BOMBAY HIGH COURT

Mansata Film Distributors

Vs.

Sorab Merwanji Modi

O.C.J. Appeal No. 107/X of 1954. from Suit No.1069/X of 1954

(Chagla, C.J. and Dixit, J.)

16.11.1954

JUDGMENT

Chagla, C.J.

1. This is an appeal against an order passed by Coyajee, J. by which he restrained the appellants from proceeding with a suit filed by them in the Calcutta High Court, and that suit came to be filed under the following circumstances. It appears that on 12-12-1953, the respondent, who is a cinema producer and actor of repute, advertised in the newspapers that he was going to produce three films in the near future. One was an epic starring the plaintiff in the lead and produced and directed by him, the second was a musical extravaganza produced and directed also by him, and the third reflecting the laughter and tears of today's society, whatever that may mean, also produced and directed by the respondent. Subsequent to this advertisement an agreement was entered into between the appellants and the respondent on 21-12-1953, by which the appellants were to distribute these three films to be produced by the plaintiff, and there were various terms as to the payments that the appellants had to make under this agreement. On 23-7-1954, the respondent filed a suit in this Court, being suit No.1069 of 1954, by which he claimed a sum of Rs. 60,000 which had fallen due under the terms of the agreement. In the alternative, he also claimed this amount as damages. On 11-8-1954, the appellants filed the Calcutta suit. In that suit their contention was that the contract of 21-12-1953, was entered into on the representation contained in the advertisement to which reference has been made, and therefore the appellants agreed to distribute the three films of the respondent on the understanding that the films will be of the nature indicated in the advertisement. According to the appellants this representation was not carried out, the films produced were not the films mentioned in the advertisement, and therefore they sought to avoid the contract and claimed back the various amounts paid by them under the agreement. On 31-8-1954, the plaintiff, the respondent before us, took out a notice of motion to restrain the appellants from proceeding with the Calcutta suit, and Coyajee, J., made an order on this notice of motion granting to the plaintiff the relief which he sought.

2. Now, the judgment of the learned Judge is mainly based on the fact that there is a clause in the agreement to the following effect that if either party proceeds in a Court of law or decides to take steps tor enforcing their rights neither party shall do so in any other place other than Bombay and the learned Judge following a decision of this Court in - *'Ram Bahadur Thakur and Co. v. Devidayal Ltd*[1]*.',* came to the conclusion that although both the Calcutta and the Bombay High Courts might have jurisdiction, as the parties had preferred to have their rights adjudicated upon by the Bombay High Court, the Bombay High Court in its equitable jurisdiction or acting under Section 151, Civil Procedure Code, would restrain the other party from breaking this agreement and will prevent him from prosecuting his suit in a Court other than the one agreed upon between the parties.

Now with very great respect to the learned Judge, it is difficult to understand how this particular clause in the agreement can apply to the suit filed by the appellants in the Calcutta High Court. This clause can only operate when the parties want to litigate their rights under the contract. But the appellants are not seeking to litigate their rights under the contract. They are seeking to avoid the contract. Their case is that the contract was entered into on certain representations which were not carried out and therefore no question arises of their having agreed to litigate that question in the Bombay High Court and not in the Calcutta High Court. Mr. Banaji who appears for the respondent does not support this part of the learned Judge's judgment. The learned Judge has based his decision only on this point, yet undoubtedly it is open to Mr. Banaji to support the learned Judge's order on any other ground which appears on the record, and what Mr. Banaji has argued is that the Court will use its inherent powers under Section 151 to restrain the defendants from proceeding with the Calcutta suit, because he says it is clear from the record that the suit is vexatious and oppressive and the Court will not permit a party to proceed with a suit of that nature. Now, indeed it is a curious proposition for which Mr. Banaji is contending that this Court under its inherent jurisdiction should restrain a defendant from proceeding with a suit which has been filed subsequently to the suit filed by the plaintiff. There is no case in the books where the Court has ever exercised such power. All the cases that are to be found are cases where the Court has exercised its jurisdiction under Section 151 to restrain a defendant from proceeding with a suit which he has filed prior to the suit filed by the plaintiff. Mr. Banaji concedes that his research has not resulted in finding any case where a defendant has been restrained from proceeding with a subsequently filed suit. But Mr. Banaji's contention is that there is no reason why the Court should make any distinction between the exercise of its power under Section 151 in the case of a suit which is previously instituted and in the case of a suit which is subsequently instituted. There is every reason why the Court would not exercise its inherent power under Section 151 in a case where the suit is subsequently instituted and the reason is based on a very good principle.

3. First turning to the decision in - '*Ram Bahadur Thakur and Co. v. Devidayal Ltd.*, on which Mr. Banaji relies, that was a case where the defendant had filed a suit which was prior to the suit filed by the plaintiff and an application was made by the plaintiff to restrain the defendant from proceeding with this previously instituted suit. What was urged before us in that case was that

under Section 10 the previously instituted suit must go on and the subsequently instituted suit must be stayed and the Court had no power to override the provisions of Section 10 by falling back upon its inherent jurisdiction under Section 151. We repelled that argument in that case and we pointed out that Section 10 did not deal with all cases of previously instituted suits, and when the Court found that a suit had been filed in violation of a contractual obligation to litigate the matter in another Court or where the suit was vexatious and frivolous or a suit had been filed to forestall the plaintiff who filed the subsequent suit, then the Court under its inherent jurisdiction under

[1] AIR 1954 Bom 176

Section 151 would prevent the defendant in the previously instituted suit from proceeding with that suit. Therefore, it is clear that the principle of that decision is that the plaintiff in that case could not have got the relief under Section 10. On the contrary, under Section 10 he would have been compelled to permit the defendant to go on with the previously instituted suit, however frivolous and vexatious that suit might have been. But the position here is entirely different. We have before us a plaintiff who has been first in the field, who has come to this Court and filed a suit. The defendant files a suit in the Calcutta High Court subsequently. If both the suits are filed on the same cause of action - and we express no opinion on this subject - then it is open to the plaintiff to get the defendant's suit in Calcutta stayed. If, on the other hand, the two suits are not filed on the same cause of action, then it is difficult to understand how this Court can have jurisdiction to prevent the defendant from filing a subsequent suit on a different cause of action. The reason why the Courts have held a previously instituted suit to be vexatious or oppressive is this that the plaintiff in that suit forestalls the defendant who wanted to file a suit and who would have ordinarily filed a suit in some other Court, and by claiming a right under Section 10 tries to get his own suit decided before the defendant can have his suit tried. But when a suit is subsequent, no question of its being vexatious or oppressive can ever arise, because if the suit is on the same cause of action, the party who has filed the suit first has the obvious right to get the subsequent suit stayed under Section 10. If it is not on the same cause of action, then any party has a right to put a plaint on the file in any Court and prosecute his suit, however dishonest the suit may be and however certain it may be that that suit would fail. But it is difficult to understand how the plaintiff in the earlier instituted suit can ever be prejudiced by a subsequent suit which is not on the same cause of action.

4. Mr. Banaji says that in this case very likely the suit would fall under Section 10 and he would have a right to apply to the Calcutta High Court. But he says that if two remedies are open to him, one to go to Calcutta and ask for stay of the subsequently instituted suit under Section 10, he has also the remedy to come to this Court and obtain an injunction under Section 151. In our opinion that contention is not tenable. It is erroneous to suggest that when a party has a right under Section 10 to have the suit stayed, he has also a remedy under Section 151 to invoke the inherent jurisdiction of this Court. As we pointed out in '*Ram Thakur Bahadur and Co. v. Devidayal Ltd.*, Section 151 was enacted to deal with those cases which the express provisions of the Code did not deal with. No Legislature in the world can contemplate all possible cases that

can arise. But when you have a case which can be dealt with under an express provision of the Code, it is impossible to urge that in a case like that the Court should not deal with that case under the express provision of the Code but should exercise its inherent jurisdiction. That is exactly the contention of Mr. Banaji in this case. His argument comes to this that although he has a specific remedy under Section 10, which remedy he can obtain in the Calcutta High Court, he can ignore that remedy and come to this Court and ask this Court to exercise its inherent jurisdiction under Section 151. However wide the powers of the Court may be under Section 151, they do not extend to the Court granting a relief under its inherent jurisdiction, when the same relief can be granted by another Court under the express provisions of the Code. In our opinion, it is unnecessary to consider whether on the facts the suit filed by the appellants is a dishonest suit as Mr. Banaji suggests. That is a question on merits which will have to be decided in the suit. We are only concerned now with the power of this Court to issue an injunction restraining the appellants from proceeding with the subsequently filed suit. In our opinion that power does not exist if the plaintiff in the Bombay suit has the right of obtaining the necessary order from the Calcutta High Court under Section 10.

5. It has also been argued by Mr. Banaji that no appeal lies from the decision of Coyajee, J. Now, the question we have to consider is whether the order of Coyajee, J. constitutes a judgment within the meaning of Clause 15 of the Letters Patent. It is well settled that interlocutory orders can also be judgments and it is not necessary that a Court should pass a final decree or a final order in order that an appeal should lie. Now, when you have an interlocutory order which is purely procedural in character, or, as it has been said, which is nothing more than a step towards obtaining a final adjudication in the suit, then undoubtedly such an order would not constitute a judgment within the meaning of Clause 15. But if an interlocutory order determines the right of a party even 'pro tanto', then the party whose right has been affected would have the right to appeal against that order.
Now, what is the effect of this decision of Coyajee J.? The appellants have been prevented from prosecuting their suit in the forum of their choice. To that extent a very important right has been affected and it is difficult to understand how an order restraining a party from proceeding with his suit till the suit filed by the other party is disposed of does not affect his right.

Mr. Banaji has relied on a judgment of this Court in - *'Jai Hind Iron Mart v. Tulsiram[2]',* In that case we were dealing with a converse case. Coyajee, J. there had refused to grant an injunction against the defendant from proceeding with a suit which he also had filed in the Calcutta High Court, and we said that that order did not constitute a judgment and no appeal lay from it, and the reason why we came to that conclusion was that Coyajee, J. had exercised his discretion under Section 151 and the exercise of that discretion did not in any way affect the rights of the parties. The result of Coyajee, J.'s order in that case was that both the suits were permitted to go on and neither party's right to prosecute his suit in the forum of his choice was affected. The case before us here is exactly the contrary. As already pointed out, the effect of Coyajee, J.'s decision is a serious infringement of the right of the appellants to proceed with the suit which they have filed

in the Calcutta High Court. In our opinion, therefore, the order of Coyajee, J. constitutes a judgment within the meaning of Clause 15 and an appeal lies from that order.

6. The result is that the appeal will be allowed with costs. The order of Coyajee, J. will be set aside and the notice of motion taken out by the plaintiff will be dismissed with costs.
Appeal allowed.
[2] AIR 1953 Bom 117