

(2001) 12 MAD CK 0034

In the Madras High Court

Case No : C.R.P. No. 3278 of 2001 and C.R.P.SR. No's. 85896 and 85899 of 2001 and C.M.P. No. 3278 of 2001 in C.R.P. No. 3278 of 2001

Shipping Corporation and Another

APPELLANT

Vs

Machado Brothers

RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 3, Order 39 Rule 4, Order 43 Rule 1
Constitution of India, 1950 — Article 227, 31, 40, 41

Citation : (2002) 1 MLJ 430

Hon'ble Judges : Prabha Sridevan, J

Bench : Single Bench

Advocate : S. Venkateswaran for V. Natraj, for the Appellant; Harikrishnan for R. Ganesh Ram, for the Respondent

Final Decision : Allowed

Judgement

1. The Shipping Corporation of India has filed all these revisions. The petitioner is the defendant in O.S.No. 5100 of 2001. Interim injunction was

granted restraining the termination of agency in I.A.No. 14780 of 2001. C.R.P.No. 3278 of 2001 is against the order passed in I.A.No. 15301 of

2001 which was for suspension of the interim injunction granted in I.A.No. 14780 of 2001. C.R.P.SR.No. 85896 of 2001 is filed invoking Article

227 of the Constitution of India for dismissing the suit O.S.No. 5100 of 2001. C.R.P.SR.No. 85899 of 2001 is filed invoking Article 227 of the

Constitution of India for dismissing the suit O.S.No. 4849 of 2001, which is also filed by the respondent.

2. The petitioner appointed the respondent herein as its Steamship agent. The agreement which forms the substratum of the relationship between

the parties is dated 3.6.1988. According to the agreement, Article 31, the appointment of the respondent would be in force for a period of six

months subject to review and it shall continue indefinitely subject to cancellation. It may be terminated by mutual consent of the parties or on ninety

days notice in writing given by either parties to the other. Article 40 of the agreement provides that ""Courts in Bombay alone will have jurisdiction"".

Article 41 is the Arbitration Clause and it provides that ""the finalisation of such arbitration shall be Bombay and Courts in Bombay will alone will

have the jurisdiction.

3. The respondent filed O.S.No. 4212 of 1995, when the petitioner issued an order of termination on 23.2.1995. The suit was filed for declaration

and permanent injunction restraining interference with the respondents acting as agents. The agency of the respondent was with regard to vessels at

Tuticorin Port. Interim injunction was asked for and the same was granted. The matter came up before this Court in C.R.P.Nos. 2690 to 2693 of

1995. In these revisions the lack of jurisdiction of Courts at Chennai to try the dispute was raised. It was held by the learned Judge that this plea of

jurisdiction can be gone into at the time of trial. The civil revision petitions were all dismissed on 24.11.1998. The interim injunction is still in force.

The suit is also pending.

4. Subsequent to this, the respondent herein filed O.S.No. 4849 of 2001 for preliminary decree for accounts and for declaration and permanent

injunction restraining the petitioner from entrusting the agency to anyone else but the respondent. In the said plaint an averment was made that the

petitioners are trying to give the work to other agencies. I.A.No. 14082 of 2001 was filed for interim injunction. Thereafter, O.S.No. 5100 of

2001 was filed for a declaration that the notice of termination dated 23.8.2001 is null and void and for consequential injunction. I.A.No. 14780 of

2001 was filed for interim injunction. On 5.9.2001, the II Assistant City Civil Judge, ordered status quo to be maintained and adjourned the matter

to 10.9.2001 for counter. Aggrieved by this the petitioners filed I.A.No. 15301 of 2001 to suspend the interim order dated 5.9.2001. This was

dismissed and therefore, the revision.

5. Mr. S. Venkateswaran, learned Senior Counsel appearing for the petitioner and Mr. C. Harikrishnan, learned Senior Counsel appearing for the

respondent argued the matter on 29.10.2001 and thereafter, prayed for permission to file written arguments. The petitioner filed his written arguments on 30.11.2001 and the respondent filed their written arguments on 23.11.01.

