

Indian Overseas Bank, Madras

Vs

Chemical Construction Company and Others

Transfer Petition No. 26 of 1978

(R. S. Sarkaria, D. A. Desai JJ)

03.05.1979

JUDGMENT

SARKARIA, J. -

1. This is a petition under Section 25 of the Civil Procedure Code, 1908, as amended by Act of 1979 for transfer of suit IB of 1972 instituted in the Court of District Judge, Seoni, Madhya Pradesh by the second respondent herein, against the petitioner and respondents 1, 3 and 4 to the file of the High Court of Madras (Original Side). The facts material to this petition are as under :

2. The first respondent, M/s. Chemical Construction Company, is a registered partnership having its registered office at No. 14 Milestone Mathura Road, Faridabad, Haryana and Head Office at Madras. It is represented by its partners, Shri T. V. P. Nambiar, Shri O. P. Nambiar, Shri O. V. Nambiar, Smt. Leela Nambiar and Smt. Nirmala Nambiar.

3. The second respondent, Rajadhiraj Industries Pvt. Ltd., has its registered office at Seoni, Madhya Pradesh. It is represented by its Managing Director, Shri. Harishchandra Singhania.

4. The third respondent, Industrial Development Bank of India Ltd. has its registered office at Bombay and branch offices at other places, including one at Madras.

5. The fourth respondent is Madhya Pradesh Financial Corporation incorporated under the State Financial Corporation Act, 1957, having its registered office in Indore, Madhya Pradesh.

6. The first respondent (manufacturer) entered into a contract on November 11, 1969 with the second respondent to erect a plant for manufacture of hydrogenated vegetable oil. There was a supplementary agreement between them on January 24, 1970. The cost of the plant was Rs. 25,00,000. The third respondent (for short, called the Industrial Bank), agreed to finance the manufacturer (first respondent) under a Scheme called the "Bills Rediscounting Scheme". Under that Scheme, the manufacturer would obtain in convenient mutually agreed installments the value of the machinery supplied within a few days of its delivery by discounting with his banker the bills of exchange arising out of the sale of the machinery, either before or after acceptance by the second respondent (purchaser). The bankers of the manufacturer/seller would take up the discounted bills and get them rediscounted by the Industrial Bank, prior to their due dates, thus reimbursing themselves with the amount paid to the manufacturer. The discounting bank would be liable to pay to the Industrial Bank the amounts under the bills on their due dates.

7. The discounting bank would normally require the second respondent to accept the

bills/promissory notes, after the payment had been guaranteed on his behalf by its banker or the fourth respondent (the State Financial Corporation), etc.

8. The petitioner, it is alleged, acted as discounting bank under the Scheme. The first respondent and the second respondent took advantage of the Scheme and pursuant to an agreement for supply of materials between the first and second respondents, the fourth respondent executed an irrevocable guarantee on November 3, 1970 and a supplementary guarantee on February 18, 1971 in favour of the petitioner on behalf of second respondent.

9. It is further that in pursuance of the independent agreement, the petitioner had discounted a total of 9 Usance Bills to the extent of Rs. 9.42 lacs which were drawn by the first respondent and accepted by the second respondent. The first eight of these bills were rediscounted by the petitioner with the third respondent (the Industrial Bank) for a total sum of Rs. 6.99 lacs, which amount was subsequently paid over to the third respondent by the petitioner but none of these eight bills were paid by the second respondent to the petitioners on the due dates. The remaining bill for Rs. 2,43,379 was not rediscounted by the petitioner with third respondent.

10. In September, 1972, the drawees of the bills (second respondent) filed suit no. IB of 1972 in the District Court, Seoni, against the petitioner and the respondents 1, 3 and 4, seeking a decree for : (a) one lac of rupees against the first respondent on account of damages for breach of contract; (b) directing the petitioner (Indian Overseas Bank) and respondent 1 and 3 jointly and severally to deliver up the guarantee deeds, dated November 3, 1970 and February 18, 1971, and the 9 Usance Bills and for cancellation of the same by the court; (c) permanent injunction restraining the petitioner Bank and respondents 1 and 3 from enforcing the aforesaid guarantees and the 9 Usance Bills; (d) permanently restraining the guarantor (fourth respondent) from discharging any liability under the aforesaid guarantees, dated November 3, 1970 and February 18, 1971. It was alleged in the plaint by the second respondent that acceptance of the bills was vitiated by false representation made by the agent of the petitioner Bank. The defendants in the Seoni Suit (petitioner and respondent 1 therein) filed their written statement denying the allegations and claim made in the plaint. In March 1978, the District Judge, Seoni, framed issues in that suit.

