

(2019) 07 RAJ CK 0099

Rajasthan High Court

Case No: Civil Misc. Appeal No. 768, 769, 770, 771 Of 2009

Moolchand Jain And Ors

APPELLANT

Vs

Rajendra Kumar Jain And Ors

RESPONDENT

Date of Decision: July 31, 2019

Acts Referred:

- Code Of Civil Procedure, 1908 - Section 20, 21(1), 115, Order 7 Rule 11

Hon'ble Judges: Dr. Pushpendra Singh Bhati, J

Bench: Single Bench

Advocate: C.P. Soni, Arvind Samdaria

Final Decision: Dismissed

Judgement

1. The appellant has preferred these misc. appeals claiming, in sum and substance, the following reliefs:

â€œ(1) 3, 4, 5 ,

(2) 62,194.60/- 16.01.2001 23.01.2001 44,805.

40/- 1,07,000/- 24

(3) â€

2. Brief facts of this case, as noticed by this Court, are that respondents No.2 is the member of the Bombay Stock Exchange and National Stock

Exchange and conduct the trade in sale and purchase of shares through respondent No.1.

3. The appellant agreed upon selling his shares through the respondents, and particularly, agreed upon the condition that the interest @ 24% per annum

shall be charged on the amount due to the appellant whenever the same is returned. However, when the amount was not returned, the dispute arose.

4. The respondents took a plea that they had a contract note bearing the signatures of the appellant, and therefore, on account of such contract note, the jurisdiction shall lie with the Courts in the Mumbai territory only.

5. The appellant pleaded that he did not sign any contract note or the bills, and therefore, the transactions between the parties have to be seen as completed here in Jodhpur itself.

6. Learned counsel for the appellant has drawn the attention of this Court towards Section 20 of the CPC, which reads as under:

â€œ20. Other suits to be instituted where defendants reside or cause of action arises.-

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdictionâ€

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily

resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on

business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry

on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.â€

7. Learned counsel for the appellant submitted that the impugned order passed by the learned court below, on the ground that the court at Jodhpur

does not have jurisdiction, is unlawful as the defendant resides in Jodhpur, and the contract was signed at Jodhpur and all the transactions between the parties had happened in Jodhpur itself.

8. Learned counsel for the appellant further submitted that the learned court below framed eight issues, out of which issue No.3 was pertaining to the

jurisdiction to adjudicate the matter; issue No.4 was relating to the determination of rights by the arbitrator and; issue No.5 was whether the appellant

is trading in the share market. Issues No.3, 4 and 5 have been dealt with by the learned court below in the impugned order dated 29.01.2009 in the

following manner:

â€œ - 3, 4, 5 :-

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1. 2008(4) C.C.C. 196 (SC).

2. AIR 2000 S.C. 1886.

3. 2003(3) DNJ (S.C.) 755.

4. 2007 DNJ S.C. 167.

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9. Learned counsel for the appellant relied upon the judgment rendered by this Honâ€™ble Court in M/s. Hindustan Metals, Jodhpur Vs. M/s. Vishal

Goods Transport Co. & Anr., reported in AIR 2002 Rajasthan 248, relevant portion of which reads as under:

â€œ17. Thus it is settled law that the jurisdiction of the Court where the cause of action wholly or partly arises cannot be taken away by the choice of

the party to the contract merely on the basis of the condition printed on the bills or the bilty as the case may be. The parties cannot create a jurisdiction

in the Court in whose territorial jurisdiction no cause of action has at all arisen. In the instant case, the cause of action do arise to the appellant plaintiff

at Jodhpur and the suit has rightly been instituted at the Court situated at Jodhpur. In the instant case the defendants failed to establish that if the said

suit is tried in the Courts at Jodhpur it would result in failure of justice. Admittedly, the defendant's Branch Office is situated at Jodhpur from where

the goods are transported and the defendants are carrying on their business of career/transportation. Admittedly goods were booked and handed over

to the defendants for transportation to M/s. Modi Steel at Jodhpur Branch Office and under these circumstances by contesting the case At Jodhpur no

failure of justice would occasion to the defendants.

18. In my considered opinion, the first appellate court fell in error by holding that Jodhpur Court has no jurisdiction and the courts at Delhi only had

jurisdiction. This part of finding is against the well settled law and, therefore, the order impugned is not sustainable in law and deserves to be set aside.

No other point was pressed.