6. According to the petitioner, the Courts at Chennai have no jurisdiction since the word Courts in Bombay have been used in the agreement that

binds the parties. According to the learned senior counsel when there was an express clause excluding the jurisdiction of all other Courts except

Bombay, the Courts at Chennai ought not to have entertained the suit much less granted interim injunction. The learned senior counsel would also

submit that the perusal of the plaint would clearly show that no part of the cause of action arose at Chennai. The agreement was executed at

Bombay and the place of operation of the agent is in the Tuticorin port. The respondent cannot be permitted to merely include one of the branch

offices of the petitioner-corporation so as to enable him to file the suit at Chennai. The Courts at Chennai had no jurisdiction both because there

was a contract between the parties excluding the jurisdiction of all Courts except Bombay and also no part of the cause of action arose within the

jurisdiction of the Court at Chennai. The learned Senior counsel also submitted that there cannot be an injunction to restrain breach of contract of

agency since the breach of contract could always be compensated in terms of money. It was further submitted that when O.S.No. 4212 of 1995

was still pending, the other two suits are nothing but abuse of process of law. For these reasons, and the written submissions, he would pray that

the revisions be allowed. He submitted that because there was inherent lack of jurisdiction and both the subsequent suits O.S.No. 4849 of 2001

and 5300 of 2001 amounted to abuse of process of law, the two revisions were filed invoking Article 227 of the Constitution of India.

7. He relied on the following judgments:

(1) Messrs. Gordon Woodroffe and Co. Madras v. C.D. Gopinath, 1978 (91) L.W. 376, where a Division Bench of this Court held that a

contract of agency cannot be specifically enforced as a breach thereof can always be compensated in money and therefore, injunction cannot be

granted to enforce a negative covenant in the service agreement.

(2) M/s. Angile Insulations Vs. M/s. Davy Ashmore India Ltd. and another, and

A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies,

Salem, a were both relied on to show that when the jurisdiction of Courts have been ousted clearly by the words, "only and exclusive" the Courts

that were excluded cannot hear suits arising out of such disputes.

8. Mr. C. Hari Krishnan, learned senior counsel appearing for the respondent on the other hand would submit that a revision would not lie against

the order passed in I.A.No. 15301 of 2001. He submitted that the application was filed under Order 39, Rule 1,2 , CPC read with Section 151,

CPC. Orders passed under Rule 1, 2 of Order 39 are appealable orders under Order 43, Rule 1(r), CPC. Therefore, even at the threshold the

revision must be dismissed. He also submitted that it is not for the petitioner to speak of abuse of process of law when it is the petitioner who has

clearly violated the order of interim injunction which was granted in O.S.No. 4212 of 1995. Though the interim order was in force the petitioner

was emboldened to issue another order of termination which alone necessitated the subsequent proceedings. Therefore, the petitioner being guilty

of violating the order of the Court cannot be heard to accuse the respondent of abuse of process of law.

For these reasons, and for the grounds raised in the written arguments, the learned senior counsel would pray that the revisions be dismissed.

9. Serious objections were raised regarding the jurisdiction of the Courts at Madras to try the suit. In the two decisions cited by the learned senior

counsel for the petitioner it was held that where an ouster clause occurs it is pertinent to see whether the Clause is clear, unambiguous and specific.

It was also held that accepted notions of contract would bind the parties and, the other Courts should avoid exercising jurisdiction. As regards

construction of the ouster clause when words like ""alone"", ""only"", ""exclusive"" and the like have been used there may be no difficulty.

10. In the present case, the words used in the agreement have already been extracted above. However, since in an earlier suit between the same

parties this Court in revision had held that the question regarding jurisdiction could be gone into at the time of trial I do not want to decide that issue

in this revision.

11. C.R.P.No. 3278 of 2001 is against an order passed in an application to suspend the injunction order. The Court below ought to have heard

