

SUPREME COURT OF INDIA

Sandeep Polymers Private Limited

Vs

Bajaj Auto Limited and Others

Appeal (Civil) 7749 of 2004

(Arijit Pasayat and L. S. Panta, JJ)

20.07.2007

JUDGMENT

DR. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a learned Single Judge of the High Court of Bombay, Nagpur Bench, directing return of the plaint, as according to the High Court the Court at Nagpur had no jurisdiction to entertain a part of the claims made in the suit. The plaintiff was granted liberty to represent the plaint in the Court having jurisdiction at Pune. The trial Court was directed to follow the procedure under Order 7 Rule 10-A of the Code of Civil Procedure, 1908 (in short the 'CPC') for return of the plaint to the plaintiff.

2. Background facts in a nutshell are as follows:

The appellant filed a special civil suit No.881/91 for recovery of Rs.79, 63, 99, 736/- as damages for breach of contract. The stand of the plaintiff in the plaint was that it is the manufacturer of moulds and high precision plastic component for the industrial application specially for use by automobile industry. It has its manufacturing operations at Nagpur and the defendants have entered into an agreement with it for lifetime supply of its products. It has made huge investments at Nagpur amounting to rupees thirty crores and that it has a most sophisticated factory at Nagpur. Plaintiff is supplying its products to the Defendant No.1 for almost two decades. The defendant no.1 vide

registered letter dated 03.11.1999, which was received by the plaintiff at its Nagpur office on 11.11.1999, has terminated its agreement with the plaintiff. Due to the said termination, the machineries which were installed by the plaintiff specifically for manufacturing moulds for the defendant No.1 would remain idle and that there will be no use of its unit installed at Nagpur. The plaintiff, therefore, contended that it is entitled to compensation of damages inasmuch, as the defendant No.1's action of refusing to honour its promise and assurance was illegal and arbitrary

The defendant Nos.1, 3 and 4 filed an application under Section 9A read with Order 7 Rule 11 of CPC submitting therein that the suit was clearly abuse of process of law and was not maintainable. The registered office of defendants 1 and 2 was at Pune and that the defendant Nos.3 and 4 are the residents of Pune, whereas the defendant No.5 has its registered office at Tokyo (Japan). The lease agreements between defendant No.1 and the plaintiff had been executed at Pune, and supplies were made by the plaintiff to defendant No.1 at Pune/Aurangabad, i.e. outside the territorial jurisdiction of Civil Judge, Senior Division, Nagpur and, therefore, it had no territorial jurisdiction to entertain the suit and the suit deserves to be dismissed summarily. It was denied by the respondents-defendants that the plaintiff has set up its factory at Nagpur at the instance of defendant No.1. It was further contended that the plaintiff has deliberately suppressed the fact that it has its registered office at Mumbai and neither of the parties to the suit resided at Nagpur. The respondents further averred in the said application that the parties by consent have restricted the jurisdiction to Pune Court only. The said term pertaining to jurisdiction is contained in all the purchase orders placed by defendant No.1 with the plaintiff. Plaintiff had deliberately filed a part of the purchase order and suppressed that part of the purchase order from the Court which contained the clause regarding jurisdiction.

The non-applicant/plaintiff filed its reply to the said application reiterating the averments made in the plaint. It reiterated that it had made huge investments at Nagpur on the assurance made by the defendant No.1. The plaintiff, further, submitted in its reply that the cause of action for suit has arisen substantially, if not wholly, within the territorial jurisdiction of the learned Court at Nagpur. Goods were supplied from Nagpur and the cost thereof is received at Nagpur and that the goods have also been delivered at Nagpur. Substantial part of the claims in the plaint was on account of damages etc. for breach of Memorandum of Understanding (in short 'MoU') and the breach of assurances given by the defendant No.1. The plaintiff, therefore, submitted that if the substantial cause of action arises out of damages on other counts and if the small part of the claim arises out of purchase order, the claim cannot be separated and, therefore, it was in the interest of justice that the Court should entertain the present suit.

