

(2014) 02 BOM CK 0032
In the Bombay High Court
Case No : S.A. No. 130 of 2011

Sureshkumar

APPELLANT

Vs

Maharashtra State Electricity Distribution Company Ltd.

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 21, 22
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, Order 7 Rule 13, 11, 15
Suits Valuation Act, 1887 — Section 11

Citation : (2014) 5 ABR 763 : (2015) 2 ALLMR 748 : (2014) 4 MhLj 947

Hon'ble Judges : S.B. Shukre, J

Bench : Single Bench

Advocate : Shyam Dewani, Advocate for the Appellant; R.E. Moharir, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

S.B. Shukre, J.—This appeal is preferred against the judgment and decree passed by the District Judge-I Nagpur in Regular Civil Appeal No. 162/1997 on 30-1-2009 thereby allowing the appeal filed against the judgment and decree passed in Regular Civil Suit No. 477/1994 by the Joint Civil Judge, Junior Division, Nagpur on 12-12-1996. The facts leading to filing of the present appeal are stated in brief as under:--

The appellant is the original plaintiff in a suit instituted by him against the respondent herein. The suit filed by the appellant was for declaration and permanent injunction. It was the case of the appellant that the appellant was customer of the respondent and the respondent supplied electricity to the appellant at his stone crushing unit situated at Village Khapri, Taluka Kalmeshwar, District Nagpur.

In the said suit, the appellant disputed the bill issued for month of January, 1994, for Rs. 67,059.30 paise. The said bill was issued by the respondent herein

after a flying squad of the respondent having visited the appellant's unit in his absence had found that appellant was consuming more electricity than sanctioned load of electricity. The appellant submitted that he did not violate any rule of electricity board. As the respondent threatened the appellant with discontinuation of the supply of electricity for non-payment of amount of said bill and the demand being illegal and arbitrary the appellant filed the said suit, which came to be numbered as Regular Civil Suit No. 477/1994.

2. The respondent resisted the suit by filing its written statement. It was contended by the respondent that during the surprise visit of the flying squad at the unit of the appellant, it was disclosed that the appellant was using load of electricity more than what was actually sanctioned and, therefore, the claim of bill made by the respondent was not arbitrary and illegal. The respondent also contended that the Court of Civil Judge, Junior Division at Nagpur did not have necessary territorial and pecuniary jurisdiction to entertain the suit, apart from the fact that the suit was undervalued.

3. On such rival pleadings, the trial Court framed the issues and after considering the evidence adduced by the parties and arguments of both the sides, learned Civil Judge Junior Division, Nagpur allowed the suit by his judgment and decree passed on 12-12-1996. Learned Civil Judge, declared that the respondent had no right to demand the arrears of the electricity bill of Rs. 67,049.30 paise on the basis of the report of flying squad and permanently restrained the respondent from disconnecting the electricity supply of the plaintiffs unit on the basis of vague report of flying squad.

4. Being aggrieved by the judgment and decree, the respondent preferred an appeal before the District Court. It was numbered as Regular Civil Appeal No. 162/1997. The learned District Judge after considering the evidence and arguments of both sides came to the conclusion that the suit was not maintainable before the Court of Civil Judge, Junior Division, Nagpur for want of territorial jurisdiction and incorrect valuation of claim for the purpose of payment of Court fees, thereby allowing the appeal. He quashed and set aside the judgment and decree passed by the trial Court and consequently dismissed the suit of the appellant.

5. Not satisfied, the appellant is before this Court in the present Second Appeal.

6. This appeal has been admitted by this Court on substantial questions of law on 15-10-2013. The substantial questions of law which have now come up for consideration of this Court are as follows:--

(1) When the first Appellate Court came to the conclusion that the trial Court lacked jurisdiction, could it in law allow the appeal and dismiss the suit instead of returning the plaint to be presented before the appropriate Court in view of the provisions of Order VII, Rules 10 and 11 of the Civil Procedure Code?

(2) Whether the first Appellate Court fell in error in concluding that the trial

Court lacked the territorial and pecuniary jurisdiction to entertain the suit filed by the appellant?

