(1954) 08 CAL CK 0043

Calcutta High Court

Case No: Application in Original Suit No. 1999 of 1954

Muttra Electric Supply Company, Ltd		APPELLANT
	Vs	
Gopal Saran Kulasresthi		RESPONDENT

Date of Decision: Aug. 16, 1954

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 20

Citation: (1955) 1 CALLT 78 : (1954) 1 CALLT 242 : 59 CWN 419 : (1956) 2 ILR (Cal) 255

Hon'ble Judges: P.B. Mukharji, J

Bench: Single Bench

Advocate: T.P. Das, for the Appellant;I.P. Mukerji, R. Goho and G.N. Nandi, for the Respondent

Judgement

P.B. Mukharji, J.

This is an application for revocation of leave under Clause 12 of the Letters Patent. The Plaintiff has optained leave in this case on the ground that the Defendant resides outside the jurisdiction of this Court but that a part of the cause of action rose within and a part outside the Ordinary Original Jurisdiction if this Court. The application is made by the Defendant and resisted by the Plaintiff.

2. In such an application the plaint is the most material document on which the decision should rest, although such decision does not rest merely on a criticism of the pleading. The petition and the affidavits in support of and against the revocation of leave are relevant but must be read subject to the over-riding considerations and facts pleaded in the plaint. It is not unusual that in such petition and affidavits the Plaintiff and the Defendant are prone to overstate their respective cases for and against the leave, and such overstatement should be toned down by reference to the plaint.

3. I, therefore, consider it necessary to proceed straight to analyse the plaint in this suit. The plaint in this suit is by the Muttra Electric Supply Company, Ltd. The Defendant is its employee, the Eesident Engineer of the Plaintiff company at Muttra. The parts of the cause of action that are pleaded to have arisen within the jurisdiction of this Court are based on the following congeries of facts.

4. The Plaintiff company itself is described; in the cause title of the plaint, as having its "registered office and principal place of "business at No. 15, Shib Thakur Lane, Calcutta-7, within the "jurisdiction of this Court". The prayers sought in the plaint reflect the cause of action. Analysing the reliefs in the plaint, I find the Plaintiff company is asking for a declaration that the employment of the Defendant under the Plaintiff company has been duly and properly terminated by its letter dated June 26, 1954, an injunction restraining the Defendant from functioning and working as Resident Engineer or in any other capacity at Muttra or at any other place where the Plaintiff company carries on business, and an injunction restraining the Defendant from entering the bungalow at Muttra within the compound of the Plaintiff company or any other place of business and in any way handling or interfering with the business, plants, machinery, wirings and cables of the Plaintiff company. It appears from paras. 10 and 11 of the plaint, and it is distinctly pleaded there in express terms, that the Defendant is in actual possession of the bungalow at Muttra in his. capacity as Resident Engineer and that, after the termination of the Defendant''s services, his continued possession has become wrongful. The Plaintiff, in this plaint, is, in effect, indirectly asking for the recovery of possession of the bungalow, although, knowing that a claim in that form would be a skit for land or immovable property outside the jurisdiction of this Court and, therefore, hit by Clause 12 of the Letters Patent, it has done it under the cover of a prayer for injunction. In particular, the form of injunction, in which the relief in the plaint is couched, is significant. The form is, as I have already set out, one asking for an injunction restraining the Defendant from entering the bungalow. Ho question of entering the bungalow arises, having regard to the express pleading in paras. 10 and 11 where it is pleaded as a fact that the Defendant is already in the bungalow and is in possession of it. It is, therefore, contended on behalf of the applicant that by the very nature of the plaint, so far as this relief is concerned, it is better tried at Muttra and, by the formulation of the prayer in the shape of an injunction, the Plaintiff company should not be allowed to cover up the fact that the particular relief in respect thereof in this suit is essentially one for the possession of the bungalow.

