

**(2011) 11 CAL CK 0048**

**Calcutta High Court**

**Case No:** G.A. No. 2119 of 2006 and C.S. No. 252 of 2002

Sarita Batura

APPELLANT

Vs

Navin Shah and Another

RESPONDENT

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**Date of Decision:** Nov. 2, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 15

**Hon'ble Judges:** I.P. Mukerji, J

**Bench:** Single Bench

**Advocate:** Pratik Bhattacharya and Mr. S. Bhattacharya, for the Appellant; Surajit Nath Mitra, Mr. Arindam Mukherjee and Mr. Rajiv Lall, for the Respondent

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### **Judgement**

I.P. Mukerji, J.

G.A. No. 2119 of 2006 With C.S. No. 252 of 2002

1. First I will deal with the Chapter XIII A application taken out by the plaintiff, being G.A. No. 2119 of 2006 connected with C.S. No. 252 of 2002.

2. This suit has quite a long history. It is of the year 2002. It was originally instituted as a summary suit under Order XXXVII of the Code of Civil Procedure. The first defendant applied to defend the suit. The suit was decreed by Ashim Kumar Banerjee J. on 3rd May, 2006 by passing a summary judgment for the entire claim. It also provided for interim interest and interest on judgment @ 6% per annum.

3. The said defendant appealed. They took only one point before the Appellate Court. The suit under Order XXXVII was incompetent and hence the decree passed thereunder was erroneous. The suit should have been treated only as an ordinary suit. On this technical point the appeal was allowed on 28th June, 2006 and the decree set-aside. No other point was taken.

4. I do not know what purpose was served, by taking this point. It was purely theoretical and nothing more. The scope of obtaining a decree under Order XXXVII is much narrower. It is inter alia for a suit founded on a written contract. On the Original Side of this Court a Chapter XIII A application can be made in a suit to obtain summary judgment. The scope of Chapter XIII A, in my reading, is much wider than Order XXXVII, though, its broad concept is similar to a suit for obtaining summary judgment. In a Chapter XIII A application a decree can be obtained even on an unwritten contract. Therefore, that which can be obtained under Order XXXVII can also be obtained under Chapter XIII A though the converse is not true. There was no doubt that a Chapter XIII A lay in this case. Yet for whatever reason which could be only technical, the decree was set-aside.

5. This Chapter XIII A was taken out by the plaintiff in 2006 more particularly on or about 14th July, 2006.

6. The plaintiff is a resident of Singapore. She dealt in palm fatty acid distillates and areca Nuts. Between May and November 2000 she sold and delivered some quantities of these goods to the first defendant. They were brought to Kolkata by sea. The mode of payment was by bills of exchange. The plaintiff's bank which presented them on behalf of the plaintiff was United Overseas Bank. The defendant's bank was Bank of Maharashtra. It is said by the plaintiff that these bills of exchange were accepted by the said defendant. This is nowhere controverted. The plaintiff received payment of U.S. \$ 10, 000 on one bill of exchange, on 15th March, 2001. The rest were dishonoured.

7. The sum claimed as decree in the Master's Summons is U.S. \$ 1,53,798.44.

8. Now let me examine what is the defence of this defendant.

9. In paragraph 4(j) of the affidavit-in-opposition it is stated that no kind of certification for the goods was furnished by the plaintiff. The goods were supplied by the defendant to his customers. They were found to be defective. This was informed by the defendant to the plaintiff "and/or her husband" so that they could give credit for the defective goods.

10. Secondly, it is pointed out that the contract between the parties dated 10th June, 2000 contained a jurisdiction clause. It was to be governed by the laws of Singapore and further that the parties agreed to submit to the jurisdiction of Singapore Court. Hence, the proceedings should not have been filed here.

11. Thirdly, the plaint was verified on 24th May, 2002. The CPC was amended by adding rule 15(4) to Order VI Rule 15 which was with effect from 1st July, 2002. The plaint was amended after that day and was not verified in accordance with the amended rule.

12. All three points are bad points.

13. Regarding the defence about quality, there is no document on record. No letter, no email, no note, no fax nor anything of the kind. The alleged conversation about bad quality is said to have been made by the said defendant with "the plaintiff and/or her husband". Even if a telephone call had actually been made, the caller would have known whom he was talking to.

14. Furthermore, no mention is made of any purchaser. There is nothing on record to show that any purchase was made. There is nothing on record to show that any purchaser had pointed out any defect regarding the goods in question. No date, no time or approximate dates or approximate time when such complaints were allegedly received are on record. This is no defence at all.

15. So far as the second objection is concerned which is with regard to the jurisdiction of the Singapore Court, it was specifically raised before Ashim Kumar Banerjee J. as was recorded by the learned Judge in his Judgment dated 3rd May, 2006. The learned Judge was pleased to specifically hold that he was unable to come to the conclusion on the basis of the jurisdiction clause that the Court at Singapore had exclusive jurisdiction. This is what the learned Judge said:

10. Jurisdiction: This contract shall be construed and governed by the Laws of Singapore and the parties hereto agreed to submit to the jurisdiction of the courts of Singapore.

Hence, neither the averment made in the said application on such score was factually correct nor the same had any basis whatsoever. The jurisdiction clause quoted (supra) in my view could not be construed to mean that there had been an ouster of jurisdiction of any competent court. Hence, such ground is also not tenable.

16. In the appeal from that judgment before the Division Bench this point was not taken. Only the point regarding Order XXXVII and Chapter XIII A were taken. If the first defendant did not want to submit to the jurisdiction of this Court he ought to have first challenged the finding of the learned Judge that this Court had jurisdiction to try and determine the suit, before raising any other point.

17. Furthermore, the appeal before the Division Bench was on a question of procedure. Therefore, the procedural together with the substantive law of India was accepted by the defendant because Order XXXVII and Chapter XIII A are a mixture of substantive and procedural law.

18. Therefore, the defendant had plainly waived any objection that was available to him with regard to jurisdiction and applicability of Singapore laws.

19. The third objection regarding failure to affirm a verifying affidavit while amending the plaint also has no merit. I have found no provision in the CPC which compulsorily enjoins a party to reverify a pleading after amendment. It is usually done further to a reverification order by the Court. The provision regarding

amendment of pleadings does not contain any requirements for reverification. Therefore, if amendment has been done without reverification, in my opinion, it is not fatal.

20. For all those reasons this Chapter XIII A is allowed.

21. I necessarily hold that the first defendant has no defence whatsoever against the claim of the plaintiff. I pass a decree against the first defendant in terms of prayer (a) of the Master's Summons. Interest @ 8% per annum simple interest is to be paid by the said defendant on the said sum from the date of the filing of this suit till realization. The suit is decreed accordingly.

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22. The facts of this application are identical to the other application (G.A. 2119 of 2006). The decree claimed is U.S. \$ 57,243.89. The defence taken is also identical.

23. For the same reasons as given by me in the other application I hold that the first defendant has been unable to disclose any defence to the claim in the suit. I allow this application for summary judgment by passing a decree in terms of prayer (a) of the Master's Summons. Interest @ 8% per annum simple interest is to be paid by the said defendant on the said sum from the date of filing of this suit till realization. The suit is decreed accordingly.

24. The decree in each of the suits should be converted into its Indian rupees equivalent as on this day.

25. Urgent certified photocopy of this judgment/decreed, if applied for, be supplied to the parties subject to compliance with all requisite formalities.