (1) C.P.C. cannot be imported while considering the validity of the impugned order, while exercising jurisdiction under Article 227 of the Constitution of India.

4-A. In this case, the question that falls for consideration is as to whether the court below was right in holding that it has got jurisdiction to enquire into the matter by virtue of the clause in Ex. P8 which I have extracted in paragraph 4 of my judgment.

5. In *Hakam Sing Vs. Gammon (India) Ltd.*, , in paragraph 3, the apex court had held as follows:

It is not open to the parties by agreement to confer by their agreement jurisdiction on a Court which it does not possess under the Code. But where two courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in one of such Courts is not contrary to public policy. Such an agreement does not contravene S. 28 of the Contract Act.

In the instant case, the City Civil Court at Madras does not have jurisdiction at all, to try the case inasmuch as the cause of action had not arisen within the jurisdiction of that court and no part of the cause of action had arisen within the jurisdiction of that court. While so, by agreement between the parties, they cannot confer jurisdiction to that court. The principle laid down in *Hakam Sing Vs. Gammon (India) Ltd.*, , squarely applies to the facts of this case.

6. Mr. Umapathy, Learned Counsel would rely upon the decision in *R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.* (A.I.R. 199 S.C. 2094). The short facts in that case are. *R.S.D.V. Finance Co. Pvt. Ltd.* filed a summary suit against the respondent under the ordinary civil jurisdiction of the High Court. At objection was taken in the written statement to the effect that Bombay High Court had no jurisdiction to entertain this suit. The learned single Judge has negated that contention. On appeal filed by the defendant, a Division Bench Of the High Court held that the leave granted under Clause XII of the Letters Patent must be revoked and it must be held that this Court had no jurisdiction to entertain and try the suit. The matter was taken up by the Supreme Court. In that context, the apex court had occasion to consider the scope of Section 21 (1) C.P.C. While considering so, the Apex Court had laid as follow:

The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following

conditions:

(1) that such objection was taken in the Court of first instance at the earliest possible opportunity.

(2) in all cases where issues are settled then at or before such settlement of issues;

(3) there has been consequent failure of justice. The above would lay down the three conditions which are necessary for allowing of such objection by the appellate or revisional court. The said Section 21 (1) C.P.C. would not come into play when the finding of the trial court regarding jurisdiction is being canvassed under Article 227 of the Constitution of India.

7. In *Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others*, it was held that in order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfilment of the following three conditions is essential:

1. The objection was taken in the court of first instance.

2. It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.

3. There has been a consequent failure of justice. All these three conditions must co-exist. Here again, I would like to point out while sitting in appeal or in revision, these requirements are necessary.

8. In *Bimal Sahoo, Secretary, Basudebpur Girls' High School and others Vs. Gouri Rani Pahari and others*, learned single Judge of the Calcutta High Court had held as follows in paragraph 10 of his judgment.

Mr. Roy Chowdhury invites my attention to the provision in Section 115, C.P.C. as it stood before amendment of 1976 and as it stands after amendment. It is clear that by the amendment of 1976 unlike the pre amendment provision a revision shall no more lie if any appeal lies to the High Court. It is urged that Article 227 of the Constitution is fettered with similar limitation. I am unable to subscribe to this view. Power of Supervision cannot be so equated with power of revision. As a matter of fact Court will strike down a patently illegal exercise of jurisdiction in exercise of the power of superintendence. I am therefore, unable to uphold the contention of Mr. Roychowdhury that the Court will not exercise this power of superintendence, if an alternative remedy is available particularly when the Court finds inherently want of jurisdiction.

With respect, I am in total agreement with the view expressed by the learned Judge. I am clear that power of supervision under Article 227 of the Constitution of India cannot be equated with power of revision. So, Section 21 (1) C.P.C. cannot be taken into account while considering a petition filed under Article 227 of the Constitution of India. Furthermore, though an alternative remedy by way of appeal is available to the petitioner, still this Court acting under Article 227 of j

the Constitution can exercise its power of superintendence when it is found that the Court below had acted without jurisdiction.

