
(2011) 09 CAL CK 0032

In the Calcutta High Court

Case No : GA No. 1403 of 2011 and C.S. 135 of 2010

Siddhi Vinayak Industries Pvt. Ltd. and Another

APPELLANT

Vs

Maresh Goyal and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Citation : (2011) 09 CAL CK 0032

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : K. Thakkar, A. Kankani and A. Bajoria, for the Appellant; Pradeep Dutta Bimal Sanganaria and Siddhartha Chatterjee for the Defendant No. 1 and 2 and Pradeep Ghosh, for the Defendant No. 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—This is an application of revocation of the leave granted under Clause 12 of the Letters Patent.

2. Before dealing with the respective contentions of the parties it is trite to narrate the case made out by the Plaintiff in the plaint.

3. The Plaintiffs are the companies having registered office at 24A Shakespeare Sarani, Kolkata - 700 071 and are engaged in a business of importing palm oil. The Plaintiff No. 2 is the sister concern of the Plaintiff No. 1. The Plaintiff No. 1 imported 1500 mt. RBD palm oil (edible grade) from Singapore and was agreed to be discharged at Kandla Port, India. The entire transaction was mediated through company broker, Raghunath (Agencies) Pvt. Ltd., being the business concern of the Defendant No. 3 and 4. By six several bills of lading the entire consignment was shifted through the vessel from Indonesia for the said Kandla Port, India. The said Defendant No. 3 and 4 represented that the Defendant No. 1 and 2 are interested in purchase of 500 mts. of the said RBD palm oil (edible grade) and one Amit Kumar of Swastik International for purchase of the other 500 mts. of the said palm oil. It is a specific case in the

plaint that the Defendant No. 1 had past dealings with the Defendant No. 1 and 2 and as such acted on the representation of the Defendant No. 3 and 4 and showed its willingness to enter into agreements with the said Defendant No. 1 and 2. The aforesaid negotiations were made within and outside the jurisdiction of the court.

4. It is the further case of the Plaintiffs that the terms of agreement were finalized including the price of the said goods shifted under the bill of lading at Kandla Port, India. The Plaintiff No. 1 thereafter entered into a high sea sale agreement with the sister concern i.e. the Plaintiff No. 2 for 1000 mt. of RBD palm oil (edible grade) which was held within the knowledge and notice of the Defendant No. 1 - 4.

5. It is specifically averred in the plaint that the said Defendants subsequently represented the Plaintiffs at its office within the jurisdiction of this Court that the Defendant No. 5 which is a business concern of the Defendant No. 1 and 2 and the Defendant No. 6 shall purchase the said 500 mts. of RBD palm oil (edible grade) and all arrangements for clearance and purchase of the said goods would be made by the Defendant No. 1 and in the name of the Defendant No. 5.

6. On such assurances/representations a second high sea sale agreement was executed at Calcutta at the office of the Plaintiffs on 1st October 2008 between the Plaintiff No. 2 and Defendant No. 5 in respect of the 500 mts. of goods.

7. Subsequently at the request of the Defendant No. 1 and 2 the Plaintiff No. 1 issued a delivery order on 16th October 2008 to the shore tank operator permitting the Defendant No. 5 to take delivery of the goods. The said shore tank operator informed the Plaintiffs on 21st October 2008 that the Defendant No. 1 sought the removal of 424.410 mt. from the tank hired by the Plaintiff No. 1 to another tank which was declined by the Plaintiff No. 1 until the payment of the goods are made.

8. Subsequently the Plaintiffs came to know that the delivery of the said quantity was made to the Defendant No. 5 without making the payment of the price of the goods. It is specifically pleaded in the plaint that the Defendant No. 1 - 6 have acted in collusion and conspired to defraud the Plaintiffs, particulars whereof have been set out in paragraph 34 of the plaint.

9. The revocation is sought not on the ground that No. cause of action either wholly or in part arose within the jurisdiction of this Court but on the ground that it would be inconvenient on the part of the Defendant No. 1 and 2 to defend the suit before this Court as they are residing at Delhi and the documents and the records pertaining to their business affairs are lying at Delhi.

10. Mr. P.K. Dutta, learned Senior Advocate appearing for the Defendant No. 1 and 2, the applicants in revocation application, contends that even if a part of the cause of action arose within the jurisdiction of this Court, the court can revoke the leave granted under Clause 12 of the Letters Patent on the ground of

inconvenience that would cause to the Defendants in defending the suit before this Court. To buttress such submission reliance is placed upon several judgments of this Court in case of Madanlal Jalan v. Madanlal and Ors. reported in AIR 1949 Cal 495, Parasram Harnandrai Vs. Chitandas and Others, , Rekhab Chand Jain Vs. Paras Das Bhartiya, and Ritu Sachdev Vs. Anita Jindal and Others,