3. The learned trial Court, after considering the rival contentions raised on behalf of the parties, found that the suit was outcome of the damages caused to the Unit of the plaintiff because of the breach of the contract. He further observed that the letter of termination was received by the plaintiff at Nagpur. It is further observed in the order that the term about jurisdiction pointed out on behalf of the defendants was relating to the breach of contract under order of purchase and not relating to the damage caused to the plaintiff by termination of the entire contract which was admittedly for the life time. The learned trial Court, therefore, held that the cause of action to file present suit arises at Nagpur and, therefore, directed the suit to proceed according to law.

4. Questioning for quashing the order passed by Joint Civil Judge, Senior Division, Nagpur Civil

Revision was filed before the High Court by the respondents. It was submitted that the substantial part of the claim arises out of four purchase orders which came to be placed by defendant No.1 with the plaintiff. All the purchase orders ousted the jurisdiction of all Courts except the Court at Pune. Except these purchase orders there was no other written contract. Since the suit is mainly based on the cause of action arising out of said purchase orders which ousted the jurisdiction of Courts except the Court situated at Pune, though there may be ancillary cause of action the ouster clause in the purchase order governs the proceedings between the parties.

5. Reference was made to various decisions of this Court in *Hakam Singh v. M/s Gammon (India) Ltd.* (Â), *Hanil Era Textiles Ltd. v. Puromatic Filters (P) Ltd.* (Â) and *New Moga Transport Company v. United India Insurance Co. Ltd. and Ors.* (Â). The plaintiff- appellant before this Court referred to various MoU dated 6.11.1996 and submitted that the same related to the technical terms between the parties. As per the said terms the plaintiff was entitled to receive 7 moulds but it was given 4 moulds. There was no ouster clause in the said MoU and, therefore, suit for breach of terms would not be covered by the ouster clause.

6. Reference has also been made to various communications dated 9.10.1993, 25.5.1996, 30.11.1996 and 23.9.1997 to substantiate the stand that assurance was given by defendant No.1 to the plaintiff that the plaintiff would be its life time supplier. Relying on the provisions of Order 2 Rule 2 of CPC it was submitted that the suit is required to include the whole of the claim which the plaintiff was entitled to make in respect of the cause of action. Therefore, it was necessary for it to join all causes of action and since only insignificant part of cause of action was governed by the purchase orders the suit filed at Nagpur will not be governed by the ouster clause.

7. The High Court referred to various purchase orders and conditions and averments in the plaint. With reference to the averments held that the claims were referable to the purchase orders. The averments in para 29 indicated that they were referable to MoU dated 6.11.1996. According to the High Court perusal of the purchase orders indicated that the said MoU was also a part of the purchase orders. With reference to Condition No.20 of the purchase orders it was held that only the Pune Court had jurisdiction in all the matters arising out of the purchase orders. Accordingly, the High Court held that the suit is based on several causes of action and it was open to the plaintiff to file a suit for causes of action not related to purchase order at Nagpur and to file another suit arising out of cause of action related to the purchase orders at Pune.

8. Accordingly, the order was passed for return of the plaint.

9. In support of the appeal, with reference to the order of the trial Court it was submitted that in para 60 it was categorically held that the court at Nagpur had jurisdiction to try the suit. The High Court accepted that by operation of Order 2 Rule 2 CPC it was permissible to raise several causes of action and there was no ouster clause in that sense. The main relief is for damages and costs incurred. The purchase order related only to part of the relief claimed. Therefore, it was submitted that the trial Court's view should not have been interfered with.

10. In response, learned counsel for the respondents submitted that the High Court has noted that the

purchase orders clearly excluded the jurisdiction and, therefore, the High Court's view is irreversible.