7. I have heard Shri Shyam Dewani, learned counsel for the appellant and Shri R.E. Moharir, learned counsel for the respondent. With their assistance, I have carefully gone through the impugned judgment and decree, the judgment and decree passed by the trial Court and the paper book of this appeal.

8. The judgment and decree of the learned District Judge impugned herein shows that learned District Judge, referring to sections 15 and 16 of the Civil Procedure Code, 1908 (hereinafter referred to as "the CPC" for short) found that since the stone crushing unit of the plaintiff was within the limits of Kalmeshwar taluka in the jurisdiction at Saoner Civil Court and the suit was undervalued, the suit was not maintainable before the Court of Civil Judge, Junior Division at Nagpur. After having found lack of territorial and pecuniary jurisdiction on the part of the Civil Judge, Junior Division Nagpur, learned District Judge went on to quash and set aside the judgment and decree passed by the trial Court and thereby dismissing the suit itself. It is here that the learned counsel for the appellant has taken a strong exception to the action of the District Judge in dismissing the suit itself.

9. Shri Dewani, learned counsel, submits that when a Civil Court comes to the conclusion that it has no territorial or pecuniary jurisdiction the appropriate course for it would be to return the plaint in view of the provisions of Order 7, Rules 10 and 11 of the Civil Procedure Code. In support, he places reliance upon the law laid down in the case of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., Shri Moharir, learned counsel for the respondent, however, does not agree. He submits that since the power under Rule 10, Order 7 of the CPC is discretionary, any refusal to exercise that power by the Civil Court cannot be challenged unless, it is shown to be exercised arbitrarily resulting in failure of justice. He submits that under Order 7, Rule 11 of the Civil Procedure Code, the Civil Court is clothed with power to reject the plaint when from the statement made in the plaint, the suit appears to be barred by any law [clause (d)] or the plaint does not disclose any cause of action [clause (a)]. He further submits that in this case the suit as filed by the appellant did not disclose any such cause of action as could have been taken cognizance of by the Civil Court situated at Nagpur and whatever cause of action was there, it had arisen within the local limits of the Court at Saoner and therefore, learned District Judge was right in dismissing the suit.

10. So far as the provision of Rule 11, Order 7 of the CPC is concerned, it is very clear that it does not confer any power upon the Court to dismiss the suit itself. The only power available to the Court under this rule is the rejection of the plaint and that is something which is to be done by the Civil Court not on merits of the case but upon consideration of the statements made and the reliefs claimed in the plaint and nature of the plaint. This rule does not contemplate dismissal of the suit on merits and this can be seen to be clarified by further provision made under Rule 13 of Order 7. It states that rejection of the plaint on any of the

grounds mentioned earlier, that is, those under Rule 11, shall not by itself prevent the plaintiff from presenting a fresh plaint in respect of the same cause of action. Therefore, if the learned district Judge found that the cause of action disclosed in the plaint was not of such a nature as could have been taken cognizance of by Nagpur Court, the learned District Judge at the most, though it is a doubtful proposition, could have rejected the plaint by resorting to Rule 11 of Order 7 of the Civil Procedure Code. That apart, certainly he could have taken recourse to provision of Rule 10, Order 7 and returned the plaint for its being presented to proper Court, if he was of the opinion that Civil Court at Nagpur had no territorial and pecuniary jurisdiction to try the suit. Learned Counsel for respondent, however, submits that power of Civil Court under Rule 10, Order 7 being discretionary, can be refused to be exercised in appropriate cases. So, let us see what this rule says.

10. Return of plaint.--(1) Subject to the provisions of Rule 10-A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Explanation: For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint, under this sub-rule.

(2) Procedure on returning--On returning a plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

11. Rule 10-A relates to the power of the Court to fix a date of appearance of parties in the Court where the plaint is to be filed after its return and it speaks of the procedure to be adopted for directing the parties to appear before the Court where the plaintiff proposes to present the plaint after its return. This rule is intended to take care of possible objection upon the power of the Court to direct appearance of the parties before the Court in which plaintiff proposes to present the plaint after having taken a decision to return the plaint on the ground that if the Court cannot try the suit, it cannot also direct parties to appear on a fixed date in another Court. It also has the object of avoiding delay and repetition in issuing summons to the defendants and ensuring presence of the parties before the new Court after the suit is filed afresh upon the return of the plaint by an earlier Court. This provision, therefore, has to be read only as boosting the power of Court under Rule 10 to return the plaint.