5. It is essentially a dispute between the master and the servant. As will appear from the plaint, the Defendant acted as Resident Engineer of the Plaintiff company at Muttra. The case of the Plaintiff company is that it lawfully terminated the employment of the Defendant by its letter of June 26, 1954. The allegation of the Plaintiff company is that the Defendant has been guilty of various acts of insubordination and of acts prejudicial to the working of the Plaintiff company''s undertaking, which include fomenting labour trouble and agitation and strike at

Muttra. It is also the allegation of the Plaintiff company that the Defendant refused to hand over charge to its Chief Officer of the office and the vacant possession of the bungalow which the Defendant was occupying in his capacity as Resident Engineer at Muttra. This refusal is alleged to have taken place at Muttra on June 30, 1954.

6. It is expressly pleaded in para. 13 of the plaint that this refusal cave rise to the Plaintiff''s cause of action in this suit. The grounds on which the Plaintiff asked for and obtained from this Court leave under Clause 12 of the Letters Patent are set out in this para. 13 of the plaint. The grounds are that the Defendant is residing outside jurisdiction, that the Plaintiff company''s Head Office is in Calcutta, that the Plaintiff company''s undertaking is at Muttra, and that the employment of the Defendant is controlled from such Head Office of the Plaintiff company in Calcutta within the jurisdiction of this Court and that the contract of employment was effected by correspondence from within the jurisdiction of this Court, and that the notice of termination of the Defendant''s employment was given by the Plaintiff company from within the said jurisdiction.

7. It is now argued on behalf of the applicant Defendant that this leave should be revoked. Mr. T.P. Das, Learned Counsel on behalf of the applicant, argues that this Court should, on the facts as pleaded in the plaint, revoke in its discretion the leave which it has already granted on the basis that a part of the cause of action, as pleaded, arose within the jurisdiction of this Court.

8. His first argument is based on certain facts appearing on the plaint itself. He says that the Defendant is not resident within jurisdiction. The whole fact of employment and the work in connection with which this dispute arises took place at Muttra outside jurisdiction. Not only the supply of electricity, the service by the Defendant and his major activities, if not the whole of his activities as resident engineer, are matters arising at Muttra, but also even the refusal to obey orders or-hand over the bungalow, which the Plaintiff company itself says had given rise to its cause of action, took place outside the jurisdiction of this Court. For the purpose of this argument, Mr. Das concedes that it may be taken that the control, direction or orders may be issued or exercised from the head office in Calcutta within the jurisdiction, but, he says, the actual grounds of complaint, as pleaded in the plaint and as setting out the cause of action, are all grounds and facts arising at Muttra outside the jurisdiction of this Court. In this connection Mr. Das particularly draws attention to the pleadings in paras. 7, 8 and 11 of the plaint, and argues that the alleged acts of insubordination, the alleged acts prejudicial to the Plaintiff company''s undertaking, the alleged fomenting of labour trouble and agitation, and the alleged refusal of handing over the bungalow are all outside the jurisdiction of this Court. It is, therefore, contended that the entire bundle of facts on which the plea of termination of the Defendant''s service is justified by the Plaintiff company happened at Muttra. The issue, in this case, is not the fact of the Defendant''s

appointment and employment by the Plaintiff company, which are admitted, but the termination of his services and dismissal on the grounds alleged in the plaint.

9. The second argument of Mr. Das on behalf of the applicant concerns the more practical aspect of the balance of convenience at the trial of the suit. It is the applicant''s case that the witness who would be necessary to prove the alleged acts of insubordination, the alleged acts prejudicial to the Plaintiff company''s undertaking, the alleged fomenting of labour trouble and agitation and the alleged refusal of handing over the bungalow will naturally be Muttra witnesses. It may be interesting to notice in this connection that, in the very next application for injunction by the Plaintiff, the Plaintiff company itself has used affidavits of persons, all affirmed at Muttra, which go to show that even many of the Plaintiff''s witnesses are going to be Muttra witnesses. All the witnesses whom the Defendant will call in order to defend himself against the charges for acts of insubordination, acts of prejudice, acts of incitement to labour and, in fact, against all the acts pleaded in paras. 7, 8 and 11 of the plaint will be of Muttra and not of Calcutta.