1. The relevant portion of the purchase orders which are identical reads as follows:

"NOTES:

1. THE MOULDS WILL BE DESIGNED AND MANUFACTURED AS PER THE FOLLOWING:

(1) THE MEMORANDUM OF UNDERSTANDING (MOU) DATED 6 NOVEMBER 1996, EXECUTED BETWEEN M/S BAL M/S MARUBENT CORPORATION, M/S TAKAHASHI SEIKI CO., LTD., M/S TOKYO R&D CO. LTD. AND M/S SUNDEEP POLYMERS PVT. LTD. AND AMENDMENT THERETO AS MAY BE AGREED TO BETWEEN THE PARTIES FROM TIME TO TIME AS PER THE PROJECT NEEDS.

(2) TECHNICAL ASSISTANCE AGREEMENT DATED 11/2/97 BETWEEN TAKAHASHI SEIKI CO. LTD. AND SUNDEEP POLYMERS LTD.

TERMS AND CONDITIONS

1. PRICE

PRICES ARE FIRM AND FOR FREE DELIVERY AT OUR WORKS

6. PAYMENT

60% ADVANCE ALONGWITH THE ORDER.

20% AFTER SUBMISSION OF T1 SAMPLE

20% AFTER FINAL APPROVAL OF SAMPLE AND MOULD

12. GUARANTEE

MOULD SHOULD BE GUARANTEED FOR QUALITY, PRECISION, RELIABILITY AND ALSO FOR WORKMANSHIP AND PERFORMANCE, USE OF MATERIAL AND DESIGN WE SHOULD BE ABLE TO GET MINIMUM 300, 000 PIECES WITH NORMAL MAINTENANCE. CONDITIONS

15. *The prices and terms and conditions in this order will be taken as firm and cannot be changed till the order is fully executed.*

20. *This contract shall be deemed to have been entered into at Pune and only Pune Courts will have jurisdiction in all matters arising out of this Order."*

Some of the pleadings in the plaint also need to be noted.

"29. In the year 1995 or near about, the 1st defendant finalized the new model scooter in the Japan, Code name alpha-4 in co-operation with the defendant No.5. Since this was to be a modern design vehicle, having entire plastic body, it was important to select a top quality supplier in India for the development of supplier of plastic parts for alpha-4 vehicle and such similar models in the future.

(a) The 1 defendant placed an order for a supply of a part of the moulds for the alpha-4 from the defendant No.5 and raised a purchase order No.529911 dated 6/11/1996 on the 5th defendant for an approximate amount of Rs.JPY 175 Million. The plaintiff craves leave to refer to and rely upon the aforesaid Purchase Order of the 1 defendant when produced.

(b) A Memo. of Understanding (MOU) has been entered into by various parties involved in the development of Alpha-4, viz. the plaintiff, defendant Nos.1 and 3, Takahashi Seiki and another Japanese Company Tokyo R&D Co. Ltd. This MoU spelt out the role and obligation of each party in the development of the plastic parts of the Alpha-4. The 1st defendant also spelt out its commitment in buying the plastic parts from the moulds supplied by the 5th defendant and for which the plaintiff was to set up additional investments. Hereto enclosed and annexed as document No.XXIV is a copy of the aforesaid Mou."

33. *In line with the aforesaid understanding between the plaintiff and the 1st, 4th and 5th defendants and also relying upon the MoU and the 1st defendant's letter dated 30.11.1996 the plaintiff agreed to accept the 4 sets of Purchase Orders for the manufacture of 10 Alpha-4 moulds, raised by the 1st defendant, at an initial payment of Rs.296.7 lacs. These Purchase Orders are:*

a) No.541024 dated 12/2/1997 for Rs.148.5 lacs.

b) No.541023 dated 12/2/1997 for Rs.111.5 lacs.

c) No.2121209 dated 22/2/1998 for Rs 35 lacs.

d) No.20122154 dated 16/3/1998 for Rs.1.7 lacs.

The aforesaid Purchase Orders were in the time with the MoU and the Technical Assistance Agreement, as already spelt out, and the same also mentioned on the Orders."

