

(2009) 5 ALD 240 : (2009) 7 ALT 726

Andhra Pradesh High Court

Case No: Civil Miscellaneous Appeal No. 2103 of 1999

Andhra Pradesh Forest
Development
Corporation Limited,
Murali Krishna Nilayam,
The Divisional
Manager, Andhra
Pradesh Forest
Development
Corporation Ltd. and
The Managing Director,
Andhra Pradesh Forest
Development
Corporation Ltd.

APPELLANT

Vs

Gaddilla Chinnappa
Reddy

RESPONDENT

Date of Decision: June 30, 2009

Acts Referred:

Arbitration and Conciliation Act, 1996 & Section 2#Civil Procedure Code, 1908 (CPC) &
Section 16, 17, 18, 19, 20

Citation: (2009) 5 ALD 240 : (2009) 7 ALT 726

Hon'ble Judges: B. Seshasayana Reddy, J; B. Prakash Rao, J

Bench: Division Bench

Advocate: P. Sreeramulu Naidu, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision: Allowed

Judgement

B. Seshasayana Reddy, J.

This Civil Miscellaneous Appeal is directed against the judgment and decree dated 10.08.1998 passed in O.S.

No. 955 of 1991 on the file of IV Senior Civil Judge, City Civil Courts, Hyderabad, whereby and whereunder the learned Senior Civil Judge

decreed the suit and appointed an arbitrator to decide the disputes and differences in respect of agreement dated 14.02.1990.

2. Facts in a nutshell necessary for appreciating the question involved in this appeal may be stated: Goddila Chinnappa Reddy-plaintiff is an

agriculturist carrying on agriculture in plantation of props of Eucalyptus at Vanamaladinne village, Punganur Mandal, Chittoor District. He sought

the services of the A.P. Forest Development Corporation for marketing Eucalyptus props. An agreement dated 14.02.1990 came to be executed

between the parties. Some disputes arose regarding payment of amount for the props supplied by the plaintiff. Since the agreement dated

14.02.1990 contained an arbitration clause, the plaintiff requested the defendants to refer the claims to the designated officer for adjudicating the

disputes and differences. The defendants neither replied nor referred the matter to the designated officer i.e. the Vice Chairman and Managing

Director, A.P. Forest Development Corporation, Hyderabad - 3rd defendant. Hence, the plaintiff filed the suit before IV Senior Civil Judge, City

Civil Courts, Hyderabad, seeking the following reliefs:

a) The defendant be directed to file into court the original agreement dated 14-2-90 between the plaintiff and defendant.

b) Arbitrator be appointed for the purpose of resolving the dispute and difference between the plaintiff and the defendant relating to the claim of the plaintiff.

c) Appropriate directions be given to the Arbitrator to decide the dispute and differences, between the plaintiff and the defendant relating to the

claim of the plaintiff including awarding of interest @ 24% p.a., and such amounts found to be payable by the defendant from the date of supply in

accordance with law.

d) Arbitrator be directed to make the award file the same into court and thereafter appropriate directions be given in accordance with law for

making said award rule of the court.

e) Cost of the entire proceedings be awarded to the plaintiff and

f) Any other relief to which the plaintiff is entitled be granted and pass such other or further orders as this Hon"ble Court deems fit and proper in

the interest of justice.

3. The 3rd defendant filed written statement and defendants 1 and 2 filed memo adopting the written statement of the 3rd respondent. Execution of

the agreement dated 14.02.1990 and supply of Eucalyptus props by the plaintiff under the said agreement are not disputed. The claim of the

plaintiff as such is disputed. The defendants also raised objection with regard to the territorial jurisdiction of the Courts situated in Hyderabad.

4. The trial Court framed the following points for consideration:

1) Whether there are any disputes and differences between the parties, if so, whether an Arbitrator should be appointed to decide the claim of the

plaintiff under the terms of the agreement dt.14-2-90?

2) Whether this Hon"ble Court has jurisdiction to entertain the suit?

3) To what relief?

5. On behalf of the plaintiff, he got marked 6 documents as Exs.A1 to A6. On behalf of the defendants, they did not choose to adduce any

evidence, either ocular or documentary.