12. Rule 10, as can be seen from the language employed therein, confers power upon the Court to return the plaint at any stage of the suit for its being presented before the Court in which the suit has to be instituted, once the Court comes to the conclusion that the suit should have been filed, not in that Court but in some other Court, and obviously it implies disability of the Court to try the suit on jurisdictional issues. This power can also be exercised by the Court of appeal or revision, and the appellate or revisional Court can return the plaint

after setting aside a decree passed in a suit. This has been made clear by explanation to the sub-rule (1) of Rule 10.

13. Upon reading Rule 10 and Rule 10-A, it appears that scheme of these provisions is to leave the Civil Court with only one option of returning the plaint and not of dismissing the suit if it is of the opinion that it cannot try the suit. The power under Rule 10 is not intended to affect the merits of the suit or otherwise there would have been no further power conferred for fixing the date of appearance of parties in the Court where the plaint is proposed to be presented.

14. In the case of RSDV Finance Company (supra), the Hon''ble Apex Court has laid down that when a suing Court has no jurisdiction to try the suit, the only course to be adopted in such a situation is to return the plaint for its presentation to the proper Court and not to dismiss the suit. Relevant observations of the Hon''ble Apex Court appearing in para 7 are extracted as follows:--

"...The Division Bench was totally wrong in passing an order of dismissal of suit itself when it had arrived to the conclusion that the Bombay Court had no jurisdiction to try the suit. The only course to be adopted in such circumstances was to return the plaint for presentation to the proper Court and not to dismiss the suit...."

15. These observations make the position clear and settle the law governing power of Civil Court under the provision of Rule 10 of Order 7 of Civil Procedure Code. This provision leaves a Civil Court with no option but to return the plaint and confers no power on the Civil Court to dismiss the suit. In these circumstances, I find that the learned Counsel for the appellant is right when he submits that District Judge should not have dismissed the suit and, should have at the most returned the plaint to the appellant to be presented before proper Court. Learned District Judge has, therefore, committed a serious error of law in dismissing the suit. The question No. 1 is answered accordingly.

16. Second substantial question of law involved in this appeal relates to lack of territorial and pecuniary jurisdiction on the part of Court of Civil Judge, Junior Division, Nagpur to try the suit.

17. According to the learned counsel for the appellant, witness No. 1 of the respondent has admitted in his cross-examination that office of Executive Engineer, MSEB was situated at Nagpur and this office controlled its other offices at Kalmeshwar and Gondkhairi thereby indicating that main office of the respondent was situated at Nagpur and therefore, Nagpur Civil Court did have the territorial jurisdiction to entertain and try the suit. He has further submitted that even the arrears as shown in the electricity bill themselves were challenged and suit was basically for declaration and permanent injunction and therefore, the Court of Civil Judge, Junior Division also had the pecuniary jurisdiction to try the suit. He further submits that even otherwise u/s 21 of the Civil Procedure Code, the objections as to the place of suing and/or pecuniary limits of the jurisdiction of the Court cannot be allowed by any appellate or revisional Court,

unless the objections are taken in the Court of first instance at the earliest possibility and in any case on or before settlement of issues and unless there has been a consequent failure of justice. He submits that in the instant case, even though these objections were taken by the respondent in the Written Statement, there has been no failure of justice and, therefore, the objections should not have been allowed by the learned District Judge. For these submissions, the learned counsel relies upon the decisions rendered in the cases of Kiran Singh and Others Vs. Chaman Paswan and Others, Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, Subhash Mahadevasa Habib Vs. Nemasa Ambasa Dharmadas (D) by LRs. and Others, and Shri Basant Kumar Jain Vs. Chief Executive Officer, Maharashtra Industrial Development Corporation, Regional Officer, Maharashtra Industrial Development Corporation and Maharashtra Industrial Development Corporation,