10. The applicant complains that it will be most harassing, vexatious and troublesome for him to come to 6alcutta with all his witnesses from Muttra to refute the charges made by the Plaintiff in this plaint. He says in his affidavit that he will be faced with the situation of having to ask for commission to examine almost all his witnesses who are residents of Muttra and not of Calcutta. Having regard to the various allegations in the plaint regarding the acts of insubordination and acts prejudicial to the Plaintiff company''s undertaking at Muttra, and acts of incitement of labour troubles, it is likely that the number of such witnesses will be large, in which event the examination of too many witnesses on commission will be not only costly but also a prolonged affair.

11. No reason, it appears, is set out in the plaint as to why this suit could not be or was not instituted at Muttra by the Plaintiff. For the Plaintiff company it may very well be said that its whole office establishment and local staff along with its Chief Engineer and its properties and business including local offices and equipments are all at Muttra and all that the Head Office in Calcutta does is really administrative work. It is, therefore, certainly easier for the Plaintiff to conduct this suit at Muttra than for the Defendant to come here to Calcutta and defend this suit.

12. All these considerations prove that the balance of convenience is in favour of Muttra being the proper place for litigating this dispute.

13. Realising this, the Plaintiff company has set out certain grounds in the affidavit of opposition of Kali Charan Bhagat, affirmed on August 4, 1954, in an attempt to show that the balance of convenience can also be taken to be in favour of this forum. These grounds are set out in para. 17 of his affidavit. Going through these grounds and scanning them, it appears to me that while documents in the shape of letters and accounts and statements, which are sent to the Head Office in Calcutta,

are certainly kept at the Head Office, the facts contained in such documents are all matters mostly to be proved to have happened at Muttra and by Muttra witnesses. This will be plain from such allegations, pleaded in the various sub-paragraphs thereof, as "Capital Works" in sub-para, (ii), or "Sundry Sales Return" as in sub-para, (iii), or details of allowances per month granted to consumers at Muttra as in sub-para, (iv), or monthly statements of imprest account as in sub-para, (v), or monthly statements of cash receipts from consumers at Muttra as in sub-para, (vi), or revenue receipts as in sub-para, (vii), or statement of issues of stores and stocks at Muttra as in sub-paras, (vii) and (ix), and abstracts of wages and dearness allowances for food as in sub-para, (xi). They all seem to me to be not so much matters of letters or documents which are kept in the custody of the Head Office but they all relate to transactions that are taking place at Muttra, and if the Plaintiff wants to prove any of those facts, then the facts contained in such letters and documents, accounts or statements, can only be proved by. witnesses who took part in those transactions, and such witnesses are all likely to be Muttra witnesses. I have, therefore, no doubt in my mind that, in the facts of this case, the balance of convenience is certainly not in favour of Calcutta but in favour of Muttra.

14. Before leaving the discussion of the grounds of convenience of the Plaintiff, as urged in the affidavit in opposition of Bhagat, there is one ground which I think requires a separate treatment. It is this. One ground, pleaded in the affidavit in opposition, is a feeling of fear in the mind of Kali Charan Bhagat, who incidentally is the Director-in-charge of the Plaintiff company. He is afraid to go to Muttra. His case, in the affidavit in opposition, is that he feels that, if he is compelled to go to Muttra, there might be bodily injury done to him by miscreants under the control of the Defendant. Now, not a word about this appears, however, in the plaint itself. If Muttra is not a place of safety, other places of safety near about Muttra could certainly be arranged by transfer of the suit from the Muttra Court. But it is unnecessary for me to go into this allegation of fear, because it is not only disputed and denied by the Defendant but also because this apprehension is not supported by any fact or incident which even remotely can be considered to be the cause of any threat to the deponent Kali Charan Bhagat. Nor am I satisfied that such a kind of threat cannot be secured against, even if it were true.

15. A good deal of law has been shown to me from the Bar. That was as was to be expected. Clause 12 of the Letters Patent of this High Court has fathered quite an unmanageable progeny of precedents. While it is not my desire, to be a progenitor of a hew theory of jurisdiction under Clause 12 of the Letters Patent in deciding this application, I am faced with the situation of having to decide at least one inescapable point of law that has been raised at the Bar. The point, in its extreme form, can be presented by saying that balance of convenience is not a consideration at all in an application for revocation of leave already granted by this Court under Clause 12 of the Letters Patent. It has been contended before me that the actual words of Clause 12 of the Letters Patent do not used the words "balance of

