

# RAJASTHAN HIGH COURT

D. Chaudhary

Vs.

Rajasthan Cricket Assocn. Man Structures Ltd

Civil Revn. Petn. Nos. 111 and 119 of 2002

(H.R. Panwar, J.)

12.07.2002

## ORDER

**H. R. Panwar, J.**

1. These two revision petitions under Section 115, C.P.C. involve common question of law and facts and are between the same parties, therefore, for convenience they are disposed of by this common order.

2. Plaintiff-petitioner filed a suit for permanent and mandatory injunction before the trial Court against the respondents vide Civil Original Suit No. 9/2001. the suit was posted for recording of evidence on 2-1-2002. The witness Anant Vyas was present in the Court for his deposition. Earlier to this an application under Order 7, Rules 10 and 11, C.P.C. was filed before the trial Court by the defendant-respondents-Rajasthan Cricket Association Man Structures Ltd. Jaipur and others, which came to be rejected by the trial Court vide order dated 1-9-1999, against which defendant-respondents-Rajasthan Cricket Association and others filed S. B. Civil Revision Petition No. 1247/99. The said revision petition came to be dismissed by this Court on 18-7-2001. While dismissing the revision petition filed by defendant- respondents, the trial Court was directed to frame issues keeping in view the provisions of sub-rule (2) of the Rule 2 of Order 14, C.P.C. and if the trial Court comes to the opinion that the case or any part thereof may be disposed of on the point of law only, it may try that issue as a preliminary issue first if that issue relates to territorial jurisdiction. In compliance of the order of this Court, the trial Court framed as many as 13 issues. Issues No. 6 and 8 are relevant in these revision petitions, which read as under :-

3. The burden to prove both these issues was on Rajasthan Cricket Association-

defendant before the trial Court. Issues were framed by the trial Court on 19-10-2001. Original suit was posted for plaintiff-petitioner's evidence on 31-10-2001. On this date the plaintiff-petitioner filed an application under Order 11, Rule 12, C.P.C. However, no witness appeared from either side. The matter was adjourned on several dates for the arguments on the said application and ultimately, on 23-11-2001 the trial Court dismissed the said application and the matter was posted for the plaintiff's evidence. Before the evidence of the parties could be recorded, the plaintiff filed a transfer application before the learned District Judge, Balotra on 22-12-2001 seeking transfer of the case from the Court of Additional Civil Judge (Junior division), Barmer. It was noticed by the trial Court that burden to prove issues No. 6 and 8, which were sought to be decided as preliminary issues, was on the defendant and the suit has wrongly been posted for plaintiff's evidence and accordingly, the suit was posted for recording of the statement of respondent-defendant's witnesses on 2-1-2002. The defendants produced its witness Anant Vyas before the Court. Before the statement of witness Anant Vyas could be recorded, the plaintiff-petitioner filed an application that issue No. 8 is only issue which can be decided as a preliminary issue as the issue raises the point of jurisdiction of the Court and issue No. 6 should not be decided along with issue No. 8. The trial Court held that issues Nos. 6 and 8 are interlinked and can be decided as preliminary issues and permitted the defendant-respondent to lead evidence. This order has been challenged by the plaintiff-petitioner in S. B. Civil Revision Petition No. 111/2002. Prior to this, the plaintiff-petitioner filed an application under Order 18, Rule 1, C.P.C. on 19-12-2001. By the said application under Order 18, Rule 1, C.P.C., the plaintiff-petitioner contended that the burden to prove issue No. 8 was on the defendant-respondent and the defendant respondent has not produced the evidence and, therefore, their evidence be closed. At this stage the trial Court noticed that the suit was wrongly posted for the evidence of the plaintiff on issues Nos.6 and 8. As a matter of fact, the burden to prove these issues was on the defendant- respondent and instead of closing the evidence of the defendant-respondent, posted the matter for recording of evidence of the defendant's witnesses. That order also came to be challenged by the plaintiff-petitioner before this Court in S.B. Civil Revision Petition No. 119/2002. by order dated 25-1-2002 the record of the trial Court was requisitioned. In compliance of this order, the record of the trial Court has been received.

I have heard learned counsel for the parties. Perused the orders impugned as also the entire record of the trial Court and the various proceedings taken there under.

4. It is contended by the learned counsel for the petitioner that issue No. 8 which relates to jurisdiction of the Court can alone be decided as preliminary issue.

