

(2009) 07 AP CK 0031

In the Andhra Pradesh High Court

Case No : C.M.A. No. 55 of 1999

Superintending Engineer, Irrigation and Power Department,
Srisailam Project and Another

APPELLANT

Vs

Steel Authority of India Limited and Others

RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 43 Rule 1, 16, 17, 18, 19
Major Port Trusts Act, 1963 — Section 42(2), 42(7)

Citation : (2009) 6 ALD 410 : (2009) 6 ALT 516

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Advocate General, for the Appellant; B. Narasimha Sharma, for Respondent Nos. 1 and 2, N.V. Suryanarayana Murthy, for Respondent No. 3, K. Somakonda Reddy, for Respondent No. 4, P. Phalguna Rao, for Respondent Nos. 6 and 7 and None appeared, for the Respondent

Judgement

V.V.S. Rao, J.—This civil miscellaneous appeal under Order XLIII Rule 1(a) of Code of Civil Procedure, 1908 (CPC), is by plaintiffs, namely, Superintending Engineer and Executive Engineer of Irrigation Department, Srisailam Project, Srisailam, Kurnool District. They filed appeal aggrieved by the judgment dated 25.7.1997 in O.S. No. 150 of 1993 passed by the Court of Additional Subordinate Judge, Kurnool. By impugned judgment, learned Subordinate Judge returned the plaint for want of territorial jurisdiction to entertain the suit. In this order, parties are referred to as they are arrayed in the suit.

2. The fact of the matter may be noticed by briefly referring to pleadings in the suit. Plaintiffs approached first defendant for supply of special items of high yield deformed steel bars worth about Rs. 8,64,000/-for Srisailam Project. First defendant accepted offer and agreed to supply material and deliver at Madras Port. Second defendant was instructed to give necessary assistance to plaintiffs. Second plaintiff paid an amount of Rs. 9,00,000/- by way of demand draft. Subsequently order of supply of some material was cancelled. An amount of Rs.

4,66,302.63 ps was refunded but the contract for supply of other material was valid. Plaintiffs were informed by second defendant that the material is likely to reach Madras Port on 21.8.1981 by ship BERISLAU and requested plaintiffs to collect documents and make necessary arrangements for unloading the stock. Plaintiffs sent Deputy Executive Engineer along with Work Inspector to Madras to know the details. They informed that the ship arrived on 02.9.1981 at Madras Port and unloading was completed on 06.9.1981. Deputy Executive Engineer contacted fifth defendant and went to Port on 06.9.1981 to trace suit consignment so as to get it transported to Korukupet goods shed. But out of forty two (42) bundles ordered, only four bundles were traced, which were duly transported. As per the work order entered into between plaintiffs and fifth defendant, it is the duty of latter to see that any claim for shortfall/damage in transit/non-delivery etc., shall be lodged with fifth defendant and that fifth defendant make good the loss if any after clearing steel from the Port. There was correspondence between plaintiffs and defendants for supply of shortfall of goods ordered. Third defendant sent a communication stating that the ship duly discharged the full bill of lading in quantity into custody of fourth defendant as reflected in tally sheet (receipt), which is statutory u/s 42(2) and 42(7) of Major Port Trusts Act, 1963. In spite of the same, goods were not delivered. The goods ordered are duly insured with defendants 6 and 7, who are responsible to make good the loss occasioned in the transit under the insurance policy. Therefore the suit for Rs. 4,35,786.85 ps which is value of thirty eight (38) bundles of high yield deformed steel bars. Hence plaintiffs instituted suit being O.S. No. 20 of 1982 before the Court of Subordinate Judge, Ongole.

