

(2011) 08 MP CK 0126

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 520 of 2005

Narsinghlal

APPELLANT

Vs

M/s. Fatehchand Jaidev and Others

RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 15, 19

Citation : (2012) 1 MPHT 83

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : V.P. Saraf, for the Appellant; S.C. Agrawal, Advocate for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mody, J.—Being aggrieved by order dated 10-1-2005 passed by 3rd ADJ, Mandsaur in C.S. No. 7-B/2002 whereby suit filed by the appellant was Returned to the appellant under Order VII Rule 10, CPC with a liberty to file suit before the Competent Court, present appeal has been filed. Short facts of the case are that the appellant filed a suit before the learned Court below on 16-8-2002 for recovery of a sum of Rs. 13,05,080.00 alleging that the appellant is carrying on his business of agricultural produce in the name and style of M/s. Vijay Traders at Bhanpura. It was alleged that respondent Nos. 1 and 2 are Commission Agents of agricultural produce and carrying on the business at Delhi. It was alleged that respondent No. 3 is a Public Undertaking and is a manufacturer of Food products. Further case of the appellant was that on 5-10-1996, respondent No. 2 inquired the market report of Soyabean and telephonically directed to supply Soyabean, which was to be supplied to respondent No. 3. It was alleged that on 5th October, 1996 a contract took place between the appellant and respondent No. 2 for the supply of Soyabean @ Rs. 1,350/- per quintal telephonically. It was alleged that respondent Nos. 1 and 2 are carrying on the business jointly. It was alleged that 800 quintal of Soyabean was supplied by the appellant between 13th

October, 1996 and 22nd October, 1996 through various trucks worth Rs. 10,39,582.00. It was alleged that as per instructions of respondent No. 2 appellant dispatched the bills and goods receipts to respondent No. 3, which was duly received by respondent No. 3 and the respondent No. 3 took the delivery of goods after paying the freight amounting to Rs. 41,615/- to the transporters. It was alleged that appellant was assured that the appellant will get the amount within two weeks from the date of delivery of goods and when the appellant did not get the price, appellant met with respondent No. 3 at that time, appellant was informed that an amount of Rs. 11,72,168.19 paise has been paid to respondent Nos. 1 and 2. Respondent No. 3 also supplied the full particulars of the challan whereby payment was made to respondent Nos. 1 and 2 by respondent No. 3. It was alleged that thereafter appellant repeatedly asked the respondent Nos. 1 and 2 and also issued notice but of no avail hence, the suit was filed.

2. Suit was contested by respondent No. 3 by filing written statement wherein the allegations made in the plaint were denied. It was denied that there was any agreement between respondent No. 3 and the appellant. It was alleged that respondent No. 3 purchased the goods by inviting tenders through newspapers. It was alleged that since respondent No. 3 placed the order at Delhi, therefore, Court of Bhanpura has no jurisdiction. It was also alleged that since there was a clause of arbitration in the notice inviting tender which was published in the newspaper therefore, Civil Court has no jurisdiction. It was prayed that suit filed by the appellant be dismissed. Respondent Nos. 1 and 2 filed separate written statement and contested the suit on various grounds. So far as jurisdiction is concerned, it was alleged that no part of agreement has taken place at Bhanpura therefore, learned Court below has no jurisdiction to hear and decide the suit. On the basis of the pleadings of the parties, learned Trial Court framed more than 20 issues, out of which Issue Nos. 10, 18, 19 and 20 were treated as preliminary issues which reads as under:-

3. Respondent Nos. 1 and 2 filed written statement wherein plaint allegations were denied. It was alleged that no part of contract took place at Bhanpura, the entire transaction has taken place at Delhi, therefore, it is only at the Court of Delhi who is having jurisdiction. It was prayed that suit be dismissed.

4. After hearing arguments preliminary Issue Nos. 10 and 18 were decided against appellant holding that the dispute was to be decided through arbitration as per the agreement and also the Court at Bhanpura is not having territorial jurisdiction to hear and decide the suit. Since the suit was returned to the appellant, therefore, this appeal has been filed.

