SUPREME COURT OF INDIA

ONGC Ltd.

Vs.

M/s. Modern Construction and Co.

C.A.Nos.8957-8958 of 2013

(Dr.B.S.Chauhan and S.A.Bobde JJ.)

07.10.2013

JUDGMENT

DR.B.S.CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 10.12.2010 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application Nos.5036-5037 of 2010, reversing and setting aside the order dated 12.3.2010, passed by the Addl. District Judge, Fast Track Court, Surat in Misc. Civil Appeal Nos.29 and 30 of 2008 as well as the order dated 28.9.2007, passed in Special Execution Petition Nos.17 and 18 of 2007, passed by the 2nd Additional Senior Civil Judge, Surat.

2. Facts and circumstances giving rise to these appeals are that:

A. A contract for re-construction of cement godown, site office and warehouse for LPG Plant at Kawas in Surat District was awarded by the appellant to the respondent to be completed on or before 8.8.1984 vide agreement dated 9.2.1984. The respondent completed the work with an inordinate delay and possession could be taken by the appellant only on 31.6.1985. The respondent filed Civil Suit Nos.60, 61 and 62 of 1986 against the appellant in the Civil Court at Mehsana to recover the outstanding dues from the appellant.

B. The Civil Court vide judgment and decree dated 31.1.1994 allowed Civil Suit Nos.61 and 62 of 1986 in favour of the respondent.

C. Aggrieved, the appellant filed First Appeal Nos.1451, 1452 and 1453 of 1994 before the High Court of Gujarat challenging the said judgment and decree dated 31.1.1994. The High Court vide common judgment and order dated 18.3.1997 held that the Civil Court at Mehsana did not have territorial jurisdiction to entertain the suits. Therefore, the said judgment and decrees passed in the civil suits were set aside and the Civil Court at Mehsana was directed to return the plaints to the respondent so that the same may be presented before the appropriate court having jurisdiction.

D. The plaints were returned to the respondent in the aforesaid civil suits, who instituted the same before the Civil Court at Surat on 3.2.1999 being Civil Suit Nos.56, 57 and 58 of 1999. The said suits were allowed by the 3rd Additional Senior Civil Judge vide judgment and decree dated 21.9.2006 holding that the respondent was entitled to receive an amount of Rs.1,29,138/-, Rs.1,69,757/- and Rs.58,616/- in the respective suits with a future interest @ 12% per annum from the date of filing of the suit till realisation.

E. The appellant complied with the decrees passed by the 3rd Addl. Senior Civil Judge and made the payment of decretal amount to the respondent calculating the interest on the principal sum from 3.2.1999, i.e. the date on which the respondent had presented the plaints in the court of competent jurisdiction at Surat.

F. The respondent after receiving the said amount filed Special Execution Petition Nos. 17 and 18 of 2007 on 5.3.2007 claiming interest for the period 1986 to 1999, i.e. during the period when the suit remained pending before the court at Mehsana which had no jurisdiction. The Executing Court vide order dated 28.9.2007 dismissed the Execution petition observing that respondent was entitled to interest from the date of filing of the suit at Surat and not from the date on which the plaint was presented at Mehsana.

G. Aggrieved, the respondent preferred Misc. Civil Appeal Nos.29, 30 and 35 of 2008 before the District Court at Surat and the same were dismissed vide order dated 12.3.2010.

H. Aggrieved, the respondent challenged the said order dated 12.3.2010 by filing Special Civil Application Nos.5036 and 5037 of 2010 before the High Court of Gujarat at Ahmedabad and the said applications have been allowed vide order dated 10.12.2010 holding that the respondent was entitled to

interest from the date of institution of the suit at Mehsana Court. Hence these appeals.

3. Shri Parag P. Tripathi, learned Senior counsel appearing for the appellant duly assisted by Shri Nishant Menon, Advocate has submitted that the plaints had initially been instituted at Mehsana Court which had no territorial jurisdiction to entertain these suits and even after being decreed, the High Court vide order dated 18.3.1997 had rightly set aside the judgment and decrees and asked the court at Mehsana to return the plaints to the respondent so that the plaintiff could present them before the court of competent territorial jurisdiction. Therefore, the order of the High Court has to be understood to have been passed in view of the provisions of Order VII Rule 10 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') and not a case of transfer of a suit from the Court at Mehsana to the Civil Court, Surat. Once the plaint is presented after being returned from the court having no jurisdiction, it is to be treated as a fresh suit and even if the trial was conducted earlier, as in the instant case, it had to be done de novo. The only protection could be to take advantage of the provisions of Section 14 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act') and the court fees paid earlier may be adjusted but by no stretch of imagination it can be held to be a continuation of the suit. Had it been so there would be no occasion for the High Court to set aside the judgment and decree of the civil court at Mehsana at such a belated stage. Thus the impugned judgment and order is liable to be set aside.