convenience" and that the language of this clause does not justify taking into consideration the doctrine of the balance of convenience in such an application. The argument really is, that once a litigant shows to this Court that a part of the cause of action has arisen within its jurisdiction, this Court has no option but to grant leave under Clause 12, Letters Patent. Once leave has been granted, this Court is left with no further jurisdiction to revoke the leave and the only remedy for the aggrieved Defendant is to appeal against the order granting leave. Three fundamental questions require an answer. The first is that Clause 12 of the Letters Patent does not justify consideration of balance of convenience. The second is that the grant of leave, when part of the cause of action is within jurisdiction, is not discretionary but the court is bound to grant the leave. The third is that no further jurisdiction is left in this Court to revoke the leave except by appeal.

16. I will first clear the ground by noticing the decisions referred to me. To begin with, there is a decision of the Supreme Court in Chittaranjan Mukherji v. Barhoo Mahto (1950) 87 C.L.J. 420, 423. But that decision is of little help in this case, because, although it contains a discussion of the judgments under appeal on the balance of convenience, Patanjali Sastri J., delivering the judgment in that case, expressly said at p. 423 of that report:

We consider it, however, unnecessary in this ease to enter upon a discussion of the balance of convenience.

17. The next decision cited at the Bar is Ridhi Karan Kabra v. A. Karamally and Sons ILR (1949) 2 Cal. 474, a decision of the Court of Appeal of Harries C.J. and Chakravartti 3. There Chakravartti J. delivering judgment, did consider the question of the balance of convenience as relevant on the question of leave prayed for under Clause 12 of the Letters Patent as also on the question of the revocation of such leave, and clearly pointed out that a slight tilting of the balance was not a decisive factor. Inconvenience caused to the parties for attending personally throughout the trial, expense or any other local or special conditions are, according to this authority, also matters relevant to the decision of the question of balance of convenience.

18. Then reliance was placed on the decision of Bimal Singh Kothari and Another Vs. Muir Mills Co. Ltd. and Others, of the Court of Appeal of Harries C.J. and Banerjee J. There it is laid down that the grant or revocation of the leave is a matter in the discretion of the Court to he exercised on well-established judicial principles. It is also decided in that case that, in considering the question whether leave should be revoked or not, the question of convenience is a material factor, though the convenience of the parties is not to be weighed in a delicate balance. That case is also an authority for the proposition that the nature of the suit and the question of comparative expenses are material considerations.

19. The decision of Rankin C.J. and C.C. Ghose, J. in Engineering Supplies, Ltd. v. Dhandhania and Company ILR (1930) Cal. 539, was also cited at the Bar. It is not

necessary for me to discuss that decision in detail, because it was quoted only on the ground of what constituted a cause of action. In that case, it has been held that if the making of the contract be a part of the cause of action, then the act of concurrence of either party, which is essential to the contract, is itself a part of that cause of action.

20. Lastly, the decision of Das J. in Madanlal Jalan v. Madanlal ILR (1945) Cal. 333, was relied upon by the applicant. It lays down the proposition that, in the exercise of its discretion, balance of convenience of the parties is a material consideration for the Court and, even if there, be no evidence of bad faith or abuse of the process of the Court, it should revoke leave where the balance of convenience is definitely in favour of the Defendant.

21. Although, from these authorities, it appears to be settled law that, in granting or revoking leave granted under Clause 12 of the Letters Patent, the Court can and should consider the balance of convenience, yet not one of these cases appears to give the reason how and why the Court attracts the doctrine of the balance of convenience in deciding an application for revocation of such leave. They appear to me to proceed on the assumption that balance of convenience is a necessary and a proper consideration, without stating the reason why. It is this aspect of the case which invests this application with an importance which cannot be minimized.

22. The basic character of the jurisdiction of this Court under Clause 12 of the Letters Patent requires a more thorough investigation than it has received so far. Under this clause, there is first a grant of power to this Court to receive, try and determine suits of every description. Then there is a broad classification of such suits into two divisions. The first classification is concerned with suits for land and immovable property and the second classification is with regard to other suits. Regarding the first class of suits relating to land and immovable property, the limitation of jurisdiction of this Court is that such land or immovable property must be situate within its jurisdiction. Regarding the second class of suits, other than those for land and immovable property, the first limitation is that the cause of action must arise wholly within its jurisdiction. Then this clause deals with those cases where part of the land or part of the cause of action is outside the jurisdiction of this Court. It is here that the leave of this Court has first to be obtained before, the suit can be instituted in this Court, with the one exception where the Defendant, at the time of the suit, dwells or carries on business or personally works for gain within the jurisdiction of the Court.

