

(2011) 08 CAL CK 0148

Calcutta High Court

Case No: C.O. No. 2920 of 2006 and CAN 8388 of 2009

West Bengal Electronics Industry
Development Corporation Ltd.

APPELLANT

Vs

Millennium Venture Pvt. Ltd.

RESPONDENT

Date of Decision: Aug. 16, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2, Order 39 Rule 1, Order 39 Rule 2, Order 7 Rule 10, 151
- Constitution of India, 1950 - Article 227

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: B. Bhattacharya, for the Appellant;

Judgement

Syamal Kanti Chakrabarti, J.

The jurisdiction exercised under order No. 57 dated 28.04.2006 by the learned Civil Judge (Senior Division), 2nd Court at Alipore in trying Title Suit No. 58 of 2001 has been assailed in this application under Article 227 of the Constitution.

2. The Petitioner/ Defendant No. 2 contends that the Plaintiff/ Respondent No. 1 filed Title Suit No. 58 of 2001 before the learned Civil Judge (Senior Division), 2nd Court at Alipore with a prayer for temporary injunction under Order 39 Rules 1 and 2 read with Section 151 CPC in 2001. In the said suit there was prayer for temporary injunction restraining the Defendant No. 1 from either encumbering or transferring or parting with the possession of the "C" schedule property measuring about 4.4 acres of land appurtenant to plot No. G, Salt Lake, Sector V of Bidhannagar in the district of North 24 Parganas.

3. It is further submitted that a deed of surrender was executed between the Petitioner herein and proforma Respondent Siemens Public Communication Network Limited (formerly known as Siemens Communication Software Limited)

(Defendant No. 1) on 18th September, 2001 in terms of which the said proforma Respondent surrendered 3.7686 acres of land to the Petitioner. The said land has thereafter been allotted in favour of Infinity Infotech Parks Limited and Satyam Computers Limited for setting up their information technology industry. The property in dispute situates within the district of North 24 Parganas but the suit was filed in the district of South 24 Parganas at Alipore. The Plaintiff/ Petitioner herein filed an application under Order 7 Rule 10 read with Section 151 CPC before the learned Court below praying for return of the plaint to the court of competent jurisdiction. The said application was, however, rejected directing the Plaintiff/ Respondent No. 1 to serve a copy of the plaint upon the Petitioner.

4. