
(1982) 01 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2709 of 1981

M/s Vaz Forwarding Pvt. Ltd., Bombay	APPELLANT
Vs	
M/s Punjab Tanneries Limited Nakodar Road, Jullundur	RESPONDENT

Date of Decision : 19-01-1982

Acts Referred:

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

Citation : (1982) 01 P&H CK 0053

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : P.S. Khera with Mr. M.S. Ratta, for the Appellant; G.L. Nagpal, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—The defendant-petitioner has filed this revision petition against the order of trial Court, dated August 20, 1981, whereby it refused to treat issue No. 4, relating to the jurisdiction of the Court, as a preliminary one. Issue No. 4 read:--

Whether the Court at Jullundur has no jurisdiction to try and so determine the suit?

2. At the motion hearing, the Learned Counsel for the petitioner stated that the defendant petitioner was not to lead any evidence on the above-said issue though the burden to prove the same was on him. According to the trial Court, the said issue could not be treated as an issue of law only, as the parties would lead evidence to show that all the correspondence, between the parties, was entertained at Jullundur, the payments were made at Jullundur and that the goods were also to be received at Jullundur. Thus, it required the leading of evidence and, therefore, the said issue could not be decided in the absence of the evidence on the record.

3. The learned counsel for the petitioner contended that in view of the provisions

of order XIV rule 2, Code of Civil Procedure, (here inafter called the Code), the afore mentioned issue should have been treated as a preliminary one by the trial Court; more particularly when the petitioner was not to lead any evidence thereon According to the Learned Counsel, if all the evidence of the parties is to be produced on all the issues, then to decide this issue at a latter stag? will be meaningless because the very purpose of the objection regarding the lack of the territorial jurisdiction of the Court trying the suit, would be defeated. The plaintiff cannot be allowed to defeat this purpose simply by stating that he would lead his evidence to negative the said issue The Learned Counsel further contended that when there is no evidence in the affirmative, the question of leading any evidence in rebuttal does not arise. On the other hand, the Learned Counsel for the plaintiff respondent contended that this Court will not interfere in the discretionary order passed by the trial Court in the instant case in the exercise of this Court's jurisdiction u/s 115 of the Code, and in any case, the above-mentioned issue cannot be said to be an issue of law only and, therefore the same could not be treated as a preliminary one. In support of his contention, the Learned Counsel placed reliance on Hardwari Lal v. Pokhar Mal (1978) 80 P.L.R. 252 Nebh Raj and others v. Sunder Dass (1979) 81 P.L.R. 131, Digvijaya Woollen Mills v. Mohinder Kumar Jain 1979 P.L.J. 194, and M/s Estrela Batteries Ltd. v. M/s Modi Industries Ltd AIR 1976 A.U. 201.

4. Order XIV rule 2 of the Code reads:--

2(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 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 untill after that issue has been determined, and may deal with the suit in accordance with the decision that issue

Section 21 of the Code, inter alia 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 the 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 Prior to the amendment of the Code by Act No. 104 of 1976, rule 2 of Order XIV read :--

Where issues both of law and fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit,

postpone the settlement of the issues of fact until after the issues of law have been determined.

In view of above provisions of the Code, it is quite evident that the question in regard to the territorial jurisdiction of the Court to try the suit has to be decided at the earliest otherwise also, if this question of territorial jurisdiction of the Court trying the case is to be decided along with the other issues, then at that stage, this objection will become irrelevant because in that situation in view of the provisions of section 1 of the Code, the party aggrieved would be further required to prove that there has been a consequent failure of justice on that account. Thus, intention of the legislature seems to be that as and when an objection as to the territorial jurisdiction of the Court to try the suit is raised the same should be decided as a preliminary issue being a question of law since the plaintiff who has chosen his own forum to file the suit could not be allowed to frustrate the defendant by claiming that the said issue liquored the leading of evidence thereon ; particularly when the defendant on whom the onus to prove the same has been placed, does not want to lead any evidence in the affirmative. Ordinarily when no evidence is led in the affirmative the question of rebuttal may not arise, but in any case, if the plaintiff is too keen to lead some evidence on the issue relating to the territorial jurisdiction of the Court, he may do so, but the same time, he cannot be allowed to plead that the said issue be not treated as a preliminary issue. Section 115 of the Code inter alia provides that the high Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or other proceeding except where the order if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made. Thus in the present case, it is quite evident that if the impugned order is allowed to stand it would occasion a failure of justice and would also cause irreparable injury to the petitioner because in that case, as observed earlier, the very purpose of the objection regard to the territorial jurisdiction of the Court would be defeated. Once the petitioner which is established at Bombay, while the suit against it has filed at Jullundur is called upon to lead its entire evidence, then at that stage, it would not be of much use to decide the issue of the territorial jurisdiction. In this view of the matter, there is no force in the contention of the Learned Counsel for the respondent in regard to the maintainability of the revision petition in this Court against the impugned order passed by the trial Court. The authorities relied upon by him are not at all applicable to the facts of the case in hand and are distinguishable. The note on sub-clause (ii) to clause 67 of Bill No 27 of 1974, proposing further amendments to the Code, and the Limitation Act, 1963, explains the objects and reasons for the incorporation of the existing rule 2 of Order XIV of the Code, vide Act No. 104 of 1976, as follows:--

Rule 2 is being substituted to provide that, although a suit can be disposed of on a preliminary issue, the Court shall ordinarily pronounce judgment on all issues ;

but where any issue relates to the jurisdiction of the Court on a bar created by any law for the time being in force, the Court may postpone settlement of the other issue with regard to the Court or such bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue.

Thus, after the substitution of rule 2 of Order XIV of the Code by Act No. 104 of 197, an issue relating to the jurisdiction of the Court is to be decided as a preliminary one, being an issue of law, failing which it may frustrate the very purpose of the objection. It is all the more necessary in the present case because, as observed earlier, the petitioner or whom the onus to prove the issue has been placed, does not want to lead any evidence in its support. In this view of the matter, it is a case where the trial Court has acted illegally and with material irregularity in the exercise of its jurisdiction, which has resulted in failure of justice in this case.

5. Consequently, this revision petition succeeds and is allowed. It is directed that issue No. 4, relating to the jurisdiction, as reproduced above, be treated as a preliminary one. However, the plaintiff-respondent may be allowed one opportunity to lead evidence, if any, on that issue. There will be no order as to costs.