11. In the Seoni Suit, the second respondent made an application for interim injunction restraining the petitioner from enforcing the rights in respect of the Usance Bills accepted by the second respondent and regarding the guarantees furnished by the fourth respondent. The District Judge dismissed that application; but on appeal, the High Court of Madhya Pradesh granted the interim injunction as regards the petitioner and the fourth respondent subject to the petitioner undertaking to reimburse the fourth respondent in accordance with the directions of the court depending upon the result of the Seoni suit. As a result the impediment in the way of the petitioner for enforcing its rights was removed.

12. The petitioner bank filed suit C.B. No. 143 of 1957 in the High Court of Madras against respondents 1 and 4 herein (as also five other defendants), who are partners of the first respondent two of whom had furnished collateral securities by way of equitable mortgages. In this Madras suit, the petitioner herein, has prayed for the following reliefs :

- (i) Directing the respondents, herein, (except respondent 3), jointly and severally to pay to the plaintiff-petitioner the sum of Rs. 10,62,364.57 under the Bills Purchase Account together with interest on the said nine Usance Bills.

(ii) Directing the first respondent herein, and their partners to pay to the plaintiff-petitioner the sum of Rs. 1,28,154-57 under the overdraft account of the first defendant firm together with interest. Passing of a mortgage preliminary decree against defendants 5 and 6 therein, (two of the partners of the first respondent, herein).

13. It is noteworthy that respondents 1, 2 and 4, herein, have filed their written statements in that suit before the Madras High Court, which on November 2, 1977, framed 12 issues. Issues 1 and 6 run as follows :

(1) Whether the defendant (first respondent, herein) is liable to pay the suit claim under the Bills Purchase Account.

(6) Whether the defendant (second respondent, herein) is not liable for the suit claim as an acceptor under the Bills Purchase Account.

14. A comparative study of the issues framed in the two suits, one at Seoni and the other at Madras, shows that the principal common question arising in each of these two suits, is : whether the second respondent and the fourth respondent, herein, are bound to make payment, the second respondent as acceptor of the bills of exchange, and the fourth respondent as guarantors for due payment thereunder. The receiving part in both the suits is the petitioner herein. According to the allegations in the present petition, the bills of exchange were drawn in Madras and discounted in Madras and also rediscounted with the Industrial Bank and payments were to be made expressly in Madras. Under an interim order dated April 9, 1976, passed by the High Court of Madras in the said suit, the fourth respondent has deposited with the petitioner herein, a sum of Rs. 10 lacs as and by way of deposit. Apart from a claim for damage of Rs. 1 lac against the first respondent herein, (the manufacturers), no money claim has been made against the petitioner in the Seoni suit. Nor has the petitioner made any counter-claim in the Seoni suit.

15. We are of opinion, this petition must succeed. Section 25 of the Code of Civil Procedure as substituted for the former section by the Code of Civil Procedure (Amendment) Act, 1976, empowers this Court to direct or other Civil Court in one State to a High Court or other Civil Court in, any other State, if it is satisfied that such an order is "expedient in the ends of justice". The former Section 25 empowered the State Government to transfer suits or proceedings in certain circumstances from one High Court, to another High Court. The scope of the former section was very restricted as it provided only for transfer of any proceeding pending in a High Court presided by a single Judge. It was thought that the state Government was not the appropriate agency for exercising this power of transfer, obviously because such exercise is a judicial function. For these reasons, the new Section 25 which has been substituted for the former one, confers on the Court very wide powers of transfer which are as extensive as its powers under Section 406 of the Code of Criminal Procedure, 1973.

16. The principle governing the general power of transfer and withdrawal under Section 24 of the Code is that the plaintiff is the dominus litis and, as such, entitled to institute his suit in any forum which the law allows him. The court should not lightly change that forum and compel him to go to another court, with consequent increase in inconvenience and expense of prosecuting his suit. A mere balance of convenience in favour of proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.

