SUPREME COURT OF INDIA

Chittaranjan Mukherji

v.

Barhoo Mahto

(Kania C.J., Patanjali Sastri J. and others)

May 05, 1950

Judgment

Patanjali Sastri J.

1. This appeal arises out of an application for revocation of the leave obtained by the appellant for the institution of a suit on the original side of the High Court at Calcutta for a declaration that a partnership entered into by him with the respondent had been dissolved, or in the alternative, for a dissolution of the partnership, and for accounts and other consequential reliefs.

2. It was alleged in the plaint that the partnership was entered into orally at Calcutta in or about January 1944 on certain terms which were subsequently confirmed by the respondent on December 14, 1944 by a letter addressed to the appellant in Calcutta. The suit was instituted on February 17, 1947. On March 03, 1947 the appellant applied for a temporary injunction restraining the respondent from realising or withdrawing moneys due in respect of contracts alleged to have been undertaken on behalf of the partnership and for the appointment of a receiver to take charge of the entire partnership assets. The respondent entered appearance on March 11, 1947, and with his consent an order was passed by Ormond J. appointing two joint receivers to collect Rs. 21,000/- admittedly due to the partnership from the Garrison Engineer, Eastern Command, Tollygunge, pending final disposal of the appellant's application for injunction and receiver, which was dismissed on April 25, 1947, subject, however, to the direction that the joint receivers for the sum of Rs. 21,000/- should continue and also take charge of all the books of account of the partnership business.

3. On April 16, 1947 the respondent applied for and obtained extension of time to file his written statement which was actually filed on April 29, 1947. The respondent therein pleaded, *inter alia*, that the partnership in question related solely to the military contracts undertaken by the respondent and did not comprise the other contracts undertaken by him, and that, if accounts were taken of the military contracts, the appellant, who had withdrawn large amounts from the partnership funds, would be found liable to pay substantial amounts to the respondent. The respondent denied the genuineness of the letter of December 14, 1944 relied on by the appellant as showing that the partnership related to all the contracts undertaken by the respondent, and put forward a deed of partnership dated April 03, 1946 as embodying the terms of the partnership which, according to him, was constituted on November 01, 1943. He alleged that the agreement of partnership was entered into and the deed of partnership executed in Bihar. The Court had no jurisdiction to entertain the suit as no part of the cause of action arose in Calcutta and the leave obtained on false allegations should be revoked.

4. The present application for revocation of leave was filed by the respondent on May 02, 1947. The appellant contended, *inter alia*, that the application for revocation was inspired by the observations made by Clough J. in his judgment dismissing the appellant's application for appointment of a receiver to the effect that he was not satisfied as to the *bona fides* of the appellant in filing the suit in Calcutta. Referring to this contention the same learned Judge, who happened to hear the application, said that he made those observations without due appreciation of the matter, and that it was "impossible in view of the appellant's assertion that he now ordinarily resides in

Calcutta and that the agreement was made in Calcutta to find as a fact that Calcutta is not a convenient forum so far as he is concerned. If it is convenient for him, it is not possible to say that it is established that he has acted *mala fide* simply to harass the defendant."

5. On the question of balance of convenience, the learned Judge held, on a consideration of all the circumstances of the case, that he did not think "it is possible to say that the balance of convenience is so against the suit being brought in Calcutta that the leave granted should be revoked on that ground."

6. He was also of opinion that, having regard to the conduct of the respondent in "making use of the existence of the suit to obtain or rather to consent to an order which he thought would be to his own advantage," and in allowing the proceedings to continue involving expenses which could have been avoided if their stay had been applied for, "it was altogether too late to make an order for revocation even if I thought it was otherwise a proper order to make in this case."

7. From that order the present respondent preferred an appeal on August 21, 1947 and on the same day he applied for a stay of proceedings in the suit till the disposal of the appeal. Such stay was granted on December 18, 1947. The appeal was heard by the Chief Justice and Mukherjea J. who set aside the judgment of Clough J. and directed that the leave granted under Clause 12, Letters Patent be revoked, that the plaint filed in the appellant's suit "be taken off the file" and that the appellant be at liberty to institute a fresh suit in the Court of appropriate jurisdiction in the State of Bihar on the same cause of action. The learned Judges went, in some detail, into the question of balance of convenience, and came to the conclusion that *prima facie* it would be more convenient to have the suit tried by any Court in Bihar, and so far as the respondent was concerned, it would be harassing and vexatious if the suit was tried on the original side of the Court. There was no "substance", in their view, in the contentions based on the respondent's delay in applying for revocation and his acquiescence in the proceedings.