18. Shri Moharir, learned counsel for the respondent submits that it was an admitted position that stone crushing unit of the appellant was situated at Village Khapri which fell within the local limits of Court at Saoner and therefore, it was Saoner Court which had the jurisdiction. He further submits that since the electricity bill raised upon the appellant for specific amount was challenged, the suit was susceptible to valuation which was of Rs. 70,000/- and which took the suit out of pecuniary jurisdiction of the Civil Judge, Junior Division, Nagpur at the relevant time. He further submits that there has also been a failure of justice at the hands of Civil Judge, Junior Division, Nagpur because the suit was tried by him even though he had no territorial or pecuniary jurisdiction. In short, he submits that the learned District Judge was right in allowing the appeal and dismissing the suit.

19. Sub-sections (1) and (2) of section 21 of the CPC deal with powers of appellate or revisional Court to consider the objections as to the place of suing and pecuniary limits of jurisdiction of Civil Court. They lay down the conditions for exercise of power thereunder to allow such objections by the appellate or revisional Court. These conditions are:--

(1) such objections must be taken in the Court of first instance at the earliest possible opportunity,

(2) they must be taken in all cases where issues are settled, at or before settlement of issues.

(3) there has been a consequent failure of justice.

20. In the case of RSDV finance company (supra) Hon''ble Apex Court has held that the objection as to the place of suing can be allowed by the appellate or revisional Court only when abovereferred three conditions are fulfilled.

21. In the case of Kopilan(supra) also Hon''ble Apex Court has held that unless all the aforesaid three conditions are fulfilled appellate/revisional Court cannot allow the objection of place of suing. Same law has been reiterated by Hon''ble

Apex Court in Subhash Mahadevasa (supra).

22. Learned Single Judge of this Court in the case of Basant Kumar Jain (supra) following the above referred law consistently laid down by Hon''ble Apex Court has held that if it is found that because of under valuation of the suit an inferior Court has decided the suit without it having pecuniary jurisdiction to try the suit, even then defendants or respondents cannot succeed unless they have suffered any prejudice or that there is any consequent failure of justice on merits.

23. In the case of Kiran Singh (supra), the Hon''ble Supreme Court while dealing with an objection as to lack of pecuniary jurisdiction of a Civil Court to try the suit, considered the principles underlying section 11 of the Suits Valuation Act, 1887 and section 21 and section 99 of Civil Procedure Code. Hon''ble Apex Court held that the principle that underlies section 11 of Suits Valuation Act, 1887, is that a decree passed by a Court which would have had no jurisdiction to hear a suit or appeal but for over-valuation or under-valuation, is not to be treated as, what it would be but for the section, null and void, and that an objection to jurisdiction based on over-valuation or undervaluation, should be dealt with under that section and not otherwise. The Hon''ble Apex Court further held that the policy underlying section 21 and section 99 of CPC and section 11 of the Suits Valuation Act, is the same, namely that when a case had been tried by a Court on the merits and judgment rendered, it should not be liable to be reversed purely on technical grounds, unless it had resulted in failure of justice, and the policy of the legislature has been to treat objections to jurisdiction both territorial and pecuniary as technical and not open to consideration by an Appellate Court, unless there has been a prejudice on the merits. The Hon''ble Apex Court further held that u/s 11 of the Suits Valuation Act, the decrees are liable to be interfered with in an Appellate Court on the ground of over-valuation or under-valuation, not in all cases and as a matter of course, but only if final disposal of the suit on merits has been prejudicially affected. The Hon''ble Apex Court also explained what amounts to prejudice on merits contemplated u/s 11. It was clarified that prejudice on merits must be directly attributable to over-valuation or under-valuation and that mere error in a finding of fact recorded after consideration of the evidence cannot possibly be said to have been caused by over-valuation or under-valuation. It was also clarified that mere errors in the conclusions on the points for determination cannot be held to be "prejudice" within the meaning of section 11.