23. A close scrutiny of this clause, therefore, reveals that there are certain total and absolute jurisdictions of this Court. They are where the whole of the land or immovable property is situate within its jurisdiction, when the suit is for such land or immovable property. That is also the case where the whole of the cause of action arises within the jurisdiction of the Court in suits other than suits for land and immovable property. Also that is the case in such cases where the Defendant, at the

time of the institution of the suit, dwells or carries on business or personally works for gain within the jurisdiction of this Court, irrespective of the fact where the cause of action arises. These three are the categories of total and absolute jurisdiction of the Court under the grant of power in Clause 12 of the Letters Patent. No question of the litigant having to take the leave of the Court arises in these three cases. So long as the litigant satisfies the test laid down in these three cases, his right to institute the suit in this Court is absolute and unfettered. The court can neither assume nor renounce such jurisdiction.

24. But then there is another class of jurisdiction which this Court can avail under Clause 12 of the Letters Patent where the realty or the cause of action is not wholly, but only partly, within its jurisdiction. It is an inchoate jurisdiction which comes into action upon the Court granting the leave to institute the suit. It is the nascent jurisdiction which lies dormant in this Court and can only be put into life and operation by an act of the Court in granting leave to institute the suit. No act of the Court is necessary to assume jurisdiction in those three cases, which I have just described, where the jurisdiction is total and absolute. There, the Court in its inception is invested with jurisdiction. But here, the Court has to acquire it. Here, the jurisdiction does not depend only on the fact of the Court but also on the act of the Court.

25. The principle that is recognised in Clause 12 of the Letters Patent is to limit such assumption of jurisdiction where, in suits for land or immovable property, the subject matter, the land or the immovable property or, in other suits, the cause of action, is partially, but not wholly, within its jurisdiction. The reason behind this principle is not far to seek. When a part only of the whole cause of action arises within the jurisdiction of the Court, the result is that no one Court can claim to have jurisdiction over the whole cause of action. In such a case, the competition between Courts and the multiplicity of proceeding involved therein are not only resolved but also the incapacity of any one Court to deal with the entire cause of action is removed by this device of granting to this Court the power to give leave to the litigant to institute the suit and, thus, assume jurisdiction over the entire cause of action.

26. In performing this act of granting leave and assuming jurisdiction, the Court performs a judicial function according to its discretion. The discretion comes in because the Court has to consider whether it will grant its fiat or leave to the Plaintiff''s choice of this forum, although only part of his cause of action has arisen here. The Plaintiff ordinarily is dominus litis. But where part of his cause of action arises within the jurisdiction of this Court, he has no absolute right of the choice of forum, because his choice has to be backed up by the sanction and leave of this Court. That is why the Court has to exercise its discretion and, no doubt, such discretion has to be exercised on judicial principles and not arbitrarily. The Court, however, is always handicapped by the fact that this order of granting leave and

thus assuming jurisdiction is normally and for practical reasons ex parte and is based only on the materials as placed in the plaint and nothing else. But when the Defendant comes and appears and points out to the Court that while a part of the cause of action has arisen within the jurisdiction of this Court, yet the other parts of the cause of action are so significant that, they having arisen outside the jurisdiction of the Court, the place where such significant parts of the cause of action had arisen is the more proper forum for trial of the action, then the Court will re-consider its act of the grant of leave and assumption of jurisdiction. It does so on the principle that no act of Court ex parte should cause avoidable harm or prejudice to a litigant. That is the reason why the Court considers the balance of convenience in determining whether it should abide its ex parte act of grant of leave and assumption of jurisdiction when, on fuller materials, it finds that such assumption of jurisdiction will cause harm and prejudice and necessarily inconvenience to the Defendant. If it so finds, then it will renounce its act of jurisdiction and allow the parties to go to the most convenient forum for trial. Wherever a cause of'' action only partially arises within the jurisdiction of on(c) Court, there is implicit competition regarding the convenience between more than one Court.

