

Cholamandalam Investments & Finance Co. Pvt. Ltd.

Vs

Radhika Synthetics and Another

Transfer Petn. (C) No. 870 of 1993

(CJI A.M. Ahmadi, B.P. Jeevan Reddy JJ)

16.01.1996

JUDGEMENT

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AHMADI, CJI :-

1. M/s. Cholamandalam Investments & Finance (P) Ltd. with its registered office at Madras filed a suit being C.S. No.1161/91, in the High Court of Madras against M/s. Radhika Synthetics Ltd., seeking a decree for a sum of Rs.65,82,850/- with interest amounting to Rs.62,75,778/- on the allegation that the amount was due under a hire purchase agreement dated 26th April, 1989 and a Supplemental Agreement dated 1st June, 1989. The plaintiff further contends that it had earlier filed C.S. No.716/90 in the High Court of Madras in which an Advocate Commissioner was appointed to seize the machinery that were the subject matter of the agreement and that thereafter on negotiation between the parties, two further supplemental agreements, both dated 19th October, 1990, were executed and in view of the supplemental agreements. C.S. No.716 of 1990 was withdrawn. The present suit before the Madras High Court was filed as the defendant M/s. Radhika Synthetics Ltd., failed to pay the instalments from November, 1990 onwards. As per the schedule annexed to the agreement dated 26th April, 1989, the machinery were to be supplied by M/s. Primatex Machinery Private Limited, Dombivli, Thane. M/s. Radhika Synthetics Limited had certain complaints about the machinery supplied to them. About that M/s. Cholamandalam Investments & Finance (P) Ltd. contend in the suit that they were only the financiers and were not concerned with any defect in the machinery supplied by M/s. Primatex Machinery Private Limited. In para 12 of the suit in the Madras High Court, it is stated that the cause of action for the suit arose partly at Madras where the monies are due and payable under the original agreement as well as the supplemental agreements.

2. M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. filed some interim applications presumably under Order 38 Rule 5 of the Code of Civil Procedure for attachment before judgment. It appears from the record that M/s. Radhika Synthetics Limited filed a counter affidavit in response to the application under Order 38 Rule 5 of the Code of Civil Procedure. Copy of the counter affidavit is on record. The objections to the application under Order 38 Rule 5 all relate to the plaintiff's responsibility for supplying defective machinery. No objection about the jurisdiction was taken therein.

3. Radhika Synthetics Limited filed suit No.692 of 1992 in the High Court of Bombay against M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. for recovery of Rs.2,56,00,000/- with interest holding them responsible for failure to commence the production unit for which the hire purchase agreement between M/s. Radhika Synthetics Limited and M/s. Cholamandalam Investments &

Finance Co. Pvt. Ltd. were executed. Coming to jurisdiction M/s. Radhika Synthetics Limited in their suit allege that M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. had agreed to install the machinery at the premises of M/s. Radhika Synthetics Limited at Bombay, that the defective machinery was supplied by the defendants at Bombay, that the agreement was executed at Bombay, that the plaintiffs suffered loss and damages at Bombay, and that all material part of cause of action has arisen at Bombay. M/s. Radhika Synthetics further contend in their suit that they have obtained leave under Clause 12 of the Letters Patent from the High Court of Bombay.

4. The Transfer Petition filed by M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. was opposed by M/s. Radhika Synthetics and Anr. inter alia on the ground that M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. has an office in Bombay, that the entire documentation was done at Bombay, that the payments made by M/s. Radhika Synthetics Limited were made at Bombay and were received by M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. at Bombay, that the entire cause of action arose at Bombay. In reply to this on behalf of M/s. Cholamandalam Investments & Finance Co. Pvt. Ltd. it was stated in the rejoinder that their office in Bombay is a small forwarding office, that the hire purchase agreement was executed at Madras, that a few instalments were also paid at Madras and that as per terms of the hire purchase agreement all monies due and payable are to be paid at Madras.

5. The copy of the hire purchase agreement dated 26th April, 1989 opens with the words "Memorandum of Agreement made at Madras". Clause 20 of the agreement deals with jurisdiction which is as under :

"20. Jurisdiction : This agreement has been accepted and executed by the Company at Madras and it has been agreed to between the parties hereto that all the covenants, terms and conditions hereof shall be observed and performed at Madras and the Hirer specifically agrees and undertakes that it or its representatives and agents shall institute any arbitration or other legal proceedings only in Madras Courts, concerning this agreement and the Hired Articles hereunder. It is further agreed between the parties hereto that only Madras Court shall have exclusive jurisdiction to try any arbitration or legal proceedings or any suit in respect of any matter, claim or dispute arising out of or in any way relating to this agreement in respect of the Hired Articles".

6. It is settled law that where two Courts have jurisdiction to adjudicate upon any dispute, the parties by a contract can submit on the jurisdiction of one and exclude the jurisdiction of the other. In that view, it appears that the parties are bound to submit to the jurisdiction of the High Court of Madras.

7. The supplemental agreements dated 19-10-1990 may have been signed on behalf of the M/s. Radhika Synthetics Limited at Bombay as appears from their letter dated 18-4-1991, but they purport to have been made at Madras. Both the supplemental agreements have a clause that all terms and conditions covered by the original hire purchase agreement will continue to be in force.

8. Apparently, at best both the High Court of Madras and the High Court of Bombay can be said to have jurisdiction over the subject-matter of the dispute although by virtue of Clause 20 of the agreement the parties submitted to the jurisdiction of Madras and are bound by that clause. The supplemental agreements have not totally superseded the original agreement and therefore, the question whether they were executed at Bombay or Madras as they purport to be loses significance. So far as the High Court at Bombay is concerned, the leave granted under Clause 12 of the Letters

Patent cannot exclude the jurisdiction of the High Court of Madras, particularly, in view of the agreement between the parties. Besides the suit at Madras was first in point of time and in that suit also, in the counter, the first respondent raised the contention that they had suffered damage to the tune of Rs.2.16 crores. The suit at Bombay was filed almost six months after the institution of the Madras suit and that is why it is described as a counterblast. The issues arising in both the suits are likely to be common in many respects. Two courses are open (i) to transfer the Bombay suit to Madras to be tried along with the latter; or (ii) to stay the Bombay suit under Section 10 of the Code of Civil Procedure till the disposal of the Madras suit. In order that all the issues are finally thrashed out by and between the parties and the litigation is not unnecessarily and unduly protracted, the first course of action commends us. Article 139A(2) empowers this Court to transfer any case pending before High Court to any other High Court. We are satisfied that this is a fit case to exercise that power and transfer the Suit No.6920 of 1992, pending in the Bombay High Court to the High Court of Madras to be tried along with C.S. No. 1161 of 1991. Transfer Petition No.870 of 1993 shall stand allowed accordingly with no order as to costs while Transfer Petition No.196 of 1994 shall stand rejected with no order as to costs. Order accordingly.