

(1987) 10 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: S.A.O. No. 10 of 1987

M/s India Woollen Textile Mills
(P) Ltd.

APPELLANT

Vs

Pepsu Road Transport
Corporation, Patiala

RESPONDENT

Date of Decision: Oct. 12, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 99

Hon'ble Judges: G.C. Mital, J

Bench: Single Bench

Advocate: P.S. Rana, for the Appellant; J.R. Mittal, for the Respondent

Final Decision: Allowed

Judgement

G.C. Mital, J.

M/s India Woollen Textile Mills (P) Ltd., (thereinafter called the Mills) filed a suit against the Pepsu Road Transport Corporation, Patiala (hereinafter called the PRTC) for the recovery of Rs. 9202.20 in which Rs. 7243.20 were towards the balance price of the Woollen Cloth Blue Serge supplied and the remaining amount was towards the interest up to the date of filing of the suit which was instituted in May, 1982 at Amritsar. The Amount of Rs. 7243.20 was deducted by the PRTC on the by plea that the supply was made later by about eleven days. This amounted to a cut of 5 per cent from the agreed sale price. The defendant contested the suit and amongst others took the plea that as per the agreement Patiala Court had the jurisdiction. The issue of territorial jurisdiction was tried as a preliminary issue and the trial Court by order dated 16.5.1985 came to the conclusion that Amritsar Court had jurisdiction as part of cause of action arose at Amritsar. Thereafter the case was decided on merits and the suit was decreed by the trial Court on 24.10.1985. Against the aforesaid judgment and decree the defendant went up in appeal and the lower Appellate Court by order dated 1.12.1986 allowed the appeal and directed the

return of the plaint to the plaintiff for presentation of the same before the Senior Sub Judge, Patiala after recording a finding that the Patiala Court alone had the territorial jurisdiction in view of the agreement of the parties and prejudice had been caused to the defendant as it had led no evidence. It was also observed that if the case had been tried at Patiala the defendant would have been able to defend the case properly by producing evidence which it could not produce at Amritsar. This is plaintiff's appeal against the aforesaid order.

2. Shri P.S. Rana, Advocate appearing for the plaintiff has ably argued that in view M/s Patnaik Industries Private Ltd. v. Kalinga Iron Works and another AIR 1984 Ori 192 (2), M/s Ajanta Enterprises v. M/s Haechst Pharmaceutical Ltd and others AIR 1937 Ori 34, The [The Black Sea Steamship U.L. Lastochkina Odessa, Union of Soviet Socialist Republic and Another Vs. The Union of India](#), Arun Kumar Pritamlal and another v. Ramanlal Shaqubhai AIR 1975 Guj 72, even if there is an agreement between the parties, still it is for the Court to see whether the facts and circumstances of the case justify directing the plaintiff to go to another Court and this was not kept in view by the lower Appellate Court which has resulted in manifest injustice to the plaintiff.

3. After going through the aforesaid four judgments. I am of the view that the stand taken by the learned counsel has force. In M/s Ajanta Enterprises's case (supra) the Court had ordered the return of the plaint after five years of trial. In spite of the agreement conferring jurisdiction on a specific Court, where the suit was not filed, it was held that it was not just and proper on the facts and circumstances of the case to return the plaint for presentation of the same to the Court agreed to between the parties. Moreover, in that case, the suit had not gone for trial whereas in the present case the entire trial had come to an end and the trial Court had decreed the suit.

4. The second argument raised by Shri Rana is that in view of section 99 of the CPC unless manifest injustice is shown by the defendant, the judgment and decree of the trial Court cannot be lightly interfered with merely for want of territorial jurisdiction. In highlighting the argument, it is pointed out that as many as six opportunities were given to the defendant to lead evidence and on the last but one opportunity, the trial Court had imposed costs while granting adjournment to lead evidence and when on the adjourned hearing neither the costs were paid nor evidence was led, the Court applied section 35-A of the CPC and closed the evidence. These facts were not controverted by the counsel for the defendant. It is urged by Shri Rana that the lower Appellate Court fell in error in coming to the conclusion that prejudice was caused to the defendant for not trying the suit at Patiala.

5. I find merit in the second contention of the learned counsel for the plaintiff as well. I have gone through the orders granting opportunities to the defendant on six occasions and in spite of such a large number of opportunities, the defendant took no steps to lead evidence. Shri Mittal argued that records had to be taken from Patiala to Amritsar and it was not possible to carry it there and if the suit had been

tried at Patiala whole of the records would have been produced including the witnesses and, therefore, it should be held that prejudice had been caused. The argument is only stated to be rejected. No party can claim that the Court should hold proceedings at a place where the records are kept specially when no application was moved before the trial Court for issue of commission or for interrogatories giving opportunity to the defendant to have the same recorded at Patiala. Accordingly, I hold that in the peculiar facts of this case no prejudice or injustice has been shown.

6. It is also pointed out that the plaintiff executed the trial Court decree and recovered the decretal amount. On such state of affairs, the lower Appellate Court should not have short circuited the decision of the suit and should have decided the appeal on merits.

7. For the reasons recorded above, this appeal is allowed and after setting aside the order of the lower Appellate Court, the matter is remitted to it (lower Appellate Court) for decision of the appeal on merits. The parties, through their counsel, are directed to appear before the lower Appellate Court on 16.11.1987. The costs of this appeal shall be the costs in the cause, i.e., if the appeal is dismissed by the Court, the costs of this Court shall be borne by the defendant.