11. Mr. K. Thakkar, learned Advocate appearing for the Plaintiffs submits that undisputedly a part of the cause of action arose within the jurisdiction of this Court which should not be revoked merely on the ground that the Defendant would face inconvenience in defending the suit. He strenuously argues that this is not a suit simplicitor for recovery of money by the unpaid seller but based on the fraudulent act of the Defendant No. 1 - 6 in hatching a conspiracy to defraud the Plaintiffs of their legitimate claim. It is further contended that this is not a suit for accounts where voluminous books of accounts and the related documents are required to be proved. He further submits that the revocation of the leave granted under Clause 12 of the Letters Patent is a discretion of the judge and should not be revoked unless proved to the satisfaction of the court that injustice would be greater if the Defendants are compelled to defend the suit before this Court and placed reliance upon a Division Bench judgment of this Court in case of Bimal Singh Kothari and Another Vs. Muir Mills Co. Ltd. and Others, . He succinctly argues that while considering an application for revocation of leave under Clause 12 of the Letters Patent on the ground of inconvenience the court shall also judge the inconvenience of the Plaintiffs and relies upon a judgment of this Court in case of Ratan Kumar Bhar Piliaia v. Laxmi Devi Bhar Piliaia and Ors. reported in 1985 (1) CHN 21 and a judgment of the Supreme Court in case of Indian Mineral and Chemicals Co. and Others Vs. Deutsche Bank, Lastly he submits that if the court has to consider both the law and the fact in detail then the application for revocation of leave should be rejected by placing reliance upon a judgment of this Court in case of Kanthal India Ltd. Vs. Anant Prasad Bhatia and Others,

12. The learned Advocate appearing for the Defendant No. 5 and 6 adopts the submission of the Defendant No. 1 and 2 in contending that the leave granted under Clause 12 of the Letters Patent by this Court should be revoked.

13. Having considered the respective submissions, it is undisputed that a fraction and/or a part of cause of action arose within the jurisdiction of this Court. The revocation of leave under Clause 12 of the Letters Patent is prayed on the ground that all the Defendants are residing and/or working for gain at Delhi that is outside the jurisdiction of this Court.

14. It is true that the court should not consider any other documents and/or statement except the facts pleaded in the plaint at the time of considering an application for revocation of leave under Clause 12 of the Letters Patent.

15. As deduced in a nutshell from the averment made in the plaint, an agreement was entered into between the Plaintiffs and the Defendant No. 5 who

represented to be the concern of the Defendant No. 1 and 2 and the entire transaction was mediated and/or negotiated through the Defendant No. 3 and 4 who acted as a broker. The Plaintiffs claimed that the delivery of the goods were made without payment of the price thereof. According to the Plaintiffs they had a prior dealing with the Defendant No. 1 and 2 and have relied and/or acted upon the representation made to it by them in transacting the business with the Defendant No. 5. It is also specifically averred that by such representations, the execution of an agreement with the Defendant No. 5 was made at the office of the Plaintiffs that is within the jurisdiction of this Court.

16. Being the unpaid seller the recovery of money is sought from all the Defendant who have conspired by acting in collusion, which resulted into a loss to the Plaintiffs.

17. This Court in case of Madanlal Jalan (supra) laid down the principles for considering an application for revocation of leave under Clause 12 of the Letters Patent in these words:

22. On a consideration of the legal principles established by the judicial decisions mentioned above it seems to me that balance of convenience is a material consideration in the exercise of discretion under Clause 12. From these judicial authorities the following propositions may, I think, be enunciated:

(a) that the application lies for revoking he leave granted under Clause 12 of the Letters Patent;

(b) that such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;

(c) that if the application depends on difficult questions of law or fact the Court should not evoke leave on a summary application but should decide the question at the trial;

(d) that if the Defendant shows clearly that No. part of the cause of action arose within jurisdiction the leave should be revoked as a matter of course;

(e) that if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;

(f) that assignment is a very important part of the cause of action in a suit by the assignee;

(g) that in giving or refusing leave or maintaining or revoking leave the court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the Defendant, apply the doctrine of forum convenience;

(h) that the court may refuse leave or revoke leave on the ground of balance of convenience although there be No. evidence of bad faith or abuse of process on

the part of the Plaintiff;

(i) that if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument the court will in recognition of the principle of negotiability insist on a far greater degree of balance of convenience in favour of the Defendant and will more readily give or maintain leave than in other cases of assignment;

(j) that if the court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the Defendant or might result in injustice the court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course.

18. The said legal principle is followed by this Court in case of Parasram Harnandrai (supra) with the addition of the further grounds in paragraph 13 which reads thus:

13. Analysing these latter decisions, I think that the following propositions may be usefully added to the list set out by Das, J., in "Madanlal v. Madanlal", 49 CWN 357 367. (a) Where an application for revocation of leave is made at the initial stages of a suit, the allegations in the plaint must be taken to be correct, and the Court will not enter into disputed questions of fact. (b) The Court cannot decide questions of "mala fides" of the plff. in instituting the suit in a particular forum except at the trial of the action.

(c) The "balance of convenience" to be decided, in such an application, must be shown to be "overwhelmingly" in favour of the deft. to such an extent, that to force the deft. to come to this Court would amount to a denial of justice. The Court will not enter into "nice" calculations for ascertaining the respective convenience or inconvenience of the parties. This is what is meant by the phrase "mere balance of convenience" is not enough."