17. As compared with Section 24, the power of transfer of civil proceeding to another court, conferred under the new Section 25 on the Supreme Court, is far wider. And, so is the amplitude of the expression, "expedient in the interest of justice" which furnishes a general guideline for the exercise of the power. Whether it is expedient or desirable in the interest of justice to transfer a proceeding to another Court, is a question which depends on the circumstances of the particular case.

18. Although the exercise of this discretionary power cannot be imprisoned within the strait-jacket of an cast-iron formula uniformly applicable to all situations, yet, certain broad propositions as to what may constitute a ground for transfer can be deuced from judicial decisions. One of them is that where two suits raising common questions of facts and laws between parties common to both the suits, are pending in two different court, it is generally in the interest of justice to transfer one of those suits to the other forum to be tried by the same court, with consequent avoidance of multiplicity in the trial of the same issues and the risk of conflicting decisions thereon. The instant case falls squarely within this category.

19. Here, in the two suits, one in the District Court Seoni, Madhya Pradesh, and the other filed by the petitioner in the High Court of Madras, the parties are the same except that in the Madras suit five other persons, who are alleged to be partners of the first respondent herein, and two of whom furnished collateral securities, have also been joined as defendants. Further, the material issues in both the suits are common or interdependent. For instance, issue no. 14 in the Seoni suit is substantially the same as issue no. 7 framed by the Madras High Court in the suit filed there by the petitioner. The questions involved, inter alia, in issues 9, 10, 12, 19, and 20 in the Seoni suit have a substantially bearing on the decision of issues 1, 2, 6, 8, 9 and 10 framed in the Madras suit. The basic question of commonly arising in each of the two suits concerns the liability of the second respondent and the fourth respondent to make payment as the acceptor of the bills of exchange and the guarantors, respectively, for due payment under those bills. If the two suits are allowed to continue in their original forum there is a possibility of conflicting findings on the question of liability under the Usance Bills and under the guaranties. It is not disputed (we are told) that the payments of the bills were to be made to the petitioner bank at Madras. The evidence in both the suits would mostly be common and locally available at Madras. Transfer of the Seoni suit to Madras High Court will avoid multiplicity in the trial of the common issues and obviate the risk of conflicting decisions. Under the circumstances, it is manifestly "expedient in the interest of justice" that both the suits should be tried by the Madras High Court on its Original Side by the same judge/judges.

20. Mr. Bal appearing for the second respondent, opposed this petition for transfer. Learned Counsel submitted that for a small company like respondent 2 it will simply be impossible to fight the litigation at Madras, and the extra expenditure that will have to be incurred by his clients in undertaking frequent visits to Madras which is about 1000 miles from Seoni, may prove too heavy a financial burden for it. Another apprehension expressed by the counsel was that the objection as to want of territorial jurisdiction in the Madras Court taken by the second respondent, will in effect, be rendered sterile by the proposed transfer of Seoni suit to Madras. Counsel suggested that the proper course is to stay the subsequently instituted suit at Madras under Section 10 of the Code of Civil Procedure till the disposal of the suit at Seoni by the District Judge.

21. We are unable to accept any of these arguments. Both the suits at Madras and Seoni are more or less at the same stage. Evidence has not yet commenced in either of the suits. The defendants in both the suits have filed their written statements. The second respondent has appeared in the Madras

High Court and joined issue with the petitioner-plaintiff there. It seems that the common evidence, which will mostly be documentary, is to be found locally at Madras. The fourth respondents who are the guarantors, have no objection to the transfer of the Seoni suit to Madras. The second respondents' apprehensions, therefore, about the transfer causing extraordinary increase in expenses of litigation and inconvenience to them, are much too exaggerated. Rather, the balance of convenience is in favour of the Seoni suit being transferred to the Madras High Court which is a superior forum than the District Court, Seoni.

22. As regards the second submission of Mr. Bal, we make it clear that the transfer of the Seoni suit to Madras will be without prejudice to the objection raised by the second respondent, herein, as to the Madras High Court's jurisdiction to try the suit, already instituted there by the petitioner.

23. Mr. Bal's argument founded on Section 10 of the Code of Civil Procedure, does not arise in this transfer petition, and we express no opinion on it.

24. For the foregoing reasons we allow this petition and transfer suit no. IB of 1972 filed by the second respondent herein, in the Court of the District Judge, Seoni, Madhya Pradesh, to the file of the High Court of Judicature at Madras (Original Side).

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