
(2014) 12 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1346 of 2012

Niziveedu Seeds Pvt. Ltd.

APPELLANT

Vs

The Registrar

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Protection of Plant Varieties and Farmers Rights Act, 2001 — Section 19, 20, 21

Citation : (2014) 12 AP CK 0091

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : S. Niranjan Reddy, Advocates for the Appellant; B. Narayana Reddy, Assistant Solicitor General, Advocates for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.—This appeal has been preferred against the judgment and order of the learned Single Judge, dated 9.3.2012, by which His Lordship was pleased to dismiss the writ petition on the question of jurisdiction without deciding the matter on merit. The writ petition (W.P. No. 26300 of 2010) was filed by the petitioner for the reliefs as set out hereunder:

2. A writ of Mandamus declaring the advertisement of the 2nd respondent's applications in respect of MRC-7918, MRC-7041 BGII and MRC-7160 varieties in the Plant Variety Journal of India without following the due procedure specified under the provisions contained in Sections 19, 20, 21 read with Rules 29 and 30 of Protection of Plant Varieties and Farmer's Rights Act, 2001 as illegal and unconstitutional and for other allied reliefs.

3. After the counter-affidavits were filed before the learned trial Judge, the writ petition was called upon to be disposed of finally on the mention made by the learned lawyer for the 2nd respondent that the jurisdictional issues involved in the above writ petition were covered by the judgment rendered by the Division Bench on 24.1.2012 in W.A. No. 651 of 2010 and batch of cases.

4. From the tenor of the judgment of the learned trial Judge, it appears to us that His Lordship was pleased to consider and decide the question of territorial jurisdiction of this Court following the judgment of the Division Bench as referred to above.

5. While deciding, the learned trial Judge held that though part of the cause of action in the writ petition disclosed by the petitioner had arisen within the territorial jurisdiction of this High Court, because of forum conveniens as held by the Division Bench on an identical jurisdictional fact, this Court would not entertain the matter on merit. This matter, likewise previous one, is to be decided by Hon"ble Delhi High Court.

6. In order to decide this appeal, we feel it expedient to narrate brief facts pertaining to the issue of jurisdiction.

The 2nd respondent, while carrying on the same kind of business as the petitioner is doing, has submitted applications to the 1st respondent under Protection of Plant Varieties and Farmer's Rights Act, 2001 (hereinafter referred to as "Act of 2001") for registration of the seed varieties being numbers MRC-7918, MRC-7041 BGII and MRC-7160. The said applications have been published in the Plant Variety Journal of India in Volume No. 3 of Book No. 4, Volume No. 3 of Book No. 8 respectively inviting objections, if any. However, while giving details of the seed varieties (hybrids), the 2nd respondent is not mentioning the denominations of their parental lines, which would have been prior notified and published in the Plant Variety Journals in accordance with the provisions of the said Act and Rules framed thereunder for registration.

7. The provisions of the Act, Rules and Regulations thereof obviously have an all India application, and the Journal is published throughout India for the purpose of submitting objections. Objections can be submitted from any part of the country, including by sending the same by registered post. Any farmer or seed grower residing in any part of the country can maintain objections to the particulars published in the journal. The journal is circulated throughout India, including within the State of Andhra Pradesh, and in fact the petitioner herein is registered as a recipient of the journal within the State of Andhra Pradesh. In the writ affidavit to invoke territorial jurisdiction it is stated as follows:-

The petitioner has its corporate office in the State of Andhra Pradesh and has its major seed processing facilities within the State of Andhra Pradesh and largely conducts its business within the State of Andhra Pradesh. The registration of any variety would result in grant of indefeasible rights to the applicant defeating the rights of others to use the said varieties. The consequences of infringement, violations would visit the petitioner within the territorial jurisdiction of this Hon"ble Court.

8. The learned Senior Counsel for the appellant submits that the learned trial Judge has committed an error in dismissing the writ petition on the concept of forum conveniens even after accepting that a part of the cause of action had

arisen within the territorial jurisdiction of this Court, as no such specific plea was taken in the counter-affidavit.

9. According to the learned counsel for the appellant, once it is held that a part of the cause of action has arisen within the territorial jurisdiction of this Court, the Court has no option but to entertain the writ petition on merit, as the language of clause (2) of Article 226 of the Constitution of India is very clear. According to him, the impact of the advertisement of the application has been felt by the petitioner in Hyderabad, therefore this part of the cause of action is good enough for this Court to decide the matter on merit invoking its jurisdiction.

10. He has brought to our attention the following number of judgments of the Supreme Court, wherein it was consistently held, considering a variety of jurisdictional facts, that if part of the cause of action is found to have arisen within the territorial jurisdiction of a particular High Court, it will entertain the writ petition.

1. S.M.D. Kiran Pasha Vs. Government of Andhra Pradesh and Others,
2. Union of India and Others Vs. Adani Exports Ltd. and Another,
3. Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another,
4. Godrej Sara Lee Limited Vs. Reckitt Benckiser Australia Pty. Ltd. and Another,
5. Om Prakash Srivastava Vs. Union of India (UOI) and Another,
6. Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others,
7. State of Rajasthan and Others Vs. Swaika Properties and Another,
8. Alchemist Limited and Another Vs. State Bank of Sikkim and Others,

11. The learned Senior Counsel, Sri C.V. Mohan Reddy, appearing for the respondents, on the other hand, says that on an identical jurisdictional fact, a Division Bench of this Court has dismissed the writ application on the ground of forum conveniens. As such, having found similarity of the jurisdictional fact, the learned trial Judge has dismissed the writ petition. He would rely on the same judgment of the Division Bench of this Court.