19. In view of the aforesaid discussion, this appeal succeeds and is hereby allowed. The order impugned dated 23rd Aug. 1984 passed by learned

Additional District Judge No. 2, Jodhpur in Civil Appeal Decree No. 25/81 is hereby set aside and quashed and the judgment and decree passed by

trial court dated 24.9.1981 is hereby restored. In the facts and circumstances of the case, this is a fit case in which exemplary cost is to be awarded

as the appellant-plaintiff has unnecessarily been dragged in litigation. I therefore, quantify the cost at Rs. 1,500/-.

10. Learned counsel for the appellant has further referred to the precedent law laid down by the Hon^{ble} Supreme Court in R.S.D.V. Finance Co.

Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., reported in AIR 1993 SC 2094, relevant portion of which reads as under:

“7. It may be further noted that the Learned Single Judge trying the suit had recorded a finding that the Bombay Court had jurisdiction to

entertain and decide the suit. Sub- sec.(1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be

allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all

cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays

down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the following conditions :-

(i) That such objection was taken in the Court of first instance at the earliest possible opportunity;

(ii) in all cases where issues are settled then at or before such settlement of issues;

(iii) there has been a consequent failure of justice.

8. In the present case though the first two conditions are satisfied but the third condition of failure of justice is not fulfilled. As already mentioned

above there was no dispute regarding the merits of the claim. The defendant has admitted the deposit of Rs. 10,00,000 by the plaintiff, as well as the

issuing of the five cheques.....

11. Learned counsel for the appellant has further submitted that taking of objection at the first instance and also before the issues were settled, though

were the two essential conditions, but the third essential condition was whether there was a consequential failure of justice, which is not there in the present case, as the respondents have not been able to prove a single line wherefrom the consequential failure of justice would have been reflected.

12. On the other hand, learned counsel for the respondents submitted that the objection regarding the territorial jurisdiction was taken at the initial stage itself and the issues No. 3, 4 and 5 were, therefore, framed, and thus, the learned court below has rightly decided the objections, as the contract note itself implied the jurisdiction of the Mumbai courts only, and since the parties themselves have agreed to subject and restrict themselves to the jurisdiction of Mumbai courts only, then it was not for the learned court below to adjudicate the matter. Moreover, learned counsel for the respondents also states that since the basic dispute was regarding trading of shares, which admittedly was done under the Bombay Stock Exchange, therefore, the parties were bound to subject themselves to the jurisdiction of courts in Mumbai territory only.

13. Learned counsel for the respondents has relied upon the judgment of this Honâ€™ble Court in Ram Singh Vs. M/s. Laxmi Enterprises (S.B. Civil

Revision Petition No.1039/2003 decided on 09.07.2009), which reads as under:-

â€œIn this revision petition filed under Section 115, C.P.C. the petitioner is challenging the validity of the order dated 21.07.2003 passed upon the application filed by the petitioner under Order 7 Rule 11, C.P.C. in the Civil Original Case No.244/03 pending before the trial Court, whereby, the learned Addl. District Judge (Fast Track) No.2, Bhilwara rejected the application filed by the petitioner under Order 7 Rule 11, C.P.C. The main contention of the petitioner is that the non- petitioner filed suit against the petitioner for recovery of money amounting to Rs.2,37,908/-and the case of the non- petitioner plaintiff is that he is registered Sub-Broker under the Securities and Exchange Board of India and pursuing business of sale and purchase of shares undertaken on delivery basis as well as forward transactions on deposit of margin-money. It is stated in the plaint that all the transactions are carried out under the rules and by-laws framed by the Bombay Stock Exchange. The petitioner is having current running account and

share transaction for sale and purchase of shares is carried out by the plaintiff-non-petitioner at the instance of the petitioner-defendant. Suit has been filed by the plaintiff-non-petitioner for recovery of money based on balance due in the above-mentioned account as a result of the transactions.

In the said suit, an application was filed by the defendant-petitioner under Order 7 Rule 11, C.P.C. seeking dismissal of the suit on the ground that the

plaintiff-non-petitioner is registered Sub-Broker under the Securities and Exchange Board of India Act, 1992 and any client agreement as well as

confirmation of transactions are specifically recorded, then, in that event, the civil Court has no jurisdiction in respect of the same. It is also submitted

that under the rules and by-laws framed by the Bombay Stock Exchange for any dispute between the Broker, Sub-Broker and client, specific

provision of arbitration is provided and dispute is required to be sent for arbitration before the Arbitration Committee constituted by the Bombay Stock

Exchange. It is pointed out that the members of the Arbitration Committee include retired Judges of the High Court as well as City Civil Court,

Chartered Accountants, Company Secretaries, Advocates and experts of capital market and, accordingly, the disputes are sorted out by due process

prescribed under the rules. Further, there is provision of appeal against the award passed as a result of arbitration proceedings.

Contention of learned counsel for the petitioner is that while deciding application filed under Order 7 Rule 11, C.P.C., though specific averment was

made by the petitioner in the application that in view of the clear provision of the rules and by-laws of Bombay Stock Exchange, in the event of dispute

between broker, sub-broker and client, the matter is required to be referred for arbitration under the rules and by-laws of the Bombay Stock

Exchange. It is contended by learned counsel for the petitioner that the application filed by the petitioner under Order 7 Rule 11, C.P.C. ought to have

been allowed; but, the learned trial Court did not even consider by-law 248 at the time of deciding the matter. Complete procedure is laid down in by-

law 248 of the Bombay Stock Exchange.

I have heard arguments on behalf of both the parties. Upon perusal of the impugned order, it is revealed that the trial Court has committed error while

not considering the provisions of by-law 248 of the Stock Exchange, Mumbai which ought to have been considered at the time of deciding application

filed under Order 7 Rule 11, C.P.C. The application has been dismissed only on the ground that the agreement which is to be executed in between the

sub- broker and client is not produced before the Court. In my opinion, at the time of deciding application filed under Order 7 Rule 11, C.P.C., when

specific ground has been taken that the matter is to be decided as per rules and by-laws of the Bombay Stock Exchange which is accepted even in the

plaint in para 2 thereof, then, the matter was to be decided in consonance with provisions of by-law 248 of the Bombay Stock Exchange Bye-laws.

I have also perused the plaint. In para 2 of the plaint, it is specifically stated that all transactions are governed under the rules and by-laws of the

Bombay Stock Exchange. When this fact is admitted by the plaintiff himself, then, it was the duty of the trial Court to take into consideration the by-

laws of the Bombay Stock Exchange. More specifically, by-law 248 of the By-laws of the Stock Exchange, Mumbai. Obviously, upon perusal of the

impugned order, it is revealed that at the time of deciding the application, by-laws of the Bombay Stock Exchange were not taken into consideration,

therefore, I deem it just and proper to set aside the impugned order and remit the matter to the trial Court for deciding the application filed under Order

7 Rule 11, C.P.C. afresh.

This revision petition is accordingly allowed. The impugned order is set aside and matter is remitted back to the trial Court. Learned trial Court shall

decide the application filed by the petitioner under Order 7 Rule 11, C.P.C. afresh while taking into consideration by-law 248 of the Stock Exchange,

Mumbai whereby complete procedure is prescribed. Further, the trial Court shall consider the fact that no agreement has been filed either by the

plaintiff or defendant in the proceedings.

Learned trial Court is directed to decide the application filed under Order 7 Rule 11, C.P.C. within a period of two months from the date of receiving

certified copy of this order.â€

14. This Court, after hearing learned counsel for the parties as well as carefully examining the record of the case alongwith the precedent laws cited

at the Bar, finds that the main contention of the appellant was that he had certain amount of money to be recovered from the non-petitioner, who was

a registered Sub-Broker under the Bombay Stock Exchange and pursuing the business of sale and purchase of shares undertaken on delivery basis as

well as forwarding of transactions on deposit of margin money. Thus, this Court finds that the facts arising out of the pleadings is that all the

transactions were being carried out subject to the Rules and Bye-laws framed by the Bombay Stock Exchange. The sale and purchase of the shares

on behalf of the appellant was done by the respondents consequentially the suit was preferred by the appellant for recovery of the money.

15. It is an undisputed position that the respondent is a registered Sub-Broker under the Securities and Exchange Board of India Act, 1992, and

moreover, this Court has also seen the contract note between the parties, which subjected and restricted the parties to the jurisdiction of Courts in

Mumbai territory only and the same was not objected to by the appellant.

16. This Court has also taken note of the fact that under the Rules and Bye-laws framed by the Bombay Stock Exchange, for any dispute between the

broker, sub broker and the clients, specific provision of arbitration is provided and the dispute is required to be sent for arbitration before the arbitration

committee constituted by the Bombay Stock Exchange.

17. As far as the objection being raised, it is clear that the objection was raised at the initial stage itself, and in any way, before framing of the issues.

Thus, the objection has been raised well within time. Since the Rules and Bye-laws of the Bombay Stock Exchange shall be required to be considered

and the Bye-laws of the Bombay Stock Exchange clearly speak of Mumbai jurisdiction only, therefore, the impugned order is justified.

18. The judgments cited by learned counsel for the appellant are not applicable to the facts of the present case.

19. For the aforesaid reasons, no interference in the impugned order passed by the learned court below is called for, and hence, the present appeals

are dismissed.