

(1972) 12 GAU CK 0005

In the Gauhati High Court

Case No : Civil Revision No's. 166 of 1969, and 3 of 1970

Sree Mohan Rice and Oil Mills

APPELLANT

Vs

Hindustan Motor Ltd. and others

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 2, Order 5 Rule 5, Order 8 Rule 1, Order 9 Rule 1, 115

Citation : AIR 1973 Guw 120

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Advocate : M. Ray and A. R. Barthakur, for the Appellant; J. P. Bhattacharjee, S. K. Sen, P. C. Das, P. C. Katakya and S. S. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Baharul Islam, J.—These two applications u/s 115 of the Code of Civil Procedure, one by the plaintiff and the other by, defendant No. 3, arise out of the same order dated 13th December, 1969 passed by the Assistant District Judge, Darrang, at Tezpur in Title Suit No. 20 of 1969.

2. The plaintiff filed the aforesaid suit for rescission of a contract for purchase of a vehicle under a hire-purchase agreement and for compensation of Rs. 12,831/-. Defendant No. 3 entered appearance, but did not file any written statement; he merely filed an application u/s 151 of the CPC alleging, inter alia, that his place of business was at Calcutta outside the jurisdiction of the Court and that under the terms and condition of the hire-purchase agreement the Courts at Calcutta alone, and no other court, had jurisdiction to try any suit in respect of any claim or dispute arising out of the said agreement or in any way relating to the same. It was alleged that the said hire-purchase agreement was binding on the parties. The plaintiff filed an objection to the aforesaid application u/s 151 of the Code of Civil, Procedure filed by the defendant No. 3, contending that the aforesaid application was not tenable in law.

3. The only point that arises for Consideration in these matters is whether the learned court below had jurisdiction to decide the point whether or not he had jurisdiction to try the suit on an application filed u/s 151 of the CPC by the defendants or any of them, not raised in any written statement filed by them. Section 151 of the CPC merely preserves inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

It is settled law that Section 151 can not be invoked when there are other provisions in the Code. Order 5 Rule 5 of the CPC provides that the Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only or for the final disposal of the suit; and the summons shall contain a direction accordingly. From the order dated 26-6-69 of the learned Court below, it appears that he ordered issue of summonses to the defendants for the settlement of issues. Order 8 Rule 1 provides that the defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence. Order 5, Rule 2 provides that every summons shall be accompanied by a copy of the plaint or, if so permitted by a concise statement. Order 9 Rule 1 provides that on the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by the Court. O.10 Rule 1 provides that at the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admission and denials.

4. It is therefore clear that on receipt of summons the defendants may appear and admit the claim of the plaintiff whereupon the claim should be decreed. If he does not admit and wants to contest the plaintiffs claim on any plea, he is to file a written statement of his objection, whereupon issues will be settled. The defendant in his written statement may also take the plea that the Court has no jurisdiction, territorial or pecuniary, to try the suit. The Court is then to try it as a preliminary issue. If he finds that he does not have jurisdiction, then he is to return the plaint to the plaintiff. Unless a written statement is filed, and the allegations made in the plaint or some of them are denied, no issue is, or issues, are raised. The learned trial Court erred in interpreting, Section 21 of the CPC as enabling the defendant to file his preliminary objection as to lack of court's jurisdiction. Section 21 merely provides that if the defendant does not raise any objection as to the place of suing in the Court of the first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, he cannot raise that plea in the Court of appeal or revision. It does not create a forum for raising the plea of Court's lack of jurisdiction by the defendant. Unless a written statement is filed no issue can be raised and no

evidence can be gone into.

5. In the instant case, therefore, the entertainment of the application u/s 151 filed by defendant No. 3 raising the plea of lack of territorial jurisdiction of the Court was without jurisdiction. In the result the impugned order of the learned trial court is quashed. The learned trial court will direct the defendants to file written statement if they so choose. If they, or any of them, do so, and take the plea of Court's lack of jurisdiction, a preliminary issue can be framed and tried, and then dispose of the matter in accordance with law.

6. In the result the two revision applications are allowed and the rules are made absolute. As both the parties were aggrieved by the order of the trial court and both have come on revision they shall bear their own costs.