8. Learned counsel for the appellant challenged the correctness of this conclusion, pointing out that the view of the learned Judges of the appellate Bench that, if the suit was tried in Bihar "it would not be at all necessary to call any evidence for the purpose of proving where the contract was in fact entered into, and that there may not be a necessity for calling any of the handwriting experts" was based on a misapprehension of the true position, inasmuch as it was necessary for the appellant to prove the oral contract which, according to him, was entered into in Calcutta, and for proving that contract he had to summon witnesses in Calcutta irrespectively of where the suit was tried. Similarly, it was necessary for the appellant to call the handwriting experts in any case to prove the respondent's signature on the letter of December 14, 1944, whose genuineness was denied, as the letter was an important piece of evidence for the appellant to establish the true scope of the partnership which was seriously disputed. Counsel also complained that the learned Judges overlooked that, according to the respondent's own allegations in his application, much of his evidence would have to be taken on commission as he proposed to examine Railway and Military officers to prove that he was not in Calcutta either in January 1944 or in December 1944, and "most of the said officers are now posted outside Bihar". The conclusion therefore that the balance of convenience was in favour of a trial in Bihar was it was said erroneous. The criticism is not without force as the judgment under appeal does not advert to these aspects of the matter. We consider it, however, unnecessary in this case to enter upon a discussion of the balance of convenience. We hold that, having regard to the delay in filing the application for revocation and the respondent's conduct in relation to the proceedings in the suit, the leave originally granted should not be revoked.

9. As already stated, the suit was instituted on February 17, 1947 and the respondent entered appearance on March 11, 1947. So far from complaining that leave had been improperly granted to

file the suit in Calcutta, as he should have done at the earliest possible opportunity, and asking for all proceedings to be stayed until that question was settled, the respondent availed himself of the pending suit to have a consent order passed by the Court appointing the solicitors of the parties as joint receivers to collect and hold the sum of Rs. 21,000/- due from the military authorities at Tollygunge. That was because, as he admitted, it was necessary to recover that sum immediately as "the Department of the Garrison Engineer, Eastern Command, Tollygunge, was going to be abolished as and from March 31, 1947".

10. Having secured this advantage, he contested the appellant's application for injunction and receiver in other respects and got it dismissed on April 25, 1947. This proceeding would not have gone on and the appellant would not have had to incur the incidental expenses if the application for revocation had been filed and all proceedings stayed soon after the respondent entered appearance on March 11. Indeed, there is considerable force in the suggestion that the application for revocation was an after-thought inspired by the observation of Clough J. in his order dated April 25, 1947 to the effect that, as both the parties were residents of Muzaffarpore in Bihar, the suit was filed in Calcutta with a view to harass the respondent. As already stated, the learned Judge himself explained later, in his order refusing revocation, that his previous observation was based upon a misapprehension as he did not appreciate that the appellant had alleged in his plaint that he was residing in Calcutta and that the letter of December 1944 was actually delivered to him at Calcutta. Even when the respondent filed the application for revocation on May 02, 1947, he made no attempt to get the further proceedings in the suit stayed. On the contrary, he himself applied for discovery and inspection of the plaintiff's documents on July 02, 1947 and obtained an order on July 07, the appellant having a few days before got a similar order in respect of the respondent's documents. And it was not until the inspection of the documents was nearing completion that the respondent appealed on August 21, 1947 against the order of Clough J. rejecting the application for revocation, and got further proceedings stayed in December 1947.

11. It is thus clear that the respondent has not only acquiesced in the steps taken by the appellant to carry forward the progress of the suit incurring considerable expenses but, in the language of Clough J., "made use of the existence of the suit" to obtain such interlocutory reliefs as he thought would be to his own advantage, at the hands of the Court which he now claims should not try the suit. We are of opinion, in agreement with Clough J., that the proceedings in the suit have been allowed to reach a stage where it would result in grave injustice if the Court were to hold that the *forum conveniens* was Bihar and not Calcutta and revoke the leave on that ground.

12. The appeal is, therefore, allowed and the respondent's application for revocation of leave is dismissed with costs throughout.

Case Number(s)
Not stated in the source

Statute(s) referred

Statute	Section/Article	Para
Letters Patent (Calcutta High Court)	Clause 12	7

Advocate(s)
Not stated in the source text.
(P) – Provisional