I.A.No. 15301 of 2001 and I.A.No. 14780 of 2001 together. In the later application interim injunction was granted and therefore, when the former application is one to suspend the same, one should not have been heard in the absence of the other. It is needless to say that in an application seeking injunction the tests to be applied are prima facie case, balance of convenience and undue hardship or irreparable injury. Strictly these tests should also have been applied to I.A.No. 15301 of 2001 and both the applications would have been heard together. However, the Court below passed the impugned order stating that injunction cannot be suspended only because there was an arbitration clause or an ouster clause. This is not a proper exercise of jurisdiction. Since there were two suits pending in respect of the rights arising out of the same transaction between the parties the records of both suits were called for from the Lower Court. It was explained that O.S.No. 4849 of 2001 was filed because there was the apprehension that the agency would be terminated and strictly speaking it was a suit for accounts. When the suit was pending the order of termination was issued by the petitioner and therefore, O.S.No. 5100 of 2001 had to be filed. O.S.No. 4849 of 2001 was filed on 17.8.2001. The termination order that is assailed in O.S.No. 5100 of 2001 is dated 23.8.2001. In O.S.No. 4849 of 2001, interim injunction was asked for in I.A.No. 14082 of 2001. It is in this application that status quo was directed to be maintained. The suit appears to have been taken on file only on 23.8.2001. it is seen from the records that the respondent has sworn to an affidavit on 29.8.2001 that when the application was originally moved the Court had expressed that there was no imminent danger and only notice was ordered and that subsequently, the respondent received a fax where they were directed to handover the document to another agency. Therefore, they prayed for review of the order of notice. On 31.8.2001, the counsel for the respondent had made an endorsement as follows:

In view of the subsequent message dated 23rd August, 2001 and 28th August 2001, the plaintiff restricts his claim in this petition to continue the agency as per the message dated 23.8.2001.

On that date the following order was passed by the Court:

Review petition filed. Endorsement made by the petitioner. Petition heard.

Records perused. Documents 1 to 12 and additional documents filed.

As per the message dated 23.8.2001, petitioner is entitled to act as agent till 90 days from the date of that message. Hence status quo is to be

maintained as on the date of filing of this suit till 7.9.2001. Notice to the respondent by then. Order 39 Rule 3, CPC to be complied with.

Therefore, it is clear that when the respondent filed O.S.No. 4849 of 2001, only notice was, ordered. Then they moved the Court after receipt of

notice and have also made the above endorsement and the above order was passed by the learned XIV Assistant City Civil Judge. In the mean

time, on 29.8.2001, the respondent has filed O.S.No. 5100 of 2001 which is a suit for permanent injunction and in that interim injunction was

asked for. Caveat had been filed on 24.8.2001 itself and therefore, when I.A.No. 14780 of 2001 came up for hearing on 4.9.2001, the caveator

took notice and on 5.9.2001, the Court had ordered the status quo which is referred to above. The endorsement made before the XIV Assistant

City Civil Judge was subsequent to the respondent presenting O.S.No. 5100 of 2001. It is pertinent to note that this suit was taken on file only on

4.9.2001. When the interim injunction application was moved there is no material on record to show that the respondent had brought to the notice

of the Court that they had restricted their claim for injunction in the earlier suit till 7.9.2001. Notwithstanding the objection raised by the learned

senior counsel for the respondent that an appeal ought to have been filed against the order and not a revision, these facts that are apparent from the

records as well as the fact that the Court below erred in not hearing the interim injunction application when the suspension application was moved,

persuade the Court to set aside the order impugned in C.R.P.No. 3278 of 2001.

12. When the matter was argued the learned Senior Counsel appearing for the petitioner was asked how an order of termination could have been

passed when the interim injunction in O.S.No. 4212 of 1995 was still in force and it was made clear to the petitioner that even if the impugned

order in C.R.P.No. 3278 of 2001 was set aside, the petitioner was bound by the earlier interim injunction which is still in force.

13. In these circumstances, a memo was filed on behalf of the petitioners in which the petitioners have undertaken that notwithstanding any order

passed in these revisions, the petitioner will not give effect to the termination

notice dated 23.8.2001 till appropriate orders or clarification or liberty is obtained from the Court in O.S.No. 4212 of 1995. It is in this suit that interim injunction was granted against the petitioner restraining termination of the agency, which order is still in force. This undertaking is recorded and will form part of this order.

14. The impugned order in I.A.No. 15301 of 2001 is set aside and the C.R.P. is allowed and the matter is remanded to the learned II Assistant

Judge, City Civil Court who shall hear I.A.No. 15301 of 2001 and I.A.No. 14780 of 2001 together and dispose of them in accordance with law.

In view of the order passed in C.R.P.No. 3278 of 2001, no orders are necessary in the other-two revisions.