3. Defendants contested the suit denying liability. They contested territorial jurisdiction of Ongole Court. The said Court framed as many as fifteen issues. The Executive Engineer gave evidence as P.W.1 and marked Exs.A-1 to A-20. Defendant examined five witnesses but marked no documents. Ongole Court considered issue of territorial jurisdiction and came to the conclusion that it lacks jurisdiction and returned the plaint. Plaintiffs then carried the matter to this Court by way of filing the appeal being C.M.A. No. 1494 of 1985. The Advocate General appeared for plaintiffs and conceded that the order of Ongole Court is correct in law. Therefore, a Division Bench of this Court dismissed appeal and granted two months time to plaintiffs to present plaint before the Court of Subordinate Judge, Kurnool. Thereafter, plaint was presented before Kurnool Court, which was renumbered as O.S. No. 150 of 1993.

4. Before Kurnool Court, during trial, defendants 1 to 3 filed application for framing two additional issues relating to territorial jurisdiction and requested to consider the same as preliminary issues. Learned Additional Subordinate Judge considered issues and basing on the concession made by Assistant Government Pleader came to the conclusion that it has no territorial jurisdiction and ordered return of plaint, while holding that question of territorial jurisdiction of Kurnool Court was not decided by High Court in C.M.A. No. 1494 of 1985.

5. When the matter was listed on 16.6.2009, this Court requested learned Advocate General to appear in the matter having regard to the fact that the goods were allegedly not traced at Madras Port admittedly after the ship discharged bill of lading and a question of admiralty jurisdiction might arise.

6. Learned Advocate General submits that for invoking admiralty jurisdiction there should be maritime lien. In the absence of any such maritime lien, the case can be instituted at the place where the plaintiffs reside or at the place where the defendants reside. According to learned Advocate General, it is essentially a suit for recovery of compensation for wrong done to movable property and therefore Section 19 of CPC would be attracted. On the question of admiralty jurisdiction he placed reliance on *M.V. Elisabeth and Others Vs. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa, and M.V. Al Quamar Vs. Tsavliris Salvage (International) Ltd. and Others*,

7. Though defendants 1 to 5 are represented by Counsel, none appears for them. Learned Counsel for defendants 6 and 7 submits that contract was concluded at Madras when second defendant agreed to handle import of steel rods, that money was received at Madras, that goods were to be delivered at Madras and therefore if there is a shortfall of goods to be supplied Madras Courts alone have jurisdiction. He also points out that non-delivery of goods occurred in Chennai and therefore Kurnool Court has no jurisdiction.

8. When question of territorial jurisdiction of a Court is raised, various issues have to be addressed. These are what is the nature of the suit? What is legal injury suffered by plaintiff and what is the obligation of defendant to compensate such legal injury. Is there any agreement between parties with regard to jurisdictional Court to resolve dispute and when defendants reside at different places whether cause of action or part of action has arisen within territorial limits of Court where suit is instituted?

9. Sections 16 - 18 of CPC essentially (except to a limited extent) deal with suits relating to immovable property (recovery, partition, redemption/foreclosure, declaration/determination and compensation etc.) Section 19 of CPC exclusively deals with suit for compensation for (i) wrong done to persons and (ii) wrong done to movable property. Section 20 of CPC deals with other suits. There is no quarrel that in this case issue raised is one relating to Section 19 or Section 20 of CPC. Sections 16 - 18 of CPC are not relevant. Before dealing with this, it is necessary to reiterate legal principles regarding "cause of action".

10. Right to sue depends on cause of action, which an aggrieved person is able to show that he suffered legal injury. The elements of cause of action are two; first breach of duty owing by one person to another and second damage resulting to other from the breach. Therefore the cause of action for a suit is not one instance or one important event from the commencement of fiduciary, jural or otherwise relationship between the parties till there is violation or breach of or obligations in relation to such relation. Thus cause of action for a suit means the

sum of total facts and circumstances which plaintiff would have to prove if traversed in order to support his claim to judgment.

