
(2003) 08 BOM CK 0049
In the Bombay High Court
Case No : First Appeal No. 336 of 2001

Shreyans Industries

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-08-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10

Citation : (2004) 1 CivCC 416 : (2004) 1 MhLj 51 : (2004) 1 MhLj 50

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : S.V. Purohit, for the Appellant; K. Dhote, Asst. Government Pleader, for the Respondent

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard finally by consent of Shri Purohit, learned Counsel for the appellant, and Shri Dhote, learned Assistant Government Pleader for the respondents.

2. Shri Purohit, learned Counsel for the appellant/plaintiff, states that the appellant/plaintiff had filed a suit for recovery of price of goods sold by the appellant to the respondents/defendants. The appellant is manufacture of super enameled copper wire. The respondent No. 2 invited tenders for supply of copper wire. The appellant's offer was accepted and order was placed. As per agreement between parties, goods were to be dispatched by train and documents were to be submitted through Bank. It is contended that 95% of the price was to be paid while getting documents realised from the Bank and 5% amount was to be paid within thirty days on inspection of goods. It is submitted that appellant supplied goods worth Rs. 88,93,704.06 and as against that, defendants made payment of Rs. 83,16,145.15 and balance amount of Rs. 5,77,558.91 remained to be paid to the appellant by the respondents. It is contended that in spite of repeated reminders to the respondents, they failed to pay the balance amount and, therefore, appellant was constrained to file Special Civil Suit No. 343/1991 for recovery of amount of Rs. 5,77,558.91 with interest

at the rate of 21% per annum from 1-7-1988 till filing of the suit.

3. Learned Counsel Shri Purohit further states that preliminary objection regarding jurisdiction of the trial Court was raised by the respondents. However, the said application was rejected on the ground that it is a mixed question of law and facts and same would be decided at the time of final hearing of the suit. It is contended that the trial Court has framed four issues and issue No. 3-A pertains to jurisdiction of the trial Court. The trial Court finally recorded a finding that it does not have jurisdiction to try the suit and plaint was returned to the appellant as per provisions of Order VII Rule 10 of the CPC to be presented in the competent Court at Lucknow having jurisdiction.

4. Learned Counsel Shri Purohit further states that though the trial Court has held that it does not have jurisdiction to entertain the suit, even then the trial Court has adjudicated upon the issue Nos. 1, 2, and 3 on merits and also recorded findings in respect of those issues. It is submitted that since trial Court did not have jurisdiction to entertain the suit, the trial Court ought not to have recorded findings on the said issues and, therefore, findings recorded by the trial Court are without jurisdiction and not sustainable in law. It is contended that competent Court at Lucknow would be required to consider these aspects on merits on presenting the plaint by the appellant and, therefore, this Court may declare the said findings recorded by the trial Court as null and void.

5. Shri Dhote, learned Assistant Government Pleader for the respondents, states that on the issue of jurisdiction, the trial Court has held that it does not have jurisdiction to try the suit and returned the plaint to the appellant as per provisions of Order VII Rule 10 of CPC to be presented in the competent Court. It is contended that the plaint was returned to the appellant by the trial Court for want of jurisdiction to try the suit.

6. I have considered the contentions canvassed by the learned Counsel for the parties. On the backdrop of the above referred facts, it is evident that the plaint was returned to the appellant/plaintiff under Order VII Rule 10 of CPC since the trial Court had held that it does not have jurisdiction to try the suit and, therefore, appellant is required to present the plaint in the competent Court having jurisdiction to try the suit. Once the Court comes to the conclusion that it has no jurisdiction to entertain the suit, the only course open to the Court is to return the plaint to the plaintiff to be presented in the competent Court and any finding recorded on merits of the matter would be of no consequence. If plaint is returned for want of jurisdiction and the same Court also records findings on merits, such findings are without jurisdiction and null and void. Similarly, the very purpose of returning the plaint for want of jurisdiction would be frustrated and that would also foreclose the issue in the plaint, which was returned to the plaintiff to be presented to the competent Civil Court. In view of this legal position, the findings recorded by the trial Court on issue Nos. 1, 2 and 3 are without jurisdiction and it will be open for the competent Court at Lucknow to consider the entire claim of the appellant/plaintiff on its own merits. In the

circumstances, the appellant is entitled to take back the plaint from the trial Court at Nagpur and file the same in the appropriate Court at Lucknow within a period of ninety days from today, failing which the suit shall be deemed to have been dismissed.

7. With the above observations, the appeal is disposed of with no order as to costs.

8. Certified copy of the judgment is expedited.