

(2013) 07 BOM CK 0287
In the Bombay High Court
Case No : Second Appeal No. 189 of 2012

Miss Mridula Nikhar

APPELLANT

Vs

Shah Nature and Health Project Pvt. Ltd.

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 1 ALLMR 505 : (2014) 2 MhLj 559

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Judgement

F.M. Reis, J.—Heard Shri R.G. Ramani, learned Counsel appearing for the appellant and Shri S.M. Singbal, learned Counsel appearing for the Respondent. Admit on the following substantial question of law:

Whether the Lower Appellate Court was justified to come to the conclusion that the suit filed by the appellant had no territorial jurisdiction in terms of Section 21 of the Civil Procedure Code.

2. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the respondent waives service.

3. The above Second Appeal challenges an order passed by the learned Lower Appellate Court dated 7/09/2012 passed in Regular Civil Appeal No. 46/2011, whereby the appeal preferred by the respondent came to be allowed and the judgment and decree passed by the learned trial Court dated 31/12/2010 passed in Regular Civil Suit No. 54/2010 was quashed and set aside.

4. Briefly the facts of the case are that the appellant filed the suit for recovery and for possession of some movable assets. The said suit was filed on the basis of an agreement which was executed between the appellant and the respondent. In view of the default committed by the respondent, the suit came to be filed for recovery of money as well as for restoration of the movable assets. It was the contention of the appellant that the said movable assets were in a structure

located at Canacona. Accordingly, the suit was filed before the learned Civil Judge Junior Division, Canacona.

5. The respondent opposed the said suit by denying the claim put forward by the appellant. The respondent disputed their obligation to pay any amount or to hand over possession of any such movable assets. An objection was also raised by the respondent to the effect that the suit at Canacona lacked territorial jurisdiction, as according to the respondent, such suit ought to have been filed in Panjim.

6. The learned Civil Judge, Junior Division at Canacona by judgment and decree dated 31/12/2010 after framing the issues decreed the suit filed by the appellant. While disposing the said suit the learned Judge came to the conclusion that Canacona Court had jurisdiction to entertain and decide the suit. Being aggrieved by the said judgment and decree the respondent preferred the said Regular Civil Appeal No. 46/2011 before the learned District Judge, South Goa at Margao. In the said appeal, a contention was also raised by the respondent that the impugned judgment and decree passed by the learned trial Court was without jurisdiction as it was lacking territorial jurisdiction and, as such, the same deserves to be quashed and set aside. The learned District Judge by the impugned judgment and decree dated 7/09/2012 considered the objection with regard to jurisdiction raised by the respondent and came to the conclusion that Canacona Court had no territorial jurisdiction to entertain the suit and, consequently, set aside the judgment and decree passed by the learned trial Court. Whilst passing the impugned judgment the merits of the rival contention of the parties was not at all considered. Being aggrieved by the judgment passed by the Lower Appellate Court, the appellant has preferred the above Second Appeal.

7. Shri R.G. Ramani, learned Counsel for the appellant has raised two contentions challenging the impugned judgment. His first contention is that on going through the provisions of Section 21 of the CPC when an objection with regard to jurisdiction is considered by the appellate Court three considerations are to be satisfied. The first is that such objection is to be raised in the court at the first instance. The second is that such objection is to be raised at the earliest opportunity and the third is that there has to be a consequent failure of justice. The learned Counsel further points out that on perusal of the impugned judgment passed by the Lower Appellate Court though the first two contentions have been satisfied, nevertheless there is nothing on record to suggest that there was any consequent failure of justice which has occasioned to the respondent. On this count alone the impugned judgment passed by the Lower Appellate Court according to the learned Counsel deserves to be quashed and set aside. The learned Counsel in support of his submissions has relied upon the judgments of the Apex Court reported in *Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others*, and *R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.*, . The next contention of Shri R.G. Ramani, learned Counsel is that in case the learned Judge had come to the conclusion that the suit filed by the

appellant lacks territorial jurisdiction, the question of allowing the appeal and dismissing the suit would not arise, but at the most the learned Judge ought to have directed the return of the plaint to enable the appellant to file such plaint before the competent Court. The learned Counsel has taken me through the impugned judgment of the Lower Appellate Court and pointed out that on this ground also the impugned judgment deserves to be quashed and set aside.

8. Shri S.M. Singbal, learned Counsel appearing for the respondent has joined issues with the contentions of Shri R.G. Ramani, learned Counsel appearing for the appellant. Shri Singbal, learned Counsel for the respondent has pointed out that once the parties raised an objection to the territorial jurisdiction, any decree passed by such Court is a nullity in law. In support of his submissions, the learned Counsel has relied upon the judgment of the Apex Court reported in *Kiran Singh and Others Vs. Chaman Paswan and Others*, . The learned Counsel has thereafter relied upon the judgment of the Apex Court reported in *A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem*, , to advance his contention that in cases of contract the suit is to be filed at the place where the contract has been executed. The learned Counsel has thereafter taken me through the findings of the Lower Appellate Court and pointed out that on the basis of the alleged cause of action pleaded by the appellant the Lower Appellate Court was justified to come to the conclusion that the Court at Panjim had jurisdiction to entertain the suit. The learned Counsel further submits that the relief for delivery of movable assets is incidental to the main relief of the appellant for recovery of money. The learned Counsel further pointed out that as the performance of the contract had to be preformed at Panjim only and, as such, the Court at Panjim had jurisdiction to entertain the suit. The learned Counsel, as such, submits that no interference is called for in the impugned judgment and, as such, the above appeal deserves to be rejected.

9. I have considered the submissions of the learned Counsel and I have also gone through the records. It cannot be disputed that an objection with regard to the territorial jurisdiction is not at par with an objection on the ground of inherent jurisdiction. It is now well settled that objection on account of territorial jurisdiction can even be waived. The point for consideration is whether in view of an objection raised by the respondent that the suit filed by the appellant had no territorial jurisdiction the Lower Appellate Court was justified to pass the impugned judgment by allowing the appeal of the respondent and dismissing the suit filed by the appellant for lack of territorial jurisdiction. Section 21 of the CPC provides thus:

21. Objections to jurisdiction.

(1) No objection as to the 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 or settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction 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.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.

On plain reading of the said provisions in order to succeed before the Appellate Court on an objection to the territorial jurisdiction of the trial Court to try the suit, there are three conditions to be satisfied. As far as the present case is concerned it cannot be disputed that the objection with regard to the territorial jurisdiction was raised by the respondent before the learned trial Court. It is also not in dispute that such objection was raised at the first instance before the framing of the issues. Hence, the first two conditions are satisfied by the respondent in the present case. But however, the third condition to be fulfilled by the respondent is that consequently there has been a case of failure of justice to the respondent. In the present case, on perusal of the impugned judgment passed by the Lower Appellate Court, I find no consideration on that count by the Lower Appellate Court. The Apex Court in the judgment relied upon by Shri R.G. Ramani, learned Counsel for the appellant in the case of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd. (supra) has observed at paras 7 & 8 thus:

7)Sub-sec. (1) of Section 21 of the CPC provides that no objection as to the 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 consequent failure of justice. 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:-

(i) That such objection was taken in the Court of first instance at the earliest possible opportunity;

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

(iii) there has been a consequent failure of justice.

8) In the present case though the first two conditions are satisfied but the third condition of failure of justice is not fulfilled. As already mentioned above there was no dispute regarding the merits of the claim. The defendant has admitted the deposit of Rs. 10,00,000/- by the plaintiff, as well as the issuing of the five cheques. We are thus clearly of the view that there is no failure of justice to the

defendant decreeing the suit by the Learned Single Judge of the Bombay High Court, on the contrary it would be totally unjust and failure of justice to the plaintiff in case such objection relating to jurisdiction is to be maintained as allowed by the Division Bench of the High Court in its appellate jurisdiction.