24. It would be thus clear from the principles of the law stated in the above referred cases that legislature treats the objections as to territorial or pecuniary jurisdiction as technical and therefore does not clothe appellate or revisional Court with power to allow such objections unless, there is a failure of justice.

25. In the instant case, the first two conditions of section 21(1) and (2) of CPC have been certainly fulfilled. Objections as regards lack of territorial and pecuniary jurisdiction were taken by the respondent at the earliest possible opportunity, that was when the written statement was filed by it. However, the

third condition of failure of justice has not been shown by the respondent to be fulfilled in this case. The respondent has not demonstrated as to how the final disposal of the suit has been prejudicially affected on merits due to lack of jurisdiction of the trial Court. It is also not the case of respondent that by trial and disposal of suit on merits by Nagpur Civil Court, any of its substantive or procedural rights have been prejudicially affected. There can be failure of justice if some substantive or procedural rights otherwise available to a party were taken away due to the fact that suit was tried by a Court not having jurisdiction in the matter. But, such is not the case here. Therefore, I am of the view that the learned District Judge has committed a serious illegality in allowing the objections regarding want of territorial and pecuniary jurisdiction of the Court of the Civil Judge, Nagpur at appellate stage.

26. Even otherwise, as submitted by the learned counsel for the appellant, it can be seen from the pleadings in the plaint and admission given by the respondent's witness DW1 that the main office of the respondent was situated at Nagpur. Nagpur Civil Court, therefore, had the jurisdiction to entertain and try the suit. The learned District Judge while holding lack of jurisdiction of Nagpur Civil Court has referred to sections 15 and 16 of the Civil Procedure Code, which lay down that every suit has to be instituted in the Court of lowest grade competent to try it (section 15) and that suit for, amongst others, determination of any right or interest in the immovable property shall be instituted, subject to pecuniary or other reliefs, in the Court within the local limits of whose jurisdiction the property is situate [section 16(d)]. There is no doubt about these mandates. Every suit must be instituted in the Court of the lowest grade competent to try it and when the suit seeks determination of any right or interest in the immovable property, it must be filed in a Court within the local limits of whose jurisdiction the property is situated.

27. In the instant case the stone crushing unit of the appellant being situated at village Khapri, was within the local limits of jurisdiction of Saoner Court at the relevant time. The electricity bill under challenge was issued in respect of the electricity consumed excessively by the appellant for running the said stone crushing unit. The appellant had challenged the said electricity bill on the ground that it was arbitrary. The appellant was not seeking determination of any right or interest in the immovable property directly. What he had sought basically was declaring the bill to be arbitrary and illegal and restraining the respondent from acting upon such a bill by disconnecting the supply of electricity to the stone crushing unit. Any threat of discontinuation of electricity supply to the unit would have had a bearing upon the right of the appellant to run the stone crushing unit in accordance with law. But such impact was indirect and ancillary to the main relief of declaration of the bill issued by the respondent as illegal. The bill was issued by the respondent having main office situated at Nagpur. Therefore, for determining the local limits of jurisdiction of Civil Court, provision of section 20 clause (a) also applied. But, it seems the learned District Judge turned oblivious of the said provision.

28. u/s 20(a) of the Civil Procedure Code, subject to provisions previous to it, every suit must be instituted in the Court within the local limits of whose jurisdiction the defendant at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. In this case, defendant being a corporation there will be no question of it "actually and voluntarily" residing or its personally working for gain. However, the condition "carries on business" with regard to the nature of the suit will be material. The respondent is a public sector undertaking which carries on business of, amongst others, distribution and supply of electric energy and there is no dispute about this fact. Therefore, respondent can be sued at a place where its main office is situated. Admittedly, the main office of the respondent is situated at Nagpur and, therefore, Court of Civil Judge, Junior Division, Nagpur, the Court of the lowest grade competent to try the suit as per section 15 of the Civil Procedure Code, had the jurisdiction to try the suit. In this regard, a useful reference could be made to the law laid down by Hon"ble Apex Court in the case of Union of India (UOI) and Another Vs. Ladu Lal Jain, wherein the question was whether union of India carried on the business of running railways and if so whether Union Government could be sued in a Court within whose territorial jurisdiction the head quarters of the railway run by the Union was situated. The answer given was in the affirmative. Hon"ble Apex Court held in para 16 as under:--

"In view of what we have said above, we hold that the Union of India carries on the business of running railways and can be sued in the Court of the Subordinate Judge of Gauhati within whose territorial jurisdiction the head-quarters of one of the railways run by the Union is situated. We accordingly dismiss the appeal with costs."