6. Learned Senior Civil Judge, on appreciation of the evidence brought on record and on hearing the counsel appearing for the parties, came to the

conclusion that the disputes and differences arose between the parties are required to be adjudicated by an arbitrator as per the terms of the

agreement and that the Courts in Hyderabad have jurisdiction since the 3rd defendant Corporation has principal office at Hyderabad. With the

above conclusions, the learned Senior Civil Judge proceeded to decree the suit and appoint Sri M. Markandeya, Retd. District and Sessions

Judge, as arbitrator for adjudication of the disputes and differences that arose between the parties, by judgment dated 10.08.1998. The said

judgment is under challenge in this CM.A.

7. Learned Counsel appearing for the appellants/defendants submits that the Court at Hyderabad have no jurisdiction to entertain the suit since no

cause of action had arisen within the territorial jurisdiction of the Courts at Hyderabad. A further submission has been made that the place of the

principal office of the defendants Corporation does not confer jurisdiction on Courts situated at Hyderabad since its subordinate offices are

situated elsewhere within whose jurisdiction cause of action arose and in which case, the suit filed by the respondent/plaintiff in the court located at

Hyderabad is liable to be dismissed for want of territorial jurisdiction. In support of his submissions, reliance has been placed on the following

decisions of the Supreme Court:

1) M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company,

2) New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others,

3) Laxman Prasad Vs. Prodigy Electronics Ltd. and Another,

8(a). In M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, , while dealing with Explanation to Section 20 CPC, the

Supreme Court has observed that where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard

to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation

having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is

to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the

corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the

corporation's place of business, not an additional one.

(b) The facts in the cited case are that appellant-Patel Roadways Limited carries on business of a carrier and transports goods on hire. It has its

principal office at Bombay and branch offices at various other places. The respondent entrusted a consignment of goods at its subordinate office at

Bodinayakanur in Tamil Nadu to be delivered at Delhi. The appellant delivered the goods at Delhi, but in damaged condition. The respondent

instituted suits for damages in the Courts at Madras within whose territorial jurisdiction the subordinate office of the appellant where the goods

were entrusted for transport. The appellant inter alia took the plea in its defence that in the contract entered into between them, the parties had

agreed that jurisdiction to decide any dispute between them would be only with the Courts at Bombay and consequently the Courts in Madras

where the suits had been instituted had no jurisdiction. The trial Court as well as the High Court rejected the said contention. The appellant carried

the matter to the Supreme Court. The question which arises for consideration is as to whether in view of the relevant clause in the contract between

the parties, the Courts at Bombay alone had jurisdiction and the jurisdiction of the Courts at Madras where the suits were instituted was barred.

Dismissing the appeals, the Supreme Court observed in para.9 of the judgment as follows:

(9) Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia ""carries on

business"". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It

has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently clause (c) is not

attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has

its principal office in Bombay it shall be deemed to carry on business at Bombay and consequently the courts at Bombay will also have jurisdiction.

On a plain reading, of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two

parts, one before the word ""or"" occurring between the words ""office in India"" and the word ""in respect of"" and the other thereafter. The

Explanation applies to a defendant which is a corporation, which term, as seen above, would include even a company such as the appellant in the

instant case. The First part of the Explanation applies only to such a corporation which has its sole or principal office at a particular place. In that

event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the

defendant may not be actually carrying on business at that place, it will ""be deemed to carry on business"" at that place because of the fiction

created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a

principal office at one place and has also a subordinate office at another place. The words ""at such place"" occurring at the end of the Explanation

and the word ""or"" referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the Explanation it is not the

court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which

alone shall have jurisdiction ""in respect of any cause of action arising at any place where it has also a subordinate office.

9. In *New Moga Transport Company, through its Proprietor Krishanlal Jhanwar Vs. United India Insurance Co. Ltd. and Others*, , the Supreme

Court held that on a plain reading of the Explanation to Section 20 CPC, it is clear that Explanation consists of two parts, (i) before the word ""or

appearing between the words ""office in India"" and the word ""in respect of"" and the other thereafter. The Explanation applies to a defendant, which

is a Corporation which term would include even a company. The first part of the Explanation applies only to such Corporation, which has its sole

or principal office at a particular place. In that event, the Court within whose jurisdiction the sole or principal office of the company is situate will

also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on

business at that place because of the fiction created by the explanation. The latter part of the Explanation takes care of a case where the defendant

does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression ""at such place

appearing in the Explanation and the word ""or"" which is disjunctive clearly suggest that if the case falls within the latter part of the explanation it is

not the Court within whose jurisdiction the principal office of the defendant is situate but the Court within whose jurisdiction it has a subordinate

office which alone have the jurisdiction ""in respect of any cause of action arising at any place where it has also a subordinate office"". In a way the

proposition of law laid down in M/s. Patel Roadways Limited, Bombay Vs. M/s. Prasad Trading Company, has been referred with approval.