4. Per contra, Shri Santosh Krishnan, learned counsel appearing for the respondent has submitted that in fact, the suits had been instituted at Mehsana Court in 1986 and the civil court therein had decreed the suit. The High Court in the impugned order has clearly stated that the suits were transferred from Mehsana Court to Civil Court at Surat and therefore, the respondent was entitled for interest from the date of institution of suit at Mehsana. The judgment and decree dated 21.9.2006 clearly reveals that the suits were received and registered on 24.3.1986. The appellant had not applied for correction of the said judgment and order by filing an application under Section 152 CPC. Therefore, no interference is called for and the appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The High Court while passing order dated 18.3.1997, did not exercise its power of transfer under Section 24 CPC; rather the language used in the said judgment

makes it clear that the return of the plaints was required in view of the provisions of Order VII Rule 10 CPC. The relevant part of the order reads as under: "Therefore, the impugned judgments and decrees in all the three appeals are allowed only on the limited ground that civil court at Mehsana had no jurisdiction to entertain the suits with the result, the plaints are required to be returned to the Plaintiff for filing suits in appropriate forum or court at appropriate place in view of provisions of O. 7, R 10 of the CPC. Therefore, the plaints are ordered to be returned to the Plaintiff or (sic) presentation to proper court having territorial jurisdiction. No doubt, we cannot resist temptation of mentioning the fact that the controversy is very old. It pertains to money on the basis of breach of contract. Therefore, the proper court on presentation of plaints will expeditiously determine and decide the dispute between the parties. We have not entered into merits of other issue decided by the trial court as decisions rendered in respect of other issues as they are examined and adjudicated upon by the trial court without jurisdiction. In the result, all the three appeals are allowed and impugned judgment and decree are quashed and set aside. The appeals are allowed. The plaints, therefore, shall be returned to the Plaintiff for presentation to proper court." (Emphasis added)

7. In Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., AIR 1929 PC 103, a Bench of Privy Council held:

> "…..It is quite clear that where a suit has been instituted in a court which is found to have no jurisdiction and it is found necessary to raise a second suit in a court of proper jurisdiction, the second suit cannot be regarded as a continuation of the first, even though the subject matter and the parties to the suits were identical……"
>
> (Emphasis added)

8. In Sri Amar Chand Inani v. Union of India, AIR 1973 SC 313, the issue involved herein was considered and this Court held that in such a fact-situation, where the plaint is returned under Order VII Rule 10 CPC and presented before the court of competent jurisdiction, the plaintiff is entitled to exclude the time during which he prosecuted the suit before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act and by no means it can be held to be continuation of the earlier suit after such presentation.

9. In Hanamanthappa & Anr. v. Chandrashekharappa & Ors., AIR 1997 SC 1307, this Court reiterated a similar view rejecting the contention that once the plaint is

returned by the court having no jurisdiction and is presented before a court of competent jurisdiction, it must be treated to be continuation of the earlier suit. The Court held: "In substance, it is a suit filed afresh subject to the limitation, pecuniary jurisdiction and payment of the Court fee. …. At best it can be treated to be a fresh plaint and the matter can be proceeded with according to law."

10. In Joginder Tuli v. S.L. Bhatia & Anr., (1997) 1 SCC 502, this Court dealt with a case wherein the landlord had terminated the tenancy and filed a suit for possession. An application for amendment of the plaint to recover damages for the use and occupation was also filed. On that basis, the pecuniary jurisdiction of the Trial Court was beyond its jurisdiction and accordingly the plaint was returned for presentation to proper court. On revision, the High Court directed the Court to return the plaint to the District Court with a direction that the matter would be taken up by the District Court and proceeded with from the stage on which it was returned. This Court disposed of the case observing:

> "Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference."

11. This Court in Harshad Chimanlal Modi (II) v. D.L.F. Universal Ltd. & Anr., AIR 2006 SC 646 has approved and followed the judgment of this Court in Sri Amar Chand Inani (supra) and distinguished the case in Joginder Tuli (supra) observing that:

> "The suit when filed was within the jurisdiction of the Court and it was properly entertained. In view of amendment in the plaint during the pendency of the suit, however, the plaint was returned for presentation to proper court taking into account the pecuniary jurisdiction of the court. Such is not the situation here."