29. It is clear from the above referred decision that a Government can carry on business and when it does it can be sued in a Court within whose territorial jurisdiction the head quarter or main office of the company which runs the business for and on behalf of the government is situated. Thus, it is seen that even otherwise, u/s 20(a) of the Civil Procedure Code, the Court of Civil Judge, Nagpur did have the territorial jurisdiction to try the suit.

30. In the case of Shantabai Moreshwarrao Hingnekar Vs. Mariambi Kazi the learned Single Judge of this Court had occasion to deal with similar objection about lack of territorial jurisdiction of the Court of Civil Judge at Nagpur. The judgment debtor therein had objected to a decree contending that the Court of Civil Judge at Nagpur who entertained and disposed of the suit had no territorial jurisdiction, as the property was not situated at Nagpur, no part of cause of action had accrued at Nagpur and the defendant was also not the resident of Nagpur. The Executing Court held that the Court entertaining the suit and passing the decree had no territorial jurisdiction and, therefore, the decree was without jurisdiction. While dealing with this objection in the revision filed before the High Court, the learned single Judge, relying upon sections 21 and 22 of the

Bombay Civil Courts Act, 1869, held in paragraph 5 thus:--

"The scheme of the Act thus shows that the Civil Judges are appointed in the District and all of them are subordinate to the District Judge who is a head of that civil district. Bombay Civil Courts Act does not contemplate an appointment of a Civil Judge for a particular taluka. If the provisions of these two sections are examined, it will be clear that Judges are appointed for the District and not a particular part thereof. What work should be assigned to a Civil Judge is more or less an administrative function of the District Judge. In short, the jurisdiction is not necessarily affected by their posting at a particular place."

31. Having examined the issue of lack of jurisdiction from all angles, the only conclusion that can be drawn is, it cannot be said that Court of Civil Judge, Nagpur did not have any territorial jurisdiction to entertain this suit, he being appointed for the District and work that was assigned to him being more or less a matter of administration.

32. As regards the objection as to lack of pecuniary jurisdiction, it must be said that I have already observed that such objection ought not to have been allowed by the learned District Judge as the respondent did not demonstrate any failure or miscarriage of justice. Besides, the electricity bill itself was under challenge on the ground of arbitrariness and therefore, it was not clear as to which amount should have been taken for making a prima facie assessment for the purpose of valuation of the suit. The reliefs that were sought were also for declaration and mandatory injunction. In such circumstances, it could not have been said that the Court of Civil Judge, Nagpur was devoid of any pecuniary jurisdiction to try the suit.

33. In view of above, I am of the opinion that learned District Judge has committed a serious error of law in holding that Court of Civil Judge, Nagpur lacked territorial and pecuniary jurisdiction to entertain and try the suit and has committed further illegality in dismissal of the suit. Second point is answered accordingly.

34. Learned District Judge has dismissed the suit on the ground of want of jurisdiction of trial Court to try the suit. He has not dealt with merits of the matter in depth. Therefore, it would be necessary to decide the appeal afresh in accordance with law by examining the legality and correctness of the findings on facts recorded on merits by the trial Court. Appeal, therefore, deserves to be partly allowed. Appeal is partly allowed with proportionate costs and the matter is remanded to the Court of District Judge, Nagpur, for deciding the case afresh in accordance with law by examining the legality and correctness of the findings recorded by the trial Court as regards the failure of the respondent to prove the contents of the electric bill vide Exh. 28 and consequent entitlement of the appellant to seek declaratory and injunctory reliefs as against the respondent.

The first Appellate Court is requested to decide the matter as far as possible within a period of six months from the appearance of the parties before it.

Parties are directed to appear before the first Appellate Court on 7-4-2014.