(d) In considering the "balance of convenience", what is to be considered is not the importance of the matter to be proved, but the volume of the evidence, and the convenience or inconvenience of producing it at a particular forum.

(e) In deciding the question of "balance of convenience", statements of a general nature contained in affidavits affirmed for that purpose, without particulars are useless. The Court must consider the facts and cannot proceed to act on vague allegations, devoid of particulars.

(f) In deciding applications for revocation of leave, it is always useful to consider as to which Court was the "Natural forum" for an action.

19. Unless the Defendant proves that the balance of convenience is overwhelmingly in favour of the suit being tried to other court the leave under Clause 12 of the Letters Patent should not be revoked as has been held in case of Ritu Sachdev (supra).

20. Thus the legal principles which appears from the Madanlal Jalan (supra) and

Parasram Harnandrai (supra) as follows:

- (1) That the application lies for revoking the leave granted under Clause 12 of the Letters Patent;
- (2) That such an application should be made at an early stage of the suit and delay and acquiescence may be a bar to such an application;
- (3) That if the application depends on difficult questions of law or fact the Court should not revoke leave on a summary application but should decide the question at the trial;
- (4) That if the Defendant shows clearly that No. part of the cause of action arose within jurisdiction the leave should be revoked as a matter of course;
- (5) That if only a part of the cause of action arose within jurisdiction, then it is a question of discretion for the court to give or refuse leave or where leave has already been granted to revoke or maintain the leave;
- (6) That assignment is a very important part of the cause of action in a suit by the assignee;
- (7) That in giving or refusing leave or maintaining or revoking leave the court will ordinarily take into consideration the balance of convenience and may, if the balance is definitely in favour of the Defendant, apply the doctrine of forum convenience;
- (8) That the court may refuse leave or revoke leave on the ground of balance of convenience although there be No. evidence of bad faith or abuse of process on the part of the Plaintiff;
- (9) That if the cause of action is founded on an assignment within jurisdiction of a negotiable instrument the court will in recognition of the principle of negotiability insist on a far greater degree of balance of convenience in favour of the Defendant and will more readily give or maintain leave than in other cases of assignment;
- (10) That if the court is satisfied that the suit has been filed mala fide for the purpose of harassing or oppressing the Defendant or might result in injustice the court should in all cases readily refuse leave or if leave has already been granted revoke the leave as a matter of course.
- (11) Where an application for revocation of leave is made at the initial stages of a suit, the allegations in the plaint must be taken to be correct, and the Court will not enter into disputed questions of fact.
- (12) The Court cannot decide questions of "mala fides" of the plff. in instituting the suit in a particular forum except at the trial of the action.
- (13) The "balance of convenience" to be decided, in such an application, must be shown to be "overwhelmingly" in favour of the deft. to such an extent, that to

force the deft. to come to this Court would amount to a denial of justice. The Court will not enter into "nice" calculations for ascertaining the respective convenience or inconvenience of the parties. This is what is meant by the phrase "mere balance of convenience" is not enough."

(14) In considering the "balance of convenience", what is to be considered is not the importance of the matter to be proved, but the volume of the evidence, and the convenience or inconvenience of producing it at a particular forum.

(15) In deciding the question of "balance of convenience", statements of a general nature contained in affidavits affirmed for that purpose, without particulars are useless. The Court must consider the facts and cannot proceed to act on vague allegations, devoid of particulars.

(16) In deciding applications for revocation of leave, it is always useful to consider as to which Court was the "Natural forum" for an action.

19. It has been laid down by the Division Bench of this Court in case of Ritu Sachdev (supra) that once a leave under Clause 12 of the Letters Patent has been granted then the same should not be revoked at the instance of the Defendant where the question raised is far too difficult to determine upon affidavit evidence.

20. However, this Court in case of Ratan Kumar Bhar Pilia (supra) held that the balance of convenience is not really a decisive factor but the Defendant must establish that the balance of convenience is overwhelmingly in favour of the suit being tried to other court and even in the facts of that case that leave should not be revoked. The principle as enunciated in Madanlal Jalan (supra) and Parasram Harnandrai (supra) has been recognized and applied by this Court in case of Kanthal India Ltd. v. Anant Prasad Bhatia and Ors. (supra).

21. By applying the above legal tests I do not find that the Defendants have been able to make out a case that the balance of convenience is overwhelmingly lies in trying the case before the Delhi court. Admittedly a part of the cause of action arose within the jurisdiction of this Court. Since there is No. business carried out by the Defendants in Calcutta does not take away the jurisdiction of this Court. The court on such fact cannot arrive at a conclusion that the Defendants would face inconvenience overwhelmingly to defend the suit before this Court. Thus the question raised by the Defendant in the instant application seeking revocation of leave under Clause 12 of the Letters Patent does not stand on the settled legal principles as discussed above.

22. The instant application is, therefore, dismissed.

23. There shall be No. order as to costs.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance of al requisite formalities.