

(2010) 03 BOM CK 0190

In the Bombay High Court

Case No : Appeal From Order No. 75 of 2005

Mallikarjun Transport and Chitrarekha Omprakash Khake

APPELLANT

Vs

Dr. Babasaheb Ambedkar Sahakari Sakhar Karkhana Ltd.

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 19, 20

Citation : (2010) 6 BomCR 622 : (2010) 4 CivCC 752

Hon'ble Judges : A.V. Potdar, J

Bench : Single Bench

Advocate : S.V. Adwant, for the Appellant; Arun Dalal, h/f. V.D. Salunkhe, learned Counsel, for the Respondent

Judgement

A.V. Potdar, J.—By the present appeal from order i.e. AO, the petitioners/original plaintiffs have challenged the order passed by the 3rd Jt. Civil Judge, Senior Division, Aurangabad in Spl. C.S. No. 73/2004 dated 08/03/2005, by which the plaint was returned to the plaintiffs for presentation to the Court, in which the suit should have been instituted without disclosing the name of that Court under the provisions of Order 7 Rule 10 of CPC. This order is impugned in this A.O.

2. Vide order dated 15/04/2009, after hearing the counsel for appellants and respondent, this Court has admitted the present appeal.

3. Today, when the A.O. came on board for final hearing, heard learned Counsel for appellants followed by the submissions of respondent. During the course of submissions across the bar, my attention is drawn towards the order impugned, as well as the plaint filed in the Court of Civil Judge, S.D. Aurangabad, which is numbered as Spl. C.S. No. 73/2004. It is not under dispute that the appellants who are plaintiffs before Lower Court are transporters and dealing in transport business. They have entered into contract with one Gangapur Cooperative Sugar Factory to move the molasses from the premises of respondent defendant Dr. Babasaheb Ambedkar Sahkari Sakhar Karkhana, Osmanabad and to transport the molasses to the factory site of Gangapur Cooperative Sugar Factory, within

the local jurisdiction of Aurangabad District. It is to be noted that while the trucks of appellants are transporting the molasses, they were detained by the respondent, the defendant before the Lower Court and also recovered an amount of Rs. 7,00,000/ under receipt of which reference is given in para No. 10. These trucks were detained on 22/11/2003, hence the suit for compensation for the wrong committed at the hands of respondent defendant for the decree of compensation in the sum of Rs. 10,78,335/ with future interest and damages @ 4,000/ per day from 16/02/2004 till the release of trucks. The dates of institution of the suit is not under dispute as 22/02/2004. It is informed across the bar that after the suit was filed, under the directions of the Court on application by the appellants, those vehicles were released by consent of respondent/ defendant. In the premise, release of trucks by way of mandatory orders now do not survive, at least at this juncture. It further appears that after service of summons, the respondents appeared before the Trial Court and filed an application vide Exh.24 to frame the preliminary issue about the territorial jurisdiction in which the suit to be instituted and to be tried as the competent civil court is the authority to decide the dispute between the parties. It appears that vide order below Exh.24, passed on 25/01/2005, the learned Lower Court was pleased to frame the preliminary issue in respect of territorial jurisdiction in which the suit to be tried. It is not under dispute that this order of framing of preliminary issue is neither impugned in this AO nor was challenged by either of the parties by preferring the necessary AO. Hence that topic is now closed. Subsequent to framing of preliminary issue, after hearing the submissions of the parties, the learned Lower Court passed order below Exh. 1 dated 08/03/2005, which is as stated earlier impugned in this AO by which the learned Trial Court is of the view that the territorial jurisdiction to try and entertain the suit is Civil Judge, S.D. Osmanabad, hence returned the plaint under order 7 Rule 10 of CPC.

4. At the opening of the submissions, learned Counsel appearing for the appellant placed in my hand the order passed in AO 92/2005 of this Court dated 22/02/2007. Parties to that AO are same. The identical order was under challenge and by the same order, the order passed about the return of plaint under Order 7 Rule 10 of CPC was set aside by this Court and Spl. Suit No. 74/2004 was returned back to the Court of Civil Judge, S.D. Aurangabad to try and dispose of in accordance with Law. It is to be noted that the said suit was filed on identical similar facts with similar prayers, but with some different amount of compensation. It is observed in the said judgment, which read as follows:

Para No. 4: In this regard perusal of the order passed by lower court shows that it has concluded that this being the suit for damages/compensation, Section 19 of C.P.C. itself clears the position from all points of view and this suit is not filed where the wrong was done or where the defendants reside as per provisions of Section 19 of C.P.C., or where the cause of action had arisen as per the provisions of Section 20(c) C.P.C. and on such reasoning, the impugned order came to be passed.

5. During the course of submissions across the bar, relying on this judgment, it is urged across the bar that the said order passed by this Court was challenged before the Apex Court in SLP No. CC 8743/2007 which came to be decided on 21/09/2007, with the order, "We are not satisfied that the petitioner herein is prejudiced by the impugned order. The SLP is dismissed." According to the learned Counsel for respondent, the order passed in AO No. 92/2005 is cannot be treated as an order on merit, but it is to be treated as the order which was not passed after hearing the respondents. It was the same submission in the SLP before the Apex Court. It is to be noted that in the SLP, the order passed in AO 92/2005 was not set aside, but the SLP was dismissed. In Law, once the reasoned order is passed, whether after hearing both the sides or in absence of one side, the order passed is always the order on merits and it cannot be termed as the order passed without considering the merits and have no binding effect on the parties to the litigation. In view of this legal proposition, at the outset this Court is not in agreement with the submissions of learned Counsel for respondent as the order in AO No. 92/2005 and the order in SLP arises out of that AO, was not passed on merit, as it was passed without hearing counsel for respondent. The order stands as it is as on today.

