(1961) 04 MP CK 0032

In the Madhya Pradesh High Court

Case No : C. Rev. No. 60 of 1961

Ranchbordas Shamji — APPELLANT

Vs

Ram Chandra — RESPONDENT

Date of Decision : 15-04-1961

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 10

Citation : (1961) JLJ 1216

Hon'ble Judges : A.H. Khan, J

Bench : Single Bench

Advocate : P.L. Dubey, for the Appellant; R.M. Karkare, for the Respondent

Final Decision : Allowed

Judgement

A.H. Khan, J.—Civil Revisions Nos. 60 of 1961 and 61 of 1961, are being disposed of by a single order, because the point for consideration is common to both.

2. The short facts of the case are that applicant Ranchhoddas bought some shares of Brihan Maharashta Sugar Syndiacte Ltd. Poona from R. M. Karkare (non-petitioner in Revision No. 60 of 1961) and N. V. Godbole (non-petitioner in Revision No. 61 of 1961), and paid the price of shares to the non-petitioners. On the refusal of the Syndicate to transfer the shares in the purchaser''s name the purchaser (who is the petitioner in both the revisions) filed a suit No. 55 of 1959 in the Court of the Civil Judge Poona, praying that the Sugar Syndicate be directed to enter the name of the plaintiff purchaser as a shareholder. To strike the names of the non-petitioners from whom the shares have been purchased and thus rectify the register of the Syndicate. The plaintiff (who is a petitioner in this case) also asked for damages for the wrongful refusal of the Syndicate to substitute the plaintiff''s name in the register.

3. Apart from filing the above suit in Poona, the plaintiff-petitioner filed two suits No. 65 of 1960 and No. 98 of 1960 against the sellers of the shares in Gwalior,

on the allegation that even after receiving the price of shares from the petitioner plaintiff, they have been receiving dividends of the shares from the Company (because the Commany refused to transfer the shares to the plaintiff) that it be declared that the sellers of the shares (who have received the price of the shares from the plaintiff) are the plaintiff''s trustees in respect of the dividends they have received, that they be ordered to give to the plaintiffs the amount of dividends they so received etc. These two suits that have teen filed in Gwalior, were stayed by the Civil Judge Second Class under Sec. 10 of the CPC till the decision of the Poona case. The two revisions have been filed against the stay order passed by the lower Court.

4. From what I have stated above, it would appear that the Poona suit is against the Syndicate, where the prayer is that the Company be ordered to rectify its register and that damages be awarded against the Syndicate for the wrongful refusal to enter the plaintiff''s name in their register.

5. The plaintiff''s suits in Gwalior are on a different footing. They are for a declaration that the amount of dividend which accrued to the sellers and which they received (after receiving the price of shares from the plaintiff) was in trust for the plaintiff and that as such it should be made available to them. The cause of action and the relief in the Poona suit and the Gwalior suits are different and it cannot be said that the matter in issue between the Poona suit and the Gwalior suits is directly and substantially the same. In this view of the matter the suits filed in Gwalior do not attract the application of Section 10 CPC and the order of the trial Court is manifestly wrong.

6. Reliance is placed by Mr. Karkare on Jai Hind Iron Mart Vs. Tulsiram Bhagwandas, and it is argued by him that in similar circumstances a suit was stayed u/s 10 CPC. I am afraid the Bombay case does not help the non-petitioners at all. Chhagla C.J has said in very clear terms that Section 10 CPC does not contemplate an identity of issues between the two suits and what the Section requires is that the matter in the two suits should be substantially the same. The facts of the Bombay case are that one suit was filed in Calcutta on a contract dated 4-11-51 for the sale of tyres. The plea of the defendant was that because the tyres were not according to specifications, the defendant could not be compelled to take their delivery. After the plaintiff had filed the suit at Calcutta, the defendant of the Calcutta suit filed a suit in Bombay on the basis of the same contract of 4-11-51 against the sellers of tyres on the allegation that because the tyres could not be delivered to the defendant (they being not according to specifications) he was justified in refusing to take their delivery, that in the circumstances, he was entitled to the refund of certain amount in respect of the price that had been already paid. Thus it would appear that in both the suits, the common question was whether the non-acceptance of tyres was justified on the ground that they were not-according to the specifications. If it was held in the Calcutta suit that the supply of tyres was not according to specifications, then the finding would have operated as res-judicata in the

Bombay suit. In the circumstances the Bombay High Court rightly stayed proceedings under Sec. 10 Civil Procedure Code.

7. But in the present case, in the first place, the suit in Poona and suits in Gwalior do not arise out of the same-contract, and, secondly the subject matter of both the suits is totally different.

8. For reasons stated above, I would allow the revisions and setting aside the order of the stay under Sections 10 CPC direct the Court below to proceed with the cases. The parties shall bear their own costs.