11. Insofar as jurisdiction to adjudicate is concerned, before a Court takes cognizance of a claim, suitor must show territorial nexus, pecuniary nexus or protective nexus. The jurisdiction is conferred by the Statute depending on these three aspects. Therefore to determine jurisdiction of a Court, limitations or borders within which the Court is mandated to exercise jurisdiction cannot be ignored. A legal forum (be it a Tribunal, Court or quasi-judicial authority), gets jurisdiction to decide or adjudicate a claim only when such authority is conferred with jurisdiction, that is to say, when cause of action arises within its jurisdiction. It is not always necessary that the entire cause of action should arise exclusively within the jurisdiction of a legal forum. It is quite possible that cause of action or part of cause of action might arise within the jurisdiction of an authority or Court and subject to statutory guidance in that regard, even if part of cause of action arises, judicial authority can take cognizance of the case. As noticed supra, Section 19 of CPC deals with an instance where statute itself confers jurisdiction on the Court where defendant resides or on the Court where plaintiff resides or where wrong done to the person or movable property. Section 20 of CPC is yet another instance, which recognizes the principle and confers jurisdiction on the Court in whose jurisdiction cause of action either wholly or in part arises.

12. To know that an aggrieved person has cause of action wholly or in part within the jurisdiction of the Court, one has to read pleadings in their entirety. Pleadings are those, which are material facts, which are compulsorily alleged and proved by suitor. In *Kusum Ingots & Alloys Limited (supra)*, cause of action has been explained as follows.

Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

13. To arrive at a conclusion whether or not cause of action has arisen within territorial jurisdiction of a Court, one has to read entire pleadings. This is well settled. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, it is laid down thus.

It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kaur v. Pratap Singh* ILR (1889) Cal 98 at 102, Lord Watson said:

... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action or in other words to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition.

14. Keeping the principles as above, question that is to be considered is whether cause of action wholly or partly has arisen within territorial jurisdiction of Kurnool Court. Plaintiffs are at the relevant time residents of Srisailam. They approached first respondent for supply of high yield deformed steel bars. The proposal to purchase was made from Srisailam and it was accepted by first respondent. Acceptance was received at Srisailam and cost of goods being Rs. 9,00,000/- was sent from Srisailam by way of demand draft. First defendant issued purchase order on 21.8.1981 from Srisailam specifically advising the latter that all correspondence relating to payments has to be made to second defendant. In the schedule accompanying purchase order, it was clearly mentioned that balance amount due shall be refunded to second plaintiff in the form of demand draft negotiable at State Bank of India, Srisailam. When part of purchase order was cancelled, an amount of Rs. 4,66,302.63 was returned by first defendant and was encashed at Srisailam. Though the goods were delivered at Madras, it is inevitable because the goods were to be transported via sea in the ship BERISLAU. These events would certainly constitute a part of cause of action. When such part of cause of action arose within territorial jurisdiction of Kurnool Court and the suit relates to wrong done to movable property, it is for plaintiff to sue either Kurnool or at Chennai.

15. A perusal of impugned judgment would show that much importance was given to concession made by Assistant Government Pleader, which on the face of it appears to be incorrect. Question of jurisdiction is basically a question of fact. Even if a concession is made by the counsel appearing for the party, it does not bind the party to raise a different plea in the appellate stage or in subsequent proceedings. Therefore, learned Advocate General is correct in contending that Kurnool Court has concurrent jurisdiction to try the suit. In that view of the matter, impugned judgment suffers from grave error.

16. In the result, this civil miscellaneous appeal is allowed and the impugned judgment of Court of Additional Subordinate Judge, Kurnool, in O.S. No. 150 of 1993 returning plaint, is set aside. The said Court is directed to take the suit on

file and conduct trial expeditiously. If the evidence is already recorded before impugned judgment is passed, it shall be open to learned Additional Subordinate Judge (now Senior Civil Judge) to hear the parties and deliver judgment. However liberty is reserved to parties to adduce fresh evidence.

17. The matter is pending from 1982 when plaintiffs moved Ongole Court. Therefore without any further delay, learned Additional Senior Civil Judge, Kurnool, shall dispose of the suit as expeditiously as possible giving top priority to the suit. There shall be no order as to costs.