6. Apart from it, the facts which were considered in above paragraph No. 4, from the order in AO No. 92/2005, as we find reference of the judgment in the matter of State of Maharashtra v. Sarvodaya Industries, a registered partnership doing business at Poha at Akola reported in AIR 1975 Bom 1975, wherein in para No. 13 and 14, scope of application of Section 19, which deals with the jurisdiction of Civil Court in the suits filed for compensation and wrong is discussed. The same issue is dealt with in the matter of State of Meghalaya and Others Vs. Jyotsna Das, . In the said matter, in para No. 13 and 16, one can find the reference about the judgment reported in The State of Maharashtra Vs. Sarvodaya Industries, , and for this purpose, it is necessary to consider the observations in para No. 13 of the judgment, which read as follows:

The question is whether the expression "wrong done" should be construed to mean only the act which caused the wrong or should also include and cover the effect of the Act. There would be no difficulty if only the act which caused wrong has to be taken into consideration for then the place where the act was done would be the place where wrong was done, but in my opinion, it shall not be reasonable and proper to put such a restrictive meaning to the expression "wrong done", which could very well and justifiably include the effect of the act, for "wrong done" is in reality the effect of the "act". The "act" by itself if it does not have any effect or results in causing effect would hardly be actionable, it is its effect which results in harm, loss or damage, etc, which together with such effect constitutes the "wrong done". It should consequently follow that if an act is done, say at place "X" and its effect which constitutes the wrong is at place "Y", it should not be said that the wrong was not done at place "Y". i.e. that it should not be restricted to mean that the wrong was done only at place "X".

While considering the ratio as given in both these judgments cited supra, to be considered in the light of Illustration (a) given below to Section 19 of The CPC, which reads as:

A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi. Which deals with suit for compensation for wrongs to person or movables.

7. The suit in which the impugned order is passed, and impugned in this AO, according to learned Counsel for respondent, the factory of respondent/defendant is at Osmanabad where the trucks of the appellant plaintiff while lifting the molasses, were detained for which initially Rs. 7,00,000/ require to be deposited by the appellants, hence according to respondent, the cause of action in the sense "wrong" about the detention of those trucks at Osmanabad. It is to be noted that in the impugned order, in para No. 7, it is observed by the learned Trial Court that the talks and negotiation of contract between the parties took place at defendant's Karkhana Keshegaon and the vehicles were detained at Keshegaon. The defendant has specifically submitted that the cause of action arose at Keshegaon, Tal. And Dist. Osmanabad. It is nobody's case that there was contract between appellants and respondent. On the contrary, the appellants are the transport contractor of Gangapur Sahakari Sakhar Karkhana, who had entered into contract with the respondent as they have purchased the molasses for which they have paid the agreed consideration to the respondent, which is not the subject matter of the Special Civil Suit before the learned Trial Court. It is also not under dispute that there is no contract between the parties to the litigation. Then no question arise as to talks and negotiation took place between the parties to the suit at the defendant's Karkhana and in absence of any such privity of contract between the appellants and respondent, it can not be said that the appellants entered into contract with respondent to lift the molasses at their factory site. A specific case is made out by the appellants in the plaint before the Lower Court that when he had been to the factory site of respondent/defendant at Osmanabad, initially their trucks were detained, but after negotiation with the purchaser Gangapur Sahakari Sakhar Karkhana, those trucks were released. On the second occasion, again the trucks were detained and at that time, the appellants forced to deposit Rs. 7,00,000/ and this compensation is not only for that 7.00.000/ but for the period , for which their trucks were detained at the factory site. The molasses lifted to be transported to Aurangabad, factory site of Gangapur, for the preparation of further products from that molasses, then, as demonstrated in the plaint, whatever the loss caused to the appellants plaintiffs, because of the contract, they have entered into with this Gangapur Sahakari Sakhar Karkhana, while transporting the molasses as per their order and placement with the respondent sugar factory. In the premise, as projected, and as per the ingredients of Section 19 of CPC, the cause of action about the loss caused to the appellants can not be said where the vehicles were detained, but because of non use of those vehicles at Aurangabad, and if it is so, as per the illustration given below Section 19 of CPC, even though the vehicles were detained at Osmanabad, they have also loss to their business at Aurangabad. In

the premise, there is option for the appellant where to file the suit, at the place of their business or where the vehicles detained. In the premise, the option was obtained by the appellants by filing the suit in the Court of Civil Judge, S.D. Aurangabad, which can not be faulted. The finding recorded by the Court below particularly in para No. 11, 12 and 13 of the order impugned that as the vehicles were detained at Osmanabad, the Court at Aurangabad has no territorial jurisdiction to decide and entertain the suit filed by the plaintiffs appellants is wrong and not the clear interpretation of Section 19 of CPC and of the scope of Section 19 of CPC.

8. In the premise, the order impugned is quashed and set aside. AO is allowed by setting aside the order dated 08/03/2005 by which the plaint was returned to the appellants for presentation in the proper court. As the AO is allowed, rule is made absolute as indicated above. Parties to appear before the learned Lower Court on 29/03/2010, i.e. 3rd Jt. Civil Judge, S.D. Aurangabad on 29/03/2010.