12. After hearing the learned counsel for the parties and reading the statements and averments in the writ petition and considering the finding of the Hon"ble trial Judge, now the question which has fallen for decision of this Court is as follows:

(i) Whether the learned trial Judge is justified in non-suiting the writ petitioner even after observing that a part of the cause of action has arisen in this matter within the territorial jurisdiction of this Court, on the concept of "forum conveniens"?

(ii) Whether the learned trial Judge is right in following the judgment of the earlier Division Bench of this Court on the question of jurisdiction?

13. The aforesaid decisions of the Apex Court cited by the learned counsel for the appellant, in our view, have laid down a statement of law, having noted the individual jurisdictional facts constituting part of the cause of action.

14. In the case of *Union of India v. Adani Exports Limited* (supra), the Supreme Court, upon examining the jurisdictional fact, held that each and every fact pleaded by the respondents (writ petitioner therein) in their application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the court's territorial jurisdiction unless those facts are such, which have a nexus or relevance with the lis that is involved in the case. Applying this principle, the Supreme Court held that none of the facts pleaded by the respondents falls into the category of bundle of facts which would constitute a cause of action giving rise to a dispute which could confer territorial jurisdiction on the courts at Ahmedabad.

15. Therefore, taking note of the jurisdictional facts pleaded in the above case, the Supreme Court found that the concerned High Court had no territorial jurisdiction. This judgment did not deal with concept of forum conveniens.

16. In the case of *S.M.D. Kiran Pasha v. Government of A.P.* (supra), the Supreme Court held that in the event of threatened or imminent violation of a right, writ petition can be filed. This judgment recognizes pre-emptive action, but this judgment has not dwelt upon the concept of forum conveniens.

17. In the case of *Kusum Ingots & Alloys Limited v. Union of India* (supra), the Supreme Court held that the question as to whether the Court has a territorial jurisdiction to entertain a writ petition, must be arrived at on the basis of the averment made in the petition, the truth or otherwise thereof being immaterial.

It is further held that in order to confer jurisdiction on a High Court to entertain a writ petition, it must disclose that the integral facts pleaded in support of the cause of action do constitute a cause so as to empower the Court to decide the dispute and that the entire or a part of the cause of action arose within its jurisdiction. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.

18. In the case of *Godrej Sara Lee Limited v. Reckitt Benckiser Australia Pty. Limited* (supra), the Supreme Court was dealing with a question of jurisdiction in relation to cancellation of registration under the Designs Act, 2000. It was held by the Supreme Court that the Court within whose jurisdiction the registration has taken place will have jurisdiction.

19. In the case of *Om Prakash Srivatsava v. Union of India* (supra), the Apex Court has merely held, by necessary implication, the concept of forum conveniens. In this case, the appellant filed a writ petition before the Delhi High Court. The said High Court refused to consider that writ petition holding that

though it might have jurisdiction to deal with grievances of the appellant but these could be more effectively dealt with by the Allahabad High Court. In this case, the Supreme Court found that Delhi High Court did not decide whether it had jurisdiction to deal with the writ petition. Therefore, such question was asked to be decided. The concept of forum conveniens was not accepted by the Supreme Court because there was no decision and finding as to whether the Delhi High Court had jurisdiction or not.

20. In the case of Oil & Natural Gas Commission v. Utpal Kumar Basu (supra), the Supreme Court found that the Calcutta High Court had no jurisdiction on the given statement and averment in the writ petition.

21. In the cases of State of Rajasthan v. Swaika Properties (supra) and Alchemist Limited v. State Bank of Sikkim (supra), the Court explained what are part or whole cause of action, and if any part thereof arises within the territorial limit of any particular High Court, it is competent to entertain the writ petition.

22. According to us, the concept of forum conveniens can be applicable when it is found by the Court that a part of the cause of action has arisen within the territorial limit of a number of Courts legally competent to entertain and decide the lis and in the choice would be one of them for entertainment and trial of the lis. We are of the view concept of forum conveniens would be invoked when, on a given case, two or more Courts have territorial jurisdiction basing on disclosure of the cause of action, one of such court is to be chosen, within whose jurisdiction dominant part of the cause of action has arisen.

23. Viewing from this angle, we now examine the case on hand. Application for registration has been made in New Delhi at the office of the 1st respondent; in pursuance thereof advertisement is ordered from the office of 1st respondent. Moreover, this plea can be entertained going by the jurisdictional facts disclosed in the writ petition. Obviously, after receipt of objections, decision for registration would be taken upon hearing by the first respondent in New Delhi. It is not that registration shall automatically be granted. If registration is granted, only then the writ petitioner would feel the impact. If on this infinitesimal part of cause of action, that may not arise even, this Court entertains this writ petition, then all High Courts over the country within whose jurisdiction adverse impact of the same registration is felt, would have to entertain number of writ petitions against the same official respondent. The inevitable result would be inviting possible conflict of judicial decisions, and the uniform judicial policy of avoidance of the same would be defeated.

24. We therefore hold the learned trial Judge has applied the correct position of law and has taken the right course of action, having found similarity of the case with the earlier matter which was dealt with by the appellate court in the judgment recorded by the learned trial Judge. It is true that the plea of forum conveniens is to be pleaded and proved by the party taking such a plea ordinarily, but when it is established on an identically proven fact between the

same parties, no such pleading is needed for it would be mere repetition.

25. According to us, the learned trial Judge had no option but to accept and follow the judgment on an identical jurisdictional fact. Therefore, we do not find any reason to interfere with the judgment and order of the Hon''ble trial Judge.

26. The Writ Appeal is, accordingly, dismissed. There will be no order as to costs.

Consequently, pending miscellaneous petitions, if any, shall also stand closed.