12. In *Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors.* it was inter-alia held as follows:

"16. Submission of learned counsel for respondent No.2-trust was that requirement of law being reading the plaint in its totality, the appellants cannot take the plea that they would give up or relinquish some of the reliefs sought for. That would not be permissible. The plea clearly overlooks the basic distinction between statements of the facts disclosing cause of action and the reliefs sought for. The reliefs claimed do not constitute the cause of action. On the contrary, they constitute the entitlement, if any, on the basis of pleaded facts. As indicated above, Order VI Rule 2 requires that pleadings shall contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim. If the plea of Mr. Savant, learned counsel for the respondent-trust is accepted the distinction between the statement of material facts and the reliance on them for the claim shall be obliterated. What is required in law is not the piecemeal reading of the plaint but in its entirety. Whether the reliefs would be granted on the pleaded facts and the evidence adduced is totally different from the relief claimed. All the reliefs claimed may not be allowed to a party on the pleadings and the evidence adduced. Whether part of the relief cannot be granted by the Civil Court is a different matter from saying that because of a combined claim of reliefs the jurisdiction is ousted or no cause of action is disclosed. Considering the reliefs claimed vis-a-vis the pleadings would not mean compartmentalization or segregation, in that sense. The plea raised by the respondent-trust is therefore clearly unacceptable. 17. Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.

18. As noted supra, Order VII Rule 11 does not justify rejection of any particular portion of the plaint. Order VI Rule 16 of the Code is relevant in this regard. It deals with 'striking out pleadings'. It has three clauses permitting the Court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the Court.

19. Order VI Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

20. There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. The distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.* A 1936 (1) KB 697 in the following passage :

The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad; it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order XXV, Rule 4 (see Philipps v. Philipps ((1878) 4 QBD 127)); or "a further and better statement of claim" may be ordered under Rule 7. The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particulars is intended to meet a further and quite separate requirement of pleading, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiff's cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial.

The dictum of Scott, L.J. in Bruce case (supra) has been quoted with approval by this Court in Samant N. Balkrishna v. George Fernandez A , and the distinction between "material facts" and "particulars" was brought out in the following terms:

The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet".

Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

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22. Under Order II Rule 1 of the Code which contains provisions of mandatory nature, the requirement is that the plaintiffs are duty bound to claim the entire relief. The suit has to be so framed as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them. Rule 2 further enjoins on the plaintiff to include the whole of the claim

which the plaintiff is entitled to make in respect of the cause of action. If the plaintiff omits to sue or intentionally relinquishes any portion of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards. If the plaintiffs as contended by Mr. Mohta want to relinquish some reliefs prayer in that regard shall be done before the trial Court. A reading of the plaint and the reliefs along with the contents of the plaint goes to show that the main dispute relates to the question of continuance of tenancy and the period of tenancy. They are in essence unrelated with the other reliefs regarding enquiry into the affairs of the trust. Such enquiries can only be undertaken under Section 50 of the Act. For instituting the suit of the nature specified in Section 50, prior consent of the Charity Commissioner is necessary under Section 51. To that extent Mr. Savant is right that the reliefs relatable to Section 50 would require a prior consent in terms of Section 51. If the plaintiffs give up those reliefs claimed in accordance with law, the question would be whether a cause of action for the residual claims/reliefs warrant continuance of the suit. The nature of the dispute is to be resolved by the Civil Court. The question of tenancy cannot be decided under Section 50 of the Act. Section 51 is applicable only to suits which are filed by a person having interest in the trust. A tenant of the trust does not fall within the category of a person having an interest in the trust. Except relief in Para D of the plaint, the other reliefs could be claimed before and can be considered and adjudicated by the Civil Courts and the bar or impediment in Sections 50 and 51 of the Act will have no relevance or application to the other reliefs. That being so, Sections 50 and 51 of the Act would not have any application to that part of the relief which relates to question of tenancy, the term of tenancy and the period of tenancy. The inevitable conclusion therefore is that Courts below were not justified in directing rejection of the plaint. However, the adjudication in the suit would be restricted to the question of tenancy, terms of tenancy and the period of tenancy only. For the rest of the reliefs, the plaintiffs shall be permitted within a month from today to make such application as warranted in law for relinquishing and/or giving up claim for other reliefs."

