

(1959) 08 KL CK 0047

High Court Of Kerala

Case No: C.R.P. No. 551 of 1959

Philip and Others

APPELLANT

Vs

M/s. The Bata Shoe Co. (Pvt.) Ltd.
and Another

RESPONDENT

Date of Decision: Aug. 7, 1959

Citation: (1959) KLJ 999

Hon'ble Judges: C.A. Vaidialingam, J

Bench: Single Bench

Advocate: T.N. Subramania Iyer and S. Subramania Iyer, for the Appellant; K.P. Abraham, George Kurien, Thomas Vellappally, E.M. Jacob and M. Pathrose Mathai Respondent 1, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vaidialingam, J.

Though I would be most reluctant ordinarily to interfere with a discretionary order passed by a subordinate court, in this case I am clearly satisfied that the learned Judge has not exercised that discretion properly, after considering the several matters arising for decision. The grounds on which the learned Subordinate Judge has consolidated all these eight suits as against the defendants are that "on the pleadings it is clear that all these suits are for money due on cheques issued for price of rubber sold to the first defendant. The first defendant contends in all these cases that the alleged delivery of rubber is not true and that the cheques are not genuine and the company is not liable for the amount claimed. The issues raised on these contentions are common issues. That the plaintiffs are not the same in all the cases is not a valid objection". These are the reasons given by the learned Judge for consolidating the eight suits (including the one before me, namely, O. S. 203 of 1958) filed by the several plaintiffs as against the defendants for recovery of amounts due to them, which according to the plaintiffs represent the value of goods supplied by the several plaintiffs on various dates. The question as to whether the

plaintiffs delivered the goods on the particular dates mentioned in their complaints to the first defendant and whether the second defendant was a purchasing agent of the first defendant during the relevant periods mentioned in each of the different complaints, cannot certainly be considered to be a common question of law or fact arising for decision in all these suits. Each plaintiff will have to establish the specific case set up by him in his complaint and a decision, one way or the other, will ultimately depend upon the materials placed in such suit before the court for either decreeing the suit or dismissing the suit. The point that has been raised before me by Mr. K. P. Abraham, Learned Counsel for the first defendant-respondent, in O. S. 203 of 1958 is that the substantial defence in all these suits raised by the first defendant, is that the goods have not been sold to the first defendant and that during the period when the goods are stated to have been sold to the first defendant, the second defendant was not their agent for purchase at Kanjirappally and he had no authorisation to issue the cheques in favour of the plaintiffs. No doubt, this may be one of the questions which has to be gone into in these proceedings. In my opinion, the fact that the defendant has set up a defence like this in all suits, is no ground for asking the plaintiff in every other suit to follow the other plaintiffs and the defendants, whenever the other suits are posted for trial. The grievance of the plaintiff, in O. S. 203 of 1958, who is the petitioner before me, is really well-founded that he should not be asked to attend the court as often as necessary when the other suits are tried, which will be the result, if this plaintiff is also to be clubbed with the other plaintiffs in the various other suits.

2. Mr. K. P. Abraham, Learned Counsel, invited my attention to certain passages in the Annual Practice, 1957 Edition, and also to an English decision in *Bailey v Curson of Kedleston (Marchioness)* (1932, (2) KB 392) and also several Indian decisions to the effect that a court has got ample jurisdiction to consolidate suits. With the proposition as stated, there can be no quarrel at all. That a court has got ample jurisdiction in proper circumstances to consolidate suits when a common question has to be decided cannot be challenged. But the question is whether these principles apply to the particular facts of the case before me. As stated earlier, each plaintiff will have to establish the case set up by him and the first defendant has also to meet the individual case of each plaintiff. Success or failure depends upon the evidence that a party places in each case before the court. The inconvenience of the first defendant to oppose all these litigations and also to let in evidence regarding the purchase-agency of the second defendant or otherwise, in my opinion, is only a minor matter, if the plaintiff's interest in each suit is considered. No doubt, the first defendant, who is the first defendant in all these litigations, has to appear in court as often as the several suits are posted but that cannot certainly be taken into account in asking the plaintiffs in all these several suits also to follow the first defendant along with the plaintiffs in the other suits whenever those suits are being tried.

3. There is no dispute that the amounts claimed, quantity of goods stated to have been supplied, the dates of such supply and the cause of action for this suit, O. S. 203 of 1958, are totally different from the various other complaints, in the other suits. Evidence will have to be recorded on all these points and such evidence will have no bearing on the evidence adduced by the other plaintiffs in their suits. In my opinion, there is absolutely no prejudice or inconvenience to anybody by the separation of O. S. 203 of 1958, from the other suits. If the plaintiffs in the other suits have agreed to have a consolidation, it is open to those plaintiffs to have a consolidated trial of their litigation. But so far as O. S. 203 of 1958 is concerned, there will be separate and independent trial by the lower court. The order of consolidation, so far as 203 of 1958 is concerned, is set aside. The petitioners will get their costs from the respondents in this Court.