9. In *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, Section 21 C.P.C. came up for consideration. The apex court has observed as follows:

Counsel for the plaintiff also submitted that the defendants have neither alleged nor proved that there has been a failure of justice in consequence of the order of the High Court, they are precluded by S. 21 of the Code from raising this objection in this Court. We think that this contention has no force. The suit has not yet been tried on the merits. So far, only the preliminary issue as to jurisdiction has been tried. That issue was decided in favour of the defendants by the trial court and the District Court and against them by the High Court, and from the order of the High Court, this appeal has been filed. There cannot be a consequent failure of justice at this stage. The condition "unless there has been a consequent failure of justice" implies that at the time when the objection is taken in the appellate or revisional court, the suit has already been tried on merits.

This again would point out that the stage when the objection taken u/s 21 C.P.C. is not at the time when the matter is still pending in the trial court in the preliminary stage.

10. Mr. Umapathy, Learned Counsel, would rely upon the decision in *Seth Hiralal Patni Vs. Sri Kali Nath*, for making a submission that the relevant clause in Ex. P8 promotion order issued by the petitioner would amount to a waiver of any objection to jurisdiction at City Civil Court, Madras, when there was such a waiver, the petitioner cannot raise it when the civil suit is filed in the City Civil Court, Madras. In *Seth Hiralal Patni Vs. Sri Kali Nath*, , the short facts are:

The respondent instituted a suit on the Original Side of the Bombay High Court against the appellant, after obtaining leave of the Bombay High Court under Clause 12 of the Letters Patent. One of the defences of the appellant, taken in his written statement, was that the suit filed was outside the territorial jurisdiction of the Bombay High Court Original Side and entire cause of action arose at Agra. The suit was eventually referred to arbitration. The arbitrator gave his award in favour of the respondent and it was upheld by the High Court. The respondent took out execution proceedings. At that time, the appellant took up objection that the Bombay High Court had no jurisdiction to entertain the suit. It was held that where a party to a suit had agreed to refer the matter to arbitration through court he would be deemed to have waived his objection to the territorial jurisdiction of the court raised by him in his written statement. The facts of this case cannot be equated to the facts of the case on which the Apex Court had ruled in this case.

11. In view of what I have stated above, I am clear that the City Civil Court, Madras, does not have jurisdiction to entertain the suit by virtue of the Clause found in Ex. P8 which I have extracted above. The parties cannot confer the jurisdiction of a court which does not have jurisdiction at all to try the matter.

From the materials available in this case it is apparent, only that the court of Poonamallee has got jurisdiction to try the case. So the Court below was wrong in entertaining the suit and in passing the impugned order and it is liable to be set aside.

12. Mr. Umapathy, Learned Counsel, would submit that if it is found that the court below does not have jurisdiction to entertain the suit direction be given for returning the plaint for presentation before the proper court and that the order passed by the court below may be permitted to be continued for a reasonable time so that the respondent can re-present it in proper court and obtain appropriate orders. I find that this request is a very reasonable one.

13. In the result, the Civil revision petition is allowed and the order passed in I. A. No. 4235 of 1994 in O. S. No. 2121 of 1994 on the file of V Assistant Judge, City Civil Court, Madras, is set aside on the sole ground that the City Civil Court, Madras does not have jurisdiction to entertain the suit and pass the impugned order. I am not saying anything with regard to the merits of the rival claims, excepting with regard to jurisdiction since it is not necessary for me to consider them in this petition. The Court below is directed to return the plaint to the plaintiff/respondent herein for presentation in proper court. The respondent is at liberty to present it in proper court and get appropriate orders. In the meanwhile, there shall be an order that the petitioner shall not give effect to the order of transfer for a period of six weeks from today. No costs.