

(1983) 06 BOM CK 0015

In the Bombay High Court

Case No : Misc. Civil Application No. 136 of 1982

Shri Seetha Mahalakshmi Rice and Groundnut Oil Mills.

APPELLANT

Vs

Rajesh Trading Code and Another

RESPONDENT

Date of Decision : 30-06-1983

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 22

Citation : AIR 1983 Bom 486

Hon'ble Judges : Waikar, J

Bench : Single Bench

Advocate : Mahesh S. Gupta, for the Appellant; S.G. Ghate, for the Respondent

Judgement

1. The Civil Suit No. 228 of 1982 filed by the present non-applicant 1 on 12-2-1982 against the present applicant and the non-applicant 2 is pending on the file of the Joint Civil Judge (Junior Division), Nagpur, while O. S. NO. 65 of 1982 filed by the present applicant in the month of July 1982 against the non-applicant 1 is pending in the Court of the Subordinate Judge, Gudivada (A. P.) Both these suits arise out of a transaction of sale of 42-bags of groundnut by this applicant to the non-applicant No. 1 through the brokerage of non-applicant 2. Admittedly, non-applicant 1 took the delivery of the goods at Nagpur, sent by this applicant from Gudivada. The price of the goods retained by non-applicant 1 is yet to be paid to the applicant.

2. The applicant by the present application made u/s 22 read with Section 23(3) Civil P. C., prays that the suit filed against him and pending in the Court at Nagpur be transferred to Gudivada where his own suit is pending for decision.

3. The basis of the suit filed by the non-applicant 1 is that the goods supplied to him by the applicant are substandard and the applicant, therefore, be directed by a writ of mandatory injunction to take them back and to pay damages of Rs. 1916.36 as detailed in para 12 of the plaint. Since the non-applicant 1 took delivery of the goods but did not pay the price thereof, the applicant filed a suit

at Gudivada for recovery of the price thereof.

4. Now, it is true that the suit instituted at Nagpur by non-applicant 1 is not earlier suit. This aspect may have some bearing and relevance in case falling for consideration u/s 10, Civil P. C., regarding stay of suits. In dealing with the question of transfer of suit u/s 22, this aspect, in my opinion, is of little significance. The section assumes and postulates that the suits are properly instituted in the Courts having jurisdiction to try them. The section in a way curtails the well recognised principle that the plaintiff is an arbiter list to choose his own forum. The determining factor in deciding the question of transfer of a suit when it is obviously desirable that the two suits raising question of facts and law must be decided at one place and by one Judge, would be one of balance of convenience having regard to all the circumstances of the two suits. Shri Gupta, the learned Counsel for the applicant, submitted that though it was open to non-applicant 1 to refuse delivery of goods, if they did not answer the correct description or were sub-standard, he did accept them. Having accepted in delivery on 19-10-1981, he protested for the first time on 22-12-1981, i. e., two months thereafter, that the goods supplied were substandard. If the goods were substandard, non-applicant I, he submitted, could of the fall in the price of goods that he retained the goods, made no payment for them and instead of selling the goods and minimising his loss, if any he filed the suit at Nagpur for a mandatory injunction that the applicant be directed to take back the goods, a relief which is somewhat unusual. He further pointed out that non-applicant No. 2 obviously as a broker brought about this bargain and under no circumstances he could be held liable for the breach, if any, committed by the contracting parties. He is impleaded just to show how the provisions of Section 20, Civil P. C., squarely applied, i.e., not only that cause of action accrued at Nagpur but one of the defendants also resides here.

5. Shri Ghate, the learned Counsel for non-applicant 1, submitted that non-applicant 1, on the allegations as made in the plaint, was justified in filing the suit at Nagpur. The suit filed subsequently by the applicant at Gudivada, he submitted, in fact, must be stayed u/s 10, Civil P. C., till his previously instituted suit at Nagpur is decided. As already stated above, Section 10, C. P. C., has little relevance in deciding the matter of transfer of suits. Shri Ghate relied upon *Dewan Chand Barbar v. M/s. Jay Pee Finance Corpn.* AIR 1977 J & K 61. But this decision, in my opinion, has no relevance as it only explains what is meant by a pending suit.

6. As pointed out above, the consideration for deciding matter of transfer of suit u/s 22 is not, which a previously instituted suit but which way the balance of convenience for the parties tips, and in weighing and examining this course of balance of convenience, the Court would be justified in trying to find out whether a particular party has chosen a forum in utter disregard to the convenience of the parties, for some ulterior object and in abuse of his position as an arbiter litus.

7. Here, non-applicant 1 took delivery of the goods and retained them when he had an option to refuse delivery. If the goods were substandard or did not answer the description as per the contract, he could have sold them and claimed the difference and other damages. He has not paid the price for the goods and filed the suit for a mandatory injunction directing the applicant to take away his goods and pay for the freight charges, octroi charges, warehouse charges and general damages and loss of the price. In a suit filed by the applicant for unpaid price of the goods sold, non-applicant I can appropriately resist the claim raising all these pleas. I would not say at this stage without any evidence, that non-applicant 1 abused the process of law in filing the suit and in claiming the reliefs, or that between non-applicant 1 and the applicant, the former is more sinning than sinned against. In the circumstances of the present case. I feel that it would meet the ends of justice and prevent the abuse of the process of the Court if Civil Suit No. 228 of 1982 pending on the file of the Joint Civil Judge (Junior Division), Nagpur, is transferred to the Court of the Subordinate Judge, Gudivada, to be tried along with O. S. No. 65 of 1982.

8. In the result, this application is allowed. Civil Suit No. 228 of 1982 M/s. Rajesh Trading Co. v. M/s. Shree Seetha Mahalakshmi Rice and Groundnut Oil Mills is hereby transferred to the Court of the Subordinate Judge, Gudivada, to be tried along with O. S. No. 65 of 1982 Shri Seetha Mahalakshmi Rice and Groundnut Oil Mills v. M/s. Rajesh Trading Co. No order as to costs.

9. Application allowed.