27. Inherent in a situation where parts of one cause of action arise at different places is the unavoidable problem of choice between courts of these different places. Inevitable in such a choice is the question of convenience of one place over another. Ex hypothesis, the situation is such that no one place has the monopoly of the conveniences and the choice of any one forum is bound to cause some inconvenience or other. Therefore, the balance of competing conveniences has to be determined not by hair-splitting arguments but broadly. That is the reason why the Court looks at the substantial convenience, and not the subtle convenience, to find out the place where such substantial convenience lies for the purpose of trial. If it does not lie in this place where part of the cause of action arose and for which the Court granted leave and assumed jurisdiction under Clause 12 of the Letters Patent, then this Court will revoke the leave and relegate the parties to that forum where substantial convenience lies.

28. Where cause of action is transitory, and amphibious in the sense that parts of one cause of action arise at different places, the jurisdiction of the Courts at any one of such places is, in essence, tentative. When this Court grants ex parte leave under Clause 12 of the Letters Patent to a Plaintiff on the ground that only a part of his cause of action has arisen within the jurisdiction of this Court, it acquires a tentative jurisdiction over the entire cause of action, but such tentative jurisdiction is liable to exception by the Defendant on the ground of the balance of convenience or the analogous grounds, which also come under the doctrine of conveniences, namely, that the choice of this forum under Clause 12 by the Plaintiff has been vexatious, oppressive, malicious or harassing. Choice obtained under the fiat of this Court by leave under Clause 12 of the Letters Patent, where only a partial cause of action has arisen within the jurisdiction of this Court, is a replaceable choice and does not

represent an irretrievable act of jurisdiction, by this Court. That is the difference between absolute jurisdiction of the Court with which it remains invested ah initio and the qualified jurisdiction of the Court which it creates for itself and acquires in individual cases by its own act of granting leave.

29. Before concluding this discussion on Clause 12 of the Letters Patent when a part of the cause of action arises within the jurisdiction of this Court, it may not be out of place, for drawing the contrast, to notice Section 20 of the CPC where the court is given absolute jurisdiction, in Sub-clause (c) thereof, even where a part of the cause of action arises and where, therefore, no leave of the Court is required by a litigant to institute his suit. The Code of Civil Procedure, by its Section 20(b). insists on the leave of the Court only in the case where, among the Defendants, some reside outside and some within the jurisdiction of this Court, unless the outside Defendant acquiesces in such jurisdiction.

30. That is how I understand the principle of the balance of convenience and these are the reasons which, to my mind, are justifications for the Court considering the balance of convenience in granting and revoking leave under Clause 12 of the Letters Patent. The subject matter of the suit, parties to the suit, witnesses required for the proof of the respective cases of the Plaintiff and the Defendant, expenses of trial are, among others, all relevant subjects while the Court considers the balance of convenience in a particular case.

31. Broadly speaking, in the case before, me, having regard to the fact, that the Plaintiff company itself carries on its undertaking at Muttra, that the service rendered by the Defendant is at Muttra, that his main work is at Muttra, that all the alleged acts of insubordination and prejudice to the company are at Muttra, I have no hesitation in holding that the balance is entirely in favour of this dispute being litigated at Muttra. There is no question of any bad faith or abuse of the processes of this Court in this case. The Plaintiff has its head office here within the jurisdiction and with leave under Clause 12 of the Letters Patent it could file its suit in this Court. But in exercising my jurisdiction, after consideration of the balance of convenience of the parties in this case, I have come to the conclusion that such balance is in favour of the Defendant''s contention.

32. For these reasons, I revoke the leave granted under Clause 12 of the Letters Patent and direct that the plaint be taken off the file and give liberty to the Plaintiff to present such plaint at the proper and convenient forum with such modifications as the Plaintiff may be advised.

33. There will, therefore, be an order in terms of Clauses (a) and (b) of the Summons. Having regard to the nature of the allegations, I do not propose to make any order as to costs of this summons. I, however, certify the Chamber Summons to be fit for the employment of counsel.