13. In *Om Prakash Srivastava v. Union of India and Anr.* 2006 (6) SCC 207 it was held as follows:

9. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, a bundle of facts, which it is necessary for the plaintiff to prove in order to succeed in the suit. (See *Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors.* 2006 (1) SCC 100.)

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) "cause of action" means every fact, which it is necessary to establish to support a right to obtain a judgment. (See *Sadanandan Bhadrans v. Madhavan Sunil Kumar* 2006 (1) SCC 100.)

11. It is settled law that "cause of action" consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the plaintiff a right to claim relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action would possibly accrue or would arise. (See *South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises Pvt. Ltd. and others.* 2006 (1) SCC 100.)

12. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense "cause of action" means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled with the right itself. Compendiously, as noted above the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove each fact, comprises in "cause of action". (See *Rajasthan High Court Advocates' Association v. Union of India and Ors.* Á 7.

13. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts, which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit. (See *Gurdit Singh v. Munsha Singh* Á .

14. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases of suing; a factual situation that entitles one person to obtain a remedy in court from another person. (See *Black's Law Dictionary*). In *Stroud's Judicial Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf. (See *Navinchandra N. Majithia v. State of Maharashtra and Ors.* Á .

15. In *Halsbury Laws of England (Fourth Edition)* it has been stated as follows:

"Cause of action has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

16. As observed by the Privy Council in *Payana v. Pana Lana* (1914) 41 IA 142, the rule is directed to securing the exhaustion of the relief in respect of a cause of action and not to the inclusion in one and the same action or different causes of action, even though they arise from the same transaction. One great criterion is, when the question arises as to whether the cause of action in the subsequent suit is identical with that in the first suit whether the same evidence will maintain both actions. (See *Mohammad Khalil Khan v. Mahbub Ali Mian* Á 1949 AIR(PC) 78.

17. It would be appropriate to quote para 61 of the said judgment, which reads as follows:-

"61. (1) The correct test in cases falling under Order II Rule 2, is whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit (*Moonshee Buzloor Fuheer v. Shumroonnissa Begum*, (1967)11 Moo I 551 : 2 Bar 259 (P.C.).

(2) The 'cause of action' means every fact which will be necessary for the plaintiff to prove it traversed in order to support his right to the judgment (*Real v. Brown* ; (1889) 22 Q.B.O. 138: 58 L.J. Q.B. 476).

(3) If the evidence to support the two claims is different, then the causes of action are also different. (*Brunsoon v. Nurnphroy* (1884) Q.B.O. 141. 53 L.J.Q. B. 476).

(4) The causes of action in the two suits may be considered to be the same if in substance they are identical (*Brunsoon v. Numphroy*, *supra*).

(5) The cause of action has no relation whether to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff. It refers to media upon which the plaintiff asks the Court to arrive a conclusion in his favour. (*Mst. Chand Kour v. Pratap Singh* : (1887)15 IA 156. This observation was made by Lord Watson in a case under section 43 of the Act of 1880 (corresponding to Order II, Rule 2) where plaintiff made various claim in the same suit".

14. Learned counsel for the appellant submitted that a separate suit shall be filed in relation to purchase orders at Pune and necessary amendments to the plaint filed at Nagpur shall be made. It shall be open to the respondents-defendants to raise such objections and to take such stand as are available. In view of above, we dispose of the appeal with the following directions:

(1) It shall be open to the appellant to file a separate suit in relation to cause of action if any relating for the purchase orders, at Pune as was submitted by learned counsel for the appellant.

(2) If the appellant is so advised it may move for amendment of the suit at Nagpur.

(3) It shall be open to the respondents-defendants to raise all objections and take such pleas as are available in law.

15. Appeal is disposed of with no order as to costs.