5. Mr. V.P. Saraf, learned Counsel for the appellant argued at length and submits that the impugned order passed by the learned Court below is illegal, incorrect and deserves to be set aside. It is submitted that since the order was placed telephonically at Bhanpura and the goods were supplied by the appellant from Bhanpura, therefore, learned Court below committed error in holding that the

Court of Bhanpura is having no jurisdiction to hear and decide the suit. Learned Counsel further submits that learned Court below committed error in holding that since there was an arbitration clause in the newspaper whereby tenders were invited by the respondent No. 3, therefore, Civil Suit is not maintainable. Learned Counsel submits that appeal filed by the appellant be allowed and the impugned order be set aside.

6. Mr. S.C. Agrawal, learned Counsel for the respondent No. 3 submits that there was no Privity of contract between the appellant and respondent No. 3 as respondent No. 3 purchased the goods from the respondent No. 2 and also paid money to respondent Nos. 1 and 2. It is submitted that tenders were invited by respondent No. 3 through publication in which there was a clause of arbitration therefore, learned Court below has rightly held that Civil Court has no jurisdiction to entertain the suit. Learned Counsel further submits that since goods were delivered at Delhi and the respondent Nos. 1 and 2 are residing at Delhi and the respondent No. 3 is also having its office at Delhi, therefore, learned Court below has rightly held that Court of Bhanpura is having no jurisdiction to decide the case. Learned Counsel for the respondent No. 3 placed reliance on a decision in the matter of Bhagwandas Goverdhandas Kedia Vs. Girdharilal Parshottamdas and Co. and Others, wherein Hon''ble Apex Court has observed that mere making of offer does not form the part of cause of action. Further reliance is placed on a decision in the matter of A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , wherein Hon''ble Apex Court has observed that where more than one Court having jurisdiction, contract to vest jurisdiction in one of them, not against public policy. Further reliance is placed on a decision in the matter of Birla Global Finance Ltd. Vs. Gajra Bevel Gears Ltd., wherein this Court has held that before making reference to arbitration, it is to be seen whether an application is made in a suit or proceedings and secondly whether there exists an agreement and thirdly whether there exists an arbitration clause in the agreement and lastly whether dispute sought to be raised in the suit is covered by the agreement.

7. Section 15 onwards of the CPC deals with place of suing. Section 19 of the CPC deals with suit for compensation for wrongs to a person or immovables which lays down that suit is for compensation for wrong done to the person or to immovables, if wrong was done within local limits of one Court and the defendants reside or carrying on business or personally works for gain within the limits of jurisdiction of another Court, suit may be instituted at the option of the plaintiff either of the said Court. In the present case, indisputedly, there is no agreement between the appellant and respondent No. 3. Respondent No. 3 has come with a case that notice was published whereby tenders were invited for purchase of Soyabean at Delhi, therefore, suits as presented can only be filed at Delhi and not at Bhanpura. So far as filing of suit against respondent Nos. 1 and 2 is concerned, this is also no more in dispute that contract was taken place telephonically between the appellant and respondent No. 2.

8. In the matter of Bhagwandas (supra), Hon''ble Court has observed that where

the offer was made by the plaintiff by telephone conversation from Ahmedabad and the same was accepted by the defendant by telephone conversation from Khamgaon the contract is made at Ahmedabad and a part of the cause of action for suit for damages for breach of the contract arises within the jurisdiction of Ahmedabad Court.

9. Keeping in view the aforesaid position of law, appeal filed by the appellant is allowed and the impugned order is set aside and the case is remanded back to the learned Court below with a direction to re-decide the preliminary issues after hearing the parties. In view of the written statement filed by the respondent, appellant shall be at liberty to amend the pleading relating to jurisdiction and also relating to non-impleading respondent No. 3 as party. Parties are directed to remain present before the Court below on 8-11-2011. Learned Court below shall, before proceedings further, secure presence of unserved respondents.