12. Section 14 of the Limitation Act provides protection against the bar of limitation to a person bonafidely presenting his case on merit but fails as the court lacks inherent jurisdiction to try the suit. The protection also applies where the plaintiff brings his suit in the right court, but is nevertheless prevented from getting a trial on merits because of subsequent developments on which a court may loose

jurisdiction because of the amendment of the plaint or an amendment in law or in a case where the defect may be analogous to the defect of jurisdiction.

13. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order VII Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.

14. There can also be no quarrel with the settled legal proposition that the Executing Court cannot go behind the decree. Thus, in absence of any challenge to the decree, no objection can be raised in execution. (Vide: Bhawarlal Bhandari v. Universal Heavy Mechanical Lifting Enterprises AIR 1999 SC 246; Dhurandhar Prasad Singh v. Jai Prakash University & Ors., AIR 2001 SC 2552; Rajasthan Financial Corpn. v. Man Industrial Corpn. Ltd., AIR 2003 SC 4273; Balvant N. Viswamitra & Ors. v. Yadav Sadashiv Mule (Dead) Thru. Lrs. & Ors., AIR 2004 SC 4377; and Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307).

15. In the instant case, a copy of the decree has not been filed by either of the parties. The judgment and order dated 21.9.2006 shows that the plaints were received and registered on 24.3.1986. The respondent cannot be permitted to take advantage of a mistake made by the court and raise a technical objection to defeat the cause of substantial justice. The legal maxim, 'Actus Curiae Neminem Gravabit' i.e. an act of Court shall prejudice no man, comes into play. (See:Jayalakshmi Coelho v. Oswald Joseph Coelho, AIR 2001 SC 1084; and Bhagwati Developers Private Ltd. v. Peerless General Finance Investment Company Ltd. & Ors., AIR 2013 SC 1690).

16. This Court in Bhartiya Seva Samaj Trust Tr. Pres. & Anr. v. Yogeshbhai Ambalal Patel & Anr., AIR 2012 SC 3285, while dealing with the issue held:

> "21. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim 'allegans suam

> turpitudinem non est audiendus'. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong….
>
> This concept is also explained by the legal maxims 'Commodum ex injuria sua non habere debet'; and 'nullus commodum capere potest de injuria sua propria'."

17. Thus, the respondent cannot take the benefit of its own mistake. Respondent instituted the suit in Civil Court at Mehsana which admittedly had no jurisdiction to entertain the suit. In spite of the fact that the civil suit stood decreed, the High Court directed the court at Mehsana to return the plaint in view of the provisions of Order VII Rule 10 CPC. Thus, the respondent presented the plaint before the Civil Court at Surat on 3.2.1999.

18. The judgment and decree dated 21.9.2006 clearly provided for future interest at the rate of 12 per cent per annum from the date of filing of the suit till the realisation of the amount. The Executing Court vide judgment and decree dated 28.9.2007 rejected the claim of the respondent observing that the respondent had wrongly filed suit at Mehsana and the said court had no jurisdiction, and the "wrong doer cannot get benefit of its own wrong" i.e. the benefit of interest on the amount from the date of filing the suit in Mehsana court. The Appellate Court in its order dated 12.3.2010 reiterated a similar view rejecting the appeal of the respondent observing that "a public undertaking cannot be penalised for the mistake committed by the plaintiff by choosing a wrong forum". Before the High Court when the matter was taken up on 14.9.2010, a similar view had been reiterated that the respondent cannot be allowed to take advantage of the words "from the date of the suit", and conveniently overlook its own wrong of initially filing the suit in 1986 in the court at Mehsana. Though the court did not have jurisdiction, the plaintiff/respondent is now claiming interest for the period from 1986 to 1999 i.e. for 13 years by taking advantage of its own wrong and for that purpose, the plaintiff/respondent is trying to misconstrue the words mentioned by the learned trial court in the operative portion of the judgment dated 21.9.2006, viz., from the date of filing of the suit. However, while passing the impugned order, the High Court has used the language that the case stood transferred from the Mehsana court to the court at Surat and, therefore, interest has to be paid from the date of initiation of the suit at Mehsana i.e. from 1986 and in view thereof, allowed the claim.

19. We are of the considered view that once the plaint was presented before the Civil Court at Surat, it was a fresh suit and cannot be considered to be continuation

of the suit instituted at Mehsana. The plaintiff/respondent cannot be permitted to take advantage of its own mistake instituting the suit before a wrong court. The judgment and order impugned cannot be sustained in the eyes of law.

20. In view of the above, appeals are allowed. The judgment and decree impugned are set aside. The judgments and orders of the Trial/Executing Court as well as of the Appellate Court are restored. There shall be no order as to costs.