

(2002) 01 KAR CK 0026

In the Karnataka High Court

Case No : Civil Revision Petition No. 4471 of 2001

Shree Shanthi Homes Private Limited, Bangalore and Others

APPELLANT

Vs

Cref Finance Limited, Calcutta

RESPONDENT

Date of Decision : 02-01-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 16, 20

Citation : AIR 2002 Kar 252 : (2002) ILR (Kar) 717 : (2002) 3 KarLJ 265 : (2002) 1 KCCR 429

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : C.V. Nagesh, for the Appellant; G.L. Vishwanath, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Chinnappa, J.—Heard Sri K. Suman for Sri C.V. Nagesh, the learned Counsel for the petitioners and Sri G.L. Vishwanath, the learned Counsel for the respondent.

2. The brief facts leading to this petition are that the respondent filed a suit in Original Suit No. 15045 of 2001 on the file of the 26th Additional City Civil Judge, Mayo Hall, Bangalore, for recovering the suit amount from the petitioners herein. When the suit was pending, the petitioners filed Interim Appeal No. III u/s 20 of the CPC to dismiss the suit in limine or to return the plaint for proper presentation before the appropriate Court on the ground that that Court had no territorial jurisdiction to try the suit. After hearing both the parties, the Court has rejected Interim Appeal No. III vide order dated 11-10-2001. As against that order, the defendants/petitioners herein have preferred this petition.

3. The learned Counsel for the petitioners vehemently argued that in view of the agreement and also the memorandum of understanding, the jurisdiction of all other Courts have been excluded agreeing to file the dispute only before the Court at Bombay. In spite of that, the respondent filed the suit in the Court at

Bangalore, which has no jurisdiction to try the case. Therefore, he submitted that the Court below has committed an error in not allowing the interim appeal as sought for.

4. Repelling this argument, the learned Counsel for the respondent submitted that though the memorandum of understanding and also the agreement contain similar provisions to the effect that only the Court at Bombay will have jurisdiction to try and adjudicate such a dispute to the exclusion of all other Courts, since the Immovable properties against which the relief sought for, are situated in Bangalore and hence u/s 16(c) of the Civil Procedure Code; the suit can be filed only in Bangalore. He also further submitted that the dispute arises not because of the agreement or memorandum of understanding but it is because of the subsequent development which compelled the respondent to file the suit. No part of cause of action arose at Bombay by which the parties could confer jurisdiction on a particular Court excluding all other Courts. Further, the petitioners are residing in Bangalore and carrying on their business in Bangalore. Therefore, the Court has rightly rejected the application of the petitioners which does not call for interference.

5. The learned Counsel for the petitioners to substantiate his arguments placed reliance on a decision in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, , wherein their Lordships of the Supreme Court held that where more than one Court was having jurisdiction, contract to vest jurisdiction in one of them was not against public policy. In this case there is nothing to show that any of the causes of action arose in Bangalore except that the respondents' registered office is at Calcutta as could be seen in the cause title.

6. Similarly, our High Court in D. Munirangappa v Amidayala Venkatappa and Anr. 1965(1) Mys. L.J. 201 : AIR 1965 Mys. 316, has held:

"Every suit has to be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It cannot be contended that because a very small fraction of the cause of action accrued within the jurisdiction of a Court, the plaintiff would not be entitled to institute the suit in that Court. Even a fraction of a cause of action is a part of the cause of action and therefore, if even a fraction of the cause of action accrues within the local limits of the jurisdiction of a Court, that Court has the jurisdiction to entertain the suit. Clause (c) of Section 20 is based on broad principle to avoid the multiplicity of the proceedings and inconvenience to the parties".

In this case as contended by the learned Counsel for the respondent, not even a fraction of the cause of action arose outside Bangalore and the contract to exclude the jurisdiction of other Court and to vest only in Mumbai Court is improper.

7. The Madhya Pradesh High Court in Praking Vs. State Bank of Indore and Another, , held that as the provision has been adequately made by Section 16 the operation of all provisions of Section 20 is not relevant; so far as the cases

like the present matter are concerned. In such cases the Court within whose jurisdiction the property which has been mortgaged is situate, is having the jurisdiction to entertain and try the suit.

8. In this case, it is no doubt true that both the memorandum of understanding dated 29-9-1995 admittedly entered into between the parties and also the agreement dated 13-12-1996 contain a verbatim clause viz., "the parties hereby agree that in respect of any dispute that may arise under this agreement, only the Courts at Mumbai shall have jurisdiction to try and adjudicate such dispute to the exclusion of all other Courts". At the very outset, it is necessary to point out that at the time of entering into these two indentures, no Immovable property is involved in this case. But, subsequently as the petitioners failed to comply with their covenants, the Immovable properties were mortgaged by necessary resolutions and also by placing the title deeds of the properties more fully described in the Schedule and therefore the respondent sought for the decree against the petitioners. From a perusal of the prayer column in the plaint, it is clear that the respondent has sought for the following reliefs:

"Wherefore the plaintiff prays that this Hon"ble Court may be pleased to pass a judgment and decree,

a. against the defendants holding them jointly and severally liable to the plaintiff in a sum of Rs. 19,33,74,411/- along with current interest at the rate of 30% per annum from the date of suit till such date fixed for payment; and

b. in default of the defendants paying the said amounts by the date fixed for such payment, for sale of the Schedule properties "A" to "D" being mortgaged to the plaintiff and to apply the proceeds of such sale in payment of the amounts due to the plaintiff under the decree; and

c. if the net proceeds of the sale are found to be insufficient to pay in full the amounts due to the plaintiff, it shall be at liberty to apply for a personal decree against the defendants for the balance due;

d. for costs;

e. and such other reliefs and other orders as this Hon"ble Court deems fit to grant in the circumstances of the case and in the interest of justice".

Therefore, the 2nd prayer is in respect of the Immovable property. Apparently all the Immovable properties more fully described in the Schedules "A" to "D" are undisputedly situated in Bangalore. It is clear that the respondent is seeking relief of foreclosure of the mortgage of the properties which were mortgaged with the company registered as per the documents produced in the case. Therefore, the Court within whose jurisdiction the Immovable properties are situated, is the Court which has jurisdiction to try the suit which comes u/s 16(c) of the Civil Procedure Code. The defendants are also residents of Bangalore and they are carrying on their business in Bangalore. The entire transaction is said to have taken place only in Bangalore. The memorandum of understanding and

agreement are also entered into in Bangalore. Only the plaintiff is residing in Bombay and there is nothing to show that any part of the contract had taken place in Mumbai.

9. From the above discussion and in view of the judgment, Section 16 has overriding effect on Section 20 as ultimately if relief is granted to the respondent, he has to work out his remedy against the Immovable properties. Further, even in respect of Section 20 also it is clear that no part of the contract has taken place in Mumbai. Therefore, viewed from any angle I am convinced that the order passed by the Court below does not call for interference.

Accordingly the petition is dismissed subject to payment of costs of Rs. 2,000/- to the respondents.