10. In Laxman Prasad Vs. Prodigy Electronics Ltd. and Another, , the Supreme Court held that Section 20[c] CPC leaves no room for doubt that

a suit would lie in a Court within the local limits of whose jurisdiction the cause of action has arisen, wholly or partly.

11. Learned Counsel appearing for the respondent/plaintiff submits that the 3rd petitioner - 3rd defendant has its principal office at Hyderabad and

therefore, the suit filed by the respondent/plaintiff at Hyderabad is saved under Explanation to Section 20 CPC and in which case the trial Court is

justified in holding that the Courts at Hyderabad have territorial jurisdiction to entertain the suit.

12. The only issue that calls for adjudications is whether the Court in Hyderabad have territorial jurisdiction to entertain the suit. It is not in dispute

that the parties entered into an agreement on 14.02.1990 and the agreement contained an arbitration clause for resolution of the disputes and

differences between them, which made the plaintiff to file a suit seeking the relief of appointment of designated arbitrator. It is also not in dispute

that the 3rd defendant is a Corporation and its principal place of office is at Hyderabad and regional office is at Nellore and Divisional Officer is at

Chittoor. Sections 16 - 20 CPC deal with territorial jurisdiction of a court (place of suing). Whereas, Sections 16 - 18 CPC relate to immovable

property, suits for compensation for wrongs to persons or movables have been dealt with u/s 19. Section 20 CPC is a residuary provision and

covers all cases not falling under Sections 16 - 19. The relevant part of Section 20 reads thus:

20. 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 jurisdiction--

(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.

Explanation: A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at

any place where it has also a subordinate office, at such place.

13. The Supreme Court while dealing with the issue of principal office and subordinate office in the M/s. Patel Roadways Limited, Bombay Vs.

M/s. Prasad Trading Company, , has observed as follows:

(13) As far as we can see the interpretation which we have placed on this Section does not create any practical or undue difficulties or

disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under Clauses (a) to (c), the plaintiff has a choice of forum

and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action

arises. If a corporation desires to be protected from being dragged into litigation at some place merely because a cause of action arises there it can

save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is

that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued

there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at

the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to

the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at

such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus for the corporation's place of business, not an

additional one.

14. Learned Counsel appearing for the respondent submitted that as per Clause (2) of the Agreement, any case or any dispute as to interpretation

or execution of the Agreement, the same shall be referred to the Arbitrator. In a way he submitted that the place of residence of the Vice-

Chairman, Managing Director is a factor to be taken into consideration to decide the territorial jurisdiction of the Court in which proceedings for

appointment of Arbitrator are to be initiated. We find it difficult to accept the contention of the learned Counsel for the appellant since it is well

settled that the place of residence of the Arbitrator is not relevant factor to decide the territorial jurisdiction of the Court in which the proceedings

are to be initiated. In para-10 of the plaint, the respondent-plaintiff stated that the Court at Hyderabad has got territorial jurisdiction to entertain the suit, as the Head Office of the defendant-Corporation is situated at Hyderabad.

15. Section 2(e) of the Arbitration and Conciliation Act, 1996, defines the "Court", which reads as hereunder.

"Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil

jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a

suit, but does not include any civil Court of a grade inferior to such principal civil Court, or any Court of Small Causes;

16. Section 20(c) of the Code of Civil Procedure, 1908 {CPC}, deals with place of suing. Section 20(c) of CPC fell for consideration in first cited

case where it has been held that if a Corporation has a subordinate Office at a place where the cause of action arises, proceedings are to be

initiated at the place wherein the subordinate office is situated. Place wherein Head Office is situated within the jurisdiction of which no cause of

action arises, it does not confer territorial jurisdiction. Therefore, the Court at Hyderabad wherein the third respondent-Head Office is situated

cannot be said to have territorial jurisdiction to entertain the application. The trial Court misread the provisions of Section 20 CPC and proceeded

to entertain the application to appoint an Arbitrator. Once the Court at Hyderabad has no jurisdiction, any order passed by that Court is a nullity.

17. Accordingly, this Civil Miscellaneous Appeal is allowed setting aside the judgment and decree dated 10.08.1998 passed in O.S. No. 955 of

1991 on the file of IV Senior Civil Judge, City Civil Courts, Hyderabad. Consequently, the plaint shall stand returned to the plaintiff for

presentation before the proper Court within two {2} months from today.