
(1995) 04 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 6 of 1995

Sukhdeo Singh Rajpurohit

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 104, 21

Citation : AIR 1995 Raj 284 : (1995) 1 RLW 379 : (1995) 2 WLC 648 : (1995) 2 WLN 47

Hon'ble Judges : P.K. Palli, J

Bench : Single Bench

Advocate : H.N. Calla, for the Appellant; B.C. Mehta, for the Respondent

Final Decision : Allowed

Judgement

Palli, J.—The plaintiff-appellant filed a suit for recovery of the amount against the defendant-respondents on the ground that the amount covered by the bills have not been paid to him. A decree was passed in favour of the plaintiff on 3-3-1994 by the learned Additional Civil Judge, No. 1, Jodhpur which decision was challenged by way of appeal which came to be heard by the learned Additional District Judge No. 2, Jodhpur. The learned Additional District Judge accepted the appeal of the defendant State vide the impugned judgment and decree holding that the court that passed the decree had no jurisdiction to try the suit.

2. Admittedly, no decision on merits was given and hence this appeal has been filed by the plaintiff.

3. Issue No. 4 was framed in respect of the jurisdiction of the Court. While deciding issue No. 4 a reference was made to the observations appearing under issue No. 3 that on the offer it was clearly stipulated that all disputes shall be referable to Jodhpur jurisdiction. It, thus, came to be accepted by the respondent State that they would be amenable to Jodhpur jurisdiction of the Court. It has also been observed by the learned trial Court under issue No. 4 that the printing

work as per undisputed position was to be carried out at Jodhpur. The learned trial court, thus, held under this issue that the court at Jodhpur has jurisdiction to try the suit. Hence, the issue was answered in favour of the plaintiff.

4. Learned first appellate court observed that the tenders were invited by the respondent No. 3 at Marwar Junction (Pali) and the tenders were accepted there itself. Therefore, no cause of action had arisen at Jodhpur. According to the first appellate Court, the printing on the offer (amenable to Jodhpur jurisdiction) was totally meaningless and that the printing could be done at any other place, that will not give the cause of action at Jodhpur. According to the learned court, the Jodhpur court had no jurisdiction to try the suit and further an observation was made that the plaintiff in case he so desires can withdraw the suit according to law and procedure and if the law permits the same be filed in a court of competent jurisdiction.

5. I have heard the learned counsel for the parties and perused the record.

6. In my opinion, the learned first appellate court has committed an error while passing the impugned judgment. The appeal has been disposed of solely on the ground of jurisdiction by holding that the court at Jodhpur had no jurisdiction to try the suit. It is too well known that when the parties appear and submit to the jurisdiction of the court, join issues and whereafter the judgment and decree is passed, it shall not be open to any of the parties to the lis to object to the decree having been passed without jurisdiction. The matter relates to the territorial jurisdiction only. The learned trial court discussed the pleadings, the evidence both oral as well as documentary placed by the parties on the record and after hearing the matter passed the judgment and decree. The issue of jurisdiction was decided in the main judgment itself. The appellate court should not have taken recourse to this type of short cut. The learned first appellate court should have decided the matter of jurisdiction alone. The plaintiff completed and handed over the job entrusted to him and on the completion of the job the bills were handed over on 11-11-1986 and 14-11-1986 and it is said that in spite of assurance the amount covered by the bills was not paid. The plaintiff was, thus, forced to file the suit against the respondent-defendants. It was not proper for the learned first appellate court to relegate the plaintiff back to square number one by allowing him to withdraw the suit if so permissible and file the same in a competent court of jurisdiction and thereby asking for a de novo trial and then appeal. Section 21 of the CPC can advantageously be taken notice of. Section 21 reads as under:--

"21. Objections to jurisdiction. -- (1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objections were taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary

limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

7. A reading of the aforesaid provision stipulates that the objection as to the place of suing shall not be allowed by the Appellate Court unless taken in the first instance and at the earliest opportunity and in all cases where issues are settled and unless there has been a consequent failure of justice.

8. To somewhat similar object is the phraseology incorporated in Sub-section (2) of Section 21 where there is a reference to the pecuniary limits of the jurisdiction of the court and the same words appear again under sub-section (3) of Section 21.

9. It has not been stated by the learned first appellate Court as to whether the filing of the suit at Jodhpur and its trial resulting into final decree resulted in failure of justice unless there was any such thing. It was not proper for the learned first appellate Court to throw the plaintiff out of court on that ground alone, without examining the case on merits.

10. Learned counsel appearing from the side of the respondents has been unable to support the view taken by the learned first appellate court.

11. Learned counsel appearing for the appellant has also pressed in service the observations made by the Hon"ble Supreme Court in A.B.C. Laminart Pvt. Ltd. and Another Vs. A.P. Agencies, Salem, The suit related to breach of a contract and the question that cropped up related to the jurisdiction to the court. The Sales Executive in that case acknowledged the, receipt of the order and registered the sale subject to the terms and conditions overleaf. The term included a clause relating to jurisdiction. It was held under the circumstances that the clause formed part of the agreement and the parties would be bound by it so long as they would be bound by the contract itself. It would not be open to deny the existence of the said clause.

12. This provision contained in Section 21 of the CPC came to be noticed by the Hon"ble Supreme Court in Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, and after looking into the provisions their Lordships analysed the same in three parts and in para 3 of the said judgment it has been ruled that all these three conditions must co-exist. In that case like the present one the earlier two conditions i.e. the objection was taken in the Court of first instance and secondly it was taken at the earliest possible opportunity and in cases where issues are settled at or before such settlement but their Lordships proceeded to

allow the appeal on the third aspect i.e. no case of violation of failure of justice on account of place of suing having been wrongly selected was made out.

13. To the similar effect are contained the observations handed down by the Hon"ble Supreme Court in The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another, There in that case also the condition "unless there has been a consequent failure of justice" was explained. It was held that the section does not preclude the objection as to the place of suing, if the trial Court had not given a verdict on merit at the time when the objection is taken in the appellate Court.

14. After giving my thoughtful consideration to the entire matter I am of the opinion that this appeal deserves to be allowed and is consequently allowed. The judgment and decree passed by the learned first appellate court are set aside, the case is remanded back to the learned first appellate court for deciding the appeal on merits and the parties are directed to appear before the first appellate court on 10-7-1995.

15. The parties are left to bear their own costs.