The learned Single Judge of this Court in the judgment reported in Hindustan Petroleum Corp. Ltd. Vs. Chandulal Dipchand Kale, and has observed at paras 13 & 14 thus:

13. That apart, the question of jurisdiction is not always a vital question. The objection as to place of suing may be considered within the ambit of section 21(1) of the C.P.C., 1908. In R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., , the Apex Court observed:

Objection as to the place of suing shall be allowed by the appellate or revisional Courts subject to the following conditions:

- (i) That such objection was taken in the Court of first instance at the earliest possible opportunity;
- (ii) in all cases where issues are settled then at or before such settlement of issues;
- (iii) there has been a consequent failure of justice.

13. In the present case though the first two conditions are satisfied yet, the third condition of failure of justice is not fulfilled. There is hardly anything on record to say that due to wrong place of suing the appellant was prejudiced in making out his defence. The objection cannot be entertained without satisfaction of the third condition alongwith the other two conditions, that the failure of justice is occasioned as a result of the wrong place of suing. In this view of the matter, the objection raised by the learned Counsel Smt. Anjali Bajpai Dube, cannot be countenanced.

10. Considering the ratio laid down by the Apex Court and this Court referred to herein above, I find that the Lower Appellate Court has not at all considered as to whether there was any failure of justice to the respondent on account of any lack of territorial jurisdiction. Having not done such exercise, the impugned judgment dated 7/09/2012 passed by the Lower Appellate Court stands vitiated and cannot be sustained.

11. Shri R.G. Ramani, learned Counsel for the appellant is also justified to contend that in case the learned Judge had come to the conclusion that Canacona Court lacks territorial jurisdiction after being satisfied of the said three predicates as provided in Section 21(1) of the Civil Procedure Code, the only option to the learned Judge was to direct the return of the plaint to enable the appellant to file such plaint in the Court of competent jurisdiction. This is the view taken by the Apex Court in the judgment reported in Auto Engineering Works Vs. Bansal Trading Company and Others, . wherein it has been observed

at para 4 thus:

4. After hearing learned Counsel for the parties, we are of the opinion that the trial court fell in error in not directing the return of the plaint to the appellant for presentation to the proper forum and the High Court also likewise fell in the same error. The terms of Order VII Rule 10 of the CPC are clear and specific. After having found that it had no territorial jurisdiction to entertain the plaint, the trial court ought to have returned the plaint to the appellant for presentation to the proper forum. We, therefore, set aside the order of the trial court to the extent it refused to return the plaint to the appellant for presentation to the proper forum and direct that the plaint shall be returned to the appellant for its presentation to the proper forum. After the plaint is so presented to the court having jurisdiction, the case shall be decided by the trial court in accordance with law on its own merits.

12. The contention of Shri Singbal the learned Counsel appearing for the respondent relying upon the judgment of the Apex Court referred to here in above are not at all applicable to the facts of the present case. In case of Kiran Singh Vs. Chaman Paswan (supra,) the question of territorial jurisdiction was being decided as a preliminary issue and there was no decree passed on merits. In the present case, though the objections were raised the trial Court disposed the suit on merits. In any event, the provisions of Section 21 of the CPC did not come into operation in the facts of the case in the said judgment of the Apex Court. Hence, the judgments relied upon by Shri Singbal, learned Counsel appearing for the respondent on facts do not apply to the facts of the present case. Even in the other judgment of the Apex Court relied by Shri S.M. Singbal, prejudice was also taken into consideration by the learned Trial Court.

13. Hence, the substantial question of law is answered accordingly. In view of the above, I pass the following order:

ORDER

(i) The impugned judgment and decree passed by the Lower Appellate Court dated 7/09/2012 in Regular Civil Appeal No. 46/2011 is quashed and set aside.

(ii) Regular Civil Appeal No. 46/2011 is restored to the file of the Lower Appellate Court.

(iii) The Lower Appellate Court is directed to decide the said appeal afresh after hearing the parties in accordance with law.