5. Learned counsel appearing for the defendant-respondents contended that issues Nos. 6 and 8 both relate to jurisdiction of the trial Court and are interlinked issues and, therefore, both the issues can be decided as preliminary issues as envisaged in sub-rule (2) of Rule 2 of Order 14, C.P.C. It was further contended that the trial Court had jurisdiction to pass the orders impugned and in the instant case, there is neither jurisdictional error nor if the orders impugned are allowed to stand, would occasion failure of justice or cause irreparable injury to the plaintiff-petitioner against whom it has been made. It was further contended that the controversy now raised before this Court by the plaintiff-petitioner raises only an academic question as the parties before the trial Court had already led evidence on issues Nos. 6 and 8 and the burden to prove issues Nos. 6 and 8 lay on the defendant-respondents, who completed their evidence and since the evidence has already been recorded on these two issues, the trial Court is now required to appreciate and decide the issues as preliminary issues. Not only this, the plaintiff-petitioner also appeared as a witness and his deposition is also on record. The statement of the plaintiff-petitioner Devaram was recorded by the trial Court on 24-1-2002. The matter is only at the stage of appreciation of the evidence led by both the parties on issues Nos. 6 and 8 and its decision. By these revision petitions, plaintiff-petitioner seeks to segregate the evidence already produced by the parties on two issues, which cannot be permitted at the revisional stage. From the record, it appears that the plaintiff-petitioner moved one after another various applications and some of them have been discussed hereinabove and ultimately came to be decided against the plaintiff-petitioner. From plain reading of issues Nos. 6 and 8, it will be seen that both these issues are interlinked inasmuch as issue No. 8 reads "whether no cause of action arose to the plaintiff in the jurisdiction of Barmer and, therefore, the Court at Barmer had no jurisdiction to try the suit?" Issue No. 6 as it reads is also clear that on the basis of the pleadings of the plaintiff in para 17 of the suit, no cause of action arose to the plaintiff against the defendant. Thus, both these issues directly and substantially relate to the challenge to the jurisdiction of the trial Court and the trial Court having considered the entire material before it, had rightly reached to the conclusion that both these issues are interlinked and relate to the jurisdiction of the Court. The scope of revision under Section 115, C.P.C. is very limited. The Constitution Bench of the Hon'ble Supreme Court in *Pandurang Dhondi*

*Chougule v. Maruti Hari Jadhav*<sup>1</sup> held that the High Court cannot while exercising its jurisdiction under Section 115, C.P.C., correct errors of fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute. (Emphasis supplied) It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked.

6. In *The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad v. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar, Hyderabad*,<sup>2</sup> the Hon'ble Supreme Court held as under (Para 5) :--

"In our opinion the High Court had no jurisdiction to interfere with the order of the first appellate Court. It is not the conclusion of the High Court that the first appellate Court had no jurisdiction to make the order that it makes. The order of the first appellate Court may be right or wrong; may be in accordance with law or may not be in accordance with law; but one thing is clear that it had jurisdiction to make that order. (Emphasis supplied.) It is not the case that the first appellate Court exercised its jurisdiction either illegally or with material irregularity. That being so, the High court could not have invoked its jurisdiction under Section 115 of the Civil Procedure Code."

7. Section 115, C.P.C. underwent amendment vide Amendment Act No. 104 of 1976, which came into force w.e.f. 1-2-1977 whereby a proviso to Section 115 was added, which provides that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favor of the party applying for revision, would have finally disposed of the suit or other proceeding, or the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

8. Keeping in view the law propounded by the Constitution Bench of the Hon'ble Supreme Court in *Pandurang Dhondi Chougule's case* ( AIR 1966 Supreme Court 153) (supra) and *The Managing Director (MIG) Hindustan Aeronautics Ltd.*

Balanagar, Hyderabad's case ( AIR 1973 Supreme Court 76) (supra) and the fact that the contentions raised by the plaintiff petitioner did not find favor with the trial Court and after having passed the orders impugned, the parties already led evidence on the two issues which are the subject- matter of these revision petitions and that the statements of the witnesses have been recorded. The learned counsel appearing for the petitioner could not point out as to how the trial Court had no jurisdiction to make the orders impugned. The orders impugned may be right or wrong, may be in accordance with law or may not be in accordance with law but one thing is very clear that the trial Court had jurisdiction to make these orders. Nothing has been pointed out from the record that the exercise of discretion by the trial Court is either arbitrary, perverse or capricious. Having considered the material on record of the trial Court in the light of the observations of the Hon'ble Supreme Court in the above noticed judgments, I am of the considered opinion that the orders impugned do not suffer from any jurisdictional error. It cannot be said that the trial Court acted with illegality or material irregularity. The order of the trial Court is neither arbitrary nor perverse or capricious. The trial Court had jurisdiction to make the orders impugned. The order impugned cannot be said to suffer from any jurisdictional error or if allowed to stand would occasion failure of justice or cause irreparable injury to the plaintiff-petitioner. Thus, it is not a fit case warranting interference in revisional jurisdiction. In this view of the matter, I am of the considered opinion that no case for interference under Section 115, C.P.C. is made out.

9. In view of the aforesaid discussion, I find no merit in both these revision petitions. Accordingly, they are dismissed. Record of the trial Court be sent forthwith. The trial Court is directed to try the suit with utmost expeditiousness and to conclude preferably within a period of one year from the date copy of this order is made available to the trial Court. No order as to costs.

Petitions dismissed.

Cases Referred.

1. AIR 1966 SC 153
2. AIR 1973 SC 76