

(1996) 07 DEL CK 0032

In the Delhi High Court

Case No : Civil Revision No. 78 of 1980

Union of India

APPELLANT

Vs

New India Assurance Co. Ltd. and another

RESPONDENT

Date of Decision : 05-07-1996

Acts Referred:

Citation : AIR 1997 Delhi 54 : (1996) 3 RCR(Civil) 241

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : B.R. Sabharwal, for the Appellant;

Judgement

1. This revision petition is directed against a judgment and decree D/-28th Sept. 1979 passed by learned Additional District Judge in MCA No. 3/78 by remanding the matter and reversing the finding in issue No. 1 relating to the territorial jurisdiction given by learned Sub-Judge 1st Class on 1st April 1978 and by holding that Suit No. 224 / 77 could be filed in Delhi Courts and that the appeal was maintainable.

2. Brief facts giving rise to the present revision are as under :--

The plaintiff/respondent New India Assurance Company Ltd. instituted a Suit No. 224/77 against Union of India for recovery of Rs. 6,000/- for non-delivery, short delivery and damages etc; caused to consignment of 800 bundles of safety matches entrusted to the, Railway Authorities at Srivilliputtur for delivery at Sriganga Nagar. In all there were three suits i.e. Nos. 784/70, 7/74 and 224/77 filed by New India Assurance Co- Ltd. against Union of India. Two other suit Nos. 160/77 and 216/77 were filed by Kohinoor Paints and United India Fire and General Insurance Co. Ltd.

In none of the suits goods were booked at Delhi nor they were to be delivered here in Delhi.

3. Shri G. P. Thareja, Sub-Judge, 1st class in his very detailed and common

judgment took the view that the Delhi Courts had no jurisdiction and he has specifically adopted the procedure laid down under R. 10A, 0.7, C. P. C. The operative portion of the order reads as under :--

"The plaint of Suits Nos. 784/70, 7/.74, 160/77, 216/77 and 224/77 are ordered to be returned to the plaintiff of respective suits for presentation in the forum prescribed by S. 80 of the Railways Act underlined by me.

In case the plaintiffs the applications as " contemplated under 0.7, R. 10(A) the files of the case be presented before me on 20-4-78 for further directions. Otherwise all the files be sent to record room. The original will be kept in Suit No. 784/70 and in the remaining suit files a copy of the order shall be kept.

4. Feeling aggrieved by the aforesaid order an appeal was preferred by the plaintiff/ respondent New India Assurance Co. Ltd. The learned Appellate Court by judgment D/- 28-9-79 in MCA No. 3/78 took the view that Delhi Courts had jurisdiction over the matter and that the appeal was maintainable under O. 43, R. 1(a).

5. Now feeling aggrieved by the order of remand in MCA No. 3/78 in appeal relating to judgment and decree in Suit No. 224/77 the Union of India has filed the present revision petition.

6. In this revision, only two points are required to be considered; (i) whether Delhi Courts would have jurisdiction if the consignment was neither booked nor was to be delivered in Delhi; and (ii) whether the appeal was maintainable against the impugned order passed by learned Sub-Judge?

7. As regards the first point about the jurisdiction, it is apparent that in none of the suits including Suit No. 224/77 referred to above, the consignment was booked in Delhi nor they were to be delivered at Delhi, The judgment in Ratan Lal Adukia and Another Vs. Union of India, covers this point in the revision petition. Following observations of the Supreme Court in Rattan Lal Adukia's case (supra) are relevant for the present purpose :

"11..... "The High Court has come to the conclusion that new S. 80 made a conscious departure on the law as to the place of suing in respect of suits of a particular subject-matter envisaged by that section. The High Court has held that the new S. 80 is a self contained provision in regard to the choice of forum for such suits. According to the High Court there was a need for the legislature to specify the places of suing which would otherwise be covered by S. 20, C. P. C. unless the special prescription as to places of suing was considered to be necessary in derogation to the general law as the matter contained in S. 20, C. P. C. the provisions in the Small Cause Courts Act..

As to the words "may be instituted" occurring in that section the High Court in Union of India (UOI) Vs. Ratan Lal Adukia and Others, observed :

"The use of the expression may be instituted in S. 80 of the Railways Act was,

equivalent to shall be instituted .Section 80 conferred right to institute suits for compensation against the Railways for breach of their obligations for carrying passengers, animals or goods specified in Chapter VII of the Indian Railways Act. Both the obligations on the part of the Railways and the right of the consigner and the consignee to institute suits are now statutory in their nature. The clear intendment of the Legislature was that it would be obligatory for the plaintiffs to institute suits only in the Courts mentioned in S. 80 of the Railways Act for enforcement of, the claims for compensation against the Railways".

1"2. After a consideration of the matter, we are inclined to the view that the reasoning of and the conclusion reached by the Full Bench of the Calcutta High Court that the new S. 80 is a self-contained provision are sound and require, to be preferred to the view expressed by the Assam and the Madras High Courts. The view, of the Full Bench is to be preferred having regard to the weight and preponderance of the relevant interpreter cri- teria....."

In view of the above it would appear that the judgment and the view taken by the learned Additional Sessions Judge could not be sustained.

8. So far as the question of maintainability of the appeal against the impugned order passed by the learned Sub-Judge is concerned, the learned Appellate Court while rejecting the contention of the respondent that the appeal was not maintainable in terms of cl, (a), R. 1 of O. 43, C.P.C. observed that O. 7, R. 10(A) cast a statutory obligation in the Court to-intimate its decision to plaintiff to return the plaint before returning the same. So by discharging statutory function, the Court did not exercise any choice of resorting to the procedure laid down under O. 7, R. 10(A), C. P. C.

9. " For proper appreciation, it is desirable to reproduce cl. (a) of R. 1 of O. XLIII and R. 10A of the O. VII, C.P.C. They read as under:

"Order XLIII.

Appeals from orders.

1. An appeal shall lie from the following orders under the provisions of S. 104, namely:--

(a) an order under R. 10 of O. VII returning and plaint to be presented to the proper Court (except where the procedure specified in R. 10A of O. VII has been followed);"

"10A. (1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court.

(a) specifying the Court in which he proposes to present the plaint after its

return,

(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court, shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,--

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice to such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),--

(a) it shall not be necessary for the Court in which the plaint is presented after its return to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded otherwise directs, and

(b) the said notice shall be dieted to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

10. It appears that there could be two possible views on failure to move an application under sub-rule (2) of R. 10A of O. 7, C.P.C. One is that the consequences as provided in sub-rule (5) of R. 10A, O.7, C.P.C. (that the plaintiff should not be entitled to file any appeal against the order returning the plaint) should not follow in the light of the reasons given by learned Additional District Judge, as mentioned above. The other view is that these consequences as provided in sub-rule (5) of R. 10(a) should follow and the appeal should be barred in terms of the second part of cl. (a) of R. I of O. 43, C. P. C. But then the word "may" in sub-rule (2) has to be read as "shall". Besides, this later approach would be in conflict with the language of sub-rule (5) of R. 10A of O.7, C. P. C., for, if no application was moved by the plaintiff in sub-rule (2), then the appeal could be filed. It is notable that R. (5) would be applicable only "Where the application made by the plaintiff under sub-rule (2)" is allowed by the Court and only for fulfilling this condition the plaintiff would be debarred from filing the appeal against the order returning the plaint. Without fulfilling these requirements, it is not possible to say that "the procedure specified in R. 10A of O. VII has been followed," to claim application of exception part of cl. (a) of R. 1 of O.XLIII, C.P.C.

11. Accordingly, I hold that there is not substance in the contention that the appeal before the learned Additional District Judge was not maintainable and was barred by cl. (a) of R.I of 0.43, C.P.C. "

12. However, if the revision petition is not allowed, it would amount to conferring territorial jurisdiction on Delhi Courts, and to allow illegal exercise of its jurisdiction in the tight of the judgment in Ratan Lal Adukia and Another Vs. Union of India, . While it is apparent, if this point had been decided by the learned Additional Court in favor of revision petitioner, this would not have finally disposed of the suit as the plaint would still be required to be returned for presentation before another Court having jurisdiction, it would surely occasion a failure of justice as well as causing irreparable injury to the petitioner for its employees would have to travel to and from Delhi to the station where the consignments were booked and where they were to be delivered; to attend Court in Delhi, which does not have the jurisdiction over the matter.

13. As such, I set aside the impugned judgment and decree D/- 28th Sept., 1979 of remanding the matter to the Trial Court and restore the order passed by the learned Trial Court directing the return of the plaint and to ensure expeditious disposal of the matter. I further direct that in case the plaintiff/ appellant fails to take steps to move an application under sub-rule (2) of R. 10A of 0.7, within a period of two months from the date of this order, then the plaint may be rejected by the learned Trial Court. Revision petition is allowed accordingly without any orders as to cost.

14. A copy of this judgment be sent to the learned Trial Court through the learned District Judge along with the trial Court report of information.

15. Petition allowed.