
(2013) 07 CAL CK 0006

In the Calcutta High Court

Case No : F.M.A. No. 860 of 2013 and C.A.N. No. 6796 of 2012

Stadmed Private Ltd.

APPELLANT

Vs

Intellectual Property Appellate Board

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Citation : (2014) 1 CHN 158

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Judgement

Arun Mishra, C.J.—This Intra-Court appeal has been preferred questioning the sustainability of the judgment and order dated 6th June, 2012 dismissing the writ petition on the ground of lack of territorial jurisdiction. The petitioners in the writ petition had questioned the order passed by a Circuit Bench of the Intellectual Property Appellate Board at Mumbai on 4th August, 2006 in which the order dated 24th March, 2003 passed by the Deputy Registrar of Trade Marks was questioned. The Intellectual Property Appellate Board has set aside the order passed by the Deputy Registrar of Trade Marks, Mumbai passed on 24th March, 2003. The appeal has been allowed.

2. The legality of the aforesaid order passed by the Intellectual Property Appellate Board had been questioned in the writ application filed before the Single Bench. The Single Bench has held that it has no territorial jurisdiction to entertain the petition merely by the fact that the order was served in Calcutta. This Court has no jurisdiction to entertain the same. The writ petition ought to have been preferred in the High Court at Mumbai. Aggrieved thereby, the intra Court appeal has been preferred.

3. Ms. Mousumi Bhattacharjee, learned Counsel for the appellants appearing with Shri S. K. Dutta and Shri S. Banerjee has submitted that as per Rule 21 of the Intellectual Property Appellate Board (Procedure) Rules, 2003, it is necessary to communicate the order. Until and unless, the order is communicated, proceedings are not complete. There can be no decision in the eye of law, as

contemplated in Rule 21 of the Rules of 2003, if there is no communication. This communication forms part of bundle of facts. This constitute cause of action, as part of cause of action has arisen within the jurisdiction of this Court. Thus, this Court had the jurisdiction to entertain the petition. The writ petition has been illegally dismissed by the learned Single Bench. The learned Counsel has relied on various decisions, which will be dealt with later on.

4. Shri Ranjan Bachwat, learned Counsel appearing on behalf of the respondents has supported the order of the Single Bench.

5. The rectification proceeding was initiated admittedly before the Deputy Registrar of Trade Marks, Mumbai. Against that order, an appeal was preferred before the Appellate Board. The same was decided by a Circuit Bench of the Appellate Board in Mumbai. The writ of certiorari was sought for quashment of the order passed by the Appellate Board. In such a situation, in our considered opinion, no petition can be filed at Calcutta High Court particularly when orders are sought to be questioned which were passed within the territorial jurisdiction of High Court at Mumbai. We find support from the decision of the Hon'ble Supreme Court in *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, in which question arose for consideration whether cause of action arose within the jurisdiction of High Court before which the writ petition was filed. The Apex Court has held that only such High Court within whose jurisdiction the subordinate Court passed the order has jurisdiction to entertain application under Article 227 of the Constitution of India. The Apex Court has laid down thus:

25. It is no doubt true that in a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of the Magistrate taking cognizance u/s 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would but be issued by a writ Court under Article 226 of the Constitution against a judicial officer. (See *Naresh Shridhar Mirajkar v. State of Maharashtra*). However, we are not oblivious of a decision of this Court in *Surya Dev Rai v. Ram Chander Rai* wherein this Court upon noticing *Naresh Shridhar Mirajkar* and also relying on a Constitution Bench of this Court in *Rupa Ashok Hurra v. Ashok Hurra* opined that a Judicial Court would also be subject to exercise of writ jurisdiction of the High Court. The said decision has again been followed in *Ranjeet Singh v. Ravi Prakash*. It is, however not necessary to dilate on the matter any further. The jurisdiction of the High Court u/s 482 of the Code of Criminal Procedure was noticed recently by this Court in *State of U. P. v. Surendra Kumar* holding that even in terms thereof, the Court cannot pass an order beyond the scope of the application thereof. In *Surya Dev Rai* we may, however, notice that this Court categorically stated that the High Court in issuing a writ of certiorari exercises a very limited jurisdiction. It also made a distinction between exercise of jurisdiction by the High Court for issuance of a writ of certiorari under Articles

226 and 227 of the Constitution. It categorically laid down that while exercising its jurisdiction under Article 226, the High Court can issue a writ of certiorari only when an error apparent on the face of the record appears as such; the error should be self-evident. Thus, an error according to this Court needs to be established. As regards exercising the jurisdiction under Article 227 of the Constitution it was held (SCC p. 689, para 24)

The power may be exercised in cases occasioning grave injustice or failure of justice such as when (I) the Court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (in) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

28. We have referred to the scope of jurisdiction under Articles 226 and 227 of the Constitution only to highlight that the High Courts should not ordinarily interfere with an order taking cognisance passed by a competent Court of law except in a proper case. Furthermore only such High Court within whose jurisdiction the order of the subordinate Court has been passed, would have the jurisdiction to entertain an application under Article 227 of the Constitution unless it is established that the earlier cause of action arose within the jurisdiction thereof.

29. The High Courts, however, must remind themselves about the doctrine of forum non conveniens also [See *Mayor (H.K.) Ltd. v. Owners & Parties, Vessel M. V. Fortune Express.*]

6. The Apex Court in *State of Rajasthan and Others Vs. Swaika Properties and Another*, , also considered whether the part of the cause of action arose within the territorial jurisdiction of the Calcutta High Court. There was service of notice u/s 52(2) of the Rajasthan Urban Improvement Act, 1959 on the respondent at their registered office within the territorial limits of the State of West Bengal. The Apex Court laid down that merely service of the notice could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land u/s 52(1) arise within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. Therefore, for the remedy by way of grant of relief, a writ petition should have been filed before the Jaipur Bench of the Rajasthan High Court. The Apex Court has laid down thus:

7. Upon these facts, we are satisfied that the cause of action neither wholly nor in part arose within the territorial limits of the Calcutta High Court and therefore the learned Single Judge had no jurisdiction to issue a rule nisi on the petition filed by the respondents under Article 226 of the Constitution or to make the ad interim ex parte prohibitory order restraining the appellants from taking any steps to take possession of the land acquired. Under sub-section (5) of section 52 of the Act the appellants were entitled to require the respondents to

surrender or deliver possession of the lands acquired forthwith and upon their failure to do so, take immediate steps to secure such possession under sub-section (6) thereof.

8. The expression "cause of action" is tersely defined in Mulla's Code of Civil Procedure:

The "cause of action" means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court.

In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice u/s 52(2) of the Act on the respondents at their registered office at 18-B, Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land u/s 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench. The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Article 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government u/s 52(1) of the Act became effective the moment it was published in the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur u/s 52(2) for the grant of an appropriate writ, direction or order under Article 226 of the Constitution for quashing the notification issued by the State Government u/s 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan u/s 52(1) of the Act by a petition under Article 226 of the Constitution, the remedy of the respondents for the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose.

7. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, the Apex Court has laid down that facts must form integral part of the cause of action. Merely service of the order at Calcutta would not confer the jurisdiction to this Court to interfere with such an order.

8. The Apex Court in *Municipal Corporation of Delhi Vs. Qimat Rai Gupta and Others*, has laid down that an order ordinarily is presumed to have been made when it is signed. The communication is merely to give enough opportunity to the person to take recourse to law, if he is aggrieved thereby.

9. Thus, the Rules 20 and 21 of the Rules of 2003 cannot come to the rescue of the appellant as the order was passed and signed in Mumbai and merely its

communication at Calcutta, would not constitute part of the cause of action to question it at the High Court at Calcutta.

10. The learned Counsel appearing on behalf of the appellant has relied upon *State of Punjab Vs. Amar Singh Harika*, in which the Apex Court has considered the fact that the respondent was an Assistant Director, Civil Supplies in the Patiala and East Punjab States Union (PEPSU) was dismissed from service by an order purported to have been passed on 3rd June, 1949. This order was, however, communicated to him by the Chief Secretary, PEPSU Government on 2nd/3rd January, 1953. The respondent filed a suit against the appellant on the ground that the impugned order whereby he was dismissed from service, was invalid, inoperative and illegal. The enquiry was assailed on the ground that it was void. The Apex Court has laid down that the order of dismissal is not effected unless it is communicated to the officer concerned. Present is not the case of dismissal where dismissal is effected when it is communicated. The order was effective at Mumbai where it was signed and particularly, when it has been passed at Mumbai. It is not a dispute between master and servant as it was in the case of *Amar Singh Harika (Supra)*. Thus, the decision has no application.

11. Reliance has also been placed upon the decision of the Hon'ble Supreme Court in the case of *Bachhittar Singh Vs. The State of Punjab*, . It is a case of dismissal in which communication may form part of the cause of action. The same is not the case here. Thus, the decision has no application in the instant case.

12. The learned counsel has also relied upon the decision of the Hon'ble Supreme Court in the case of *Bikash Bhushan Ghosh and Others Vs. Novartis India Limited and Another*, , in which the Apex Court has considered the question of the Appropriate Government to make reference as order of termination was served at Calcutta and it was passed on the fact of not obeying orders of transfer. Transfer of appellants had some nexus with the order of termination of their services. The transfer order was passed at Calcutta while the employee was at Calcutta. Thus, it was held that part of the cause of action arose in Calcutta and the State of West Bengal was the Appropriate Government. The decision has no application as to the facts of the instant case and no part of the cause of action has arisen here at Calcutta.

13. The learned counsel has also relied upon the decision of this Court in the case of *Serajuddin and Co. Vs. The State of Orissa and Others*, and in the case of *Union of India (UOI) and Others Vs. Hindustan Aluminium Corporation Limited and Another*, . Both the decision have no application as to the facts of the instant case.

14. In the facts and circumstances of the case, we find no merit in the submissions of the learned counsel of the appellants. Resultantly, the appeal being devoid of any merit is hereby dismissed. The application being C.A.N. 6796 of 2012 is also dismissed.

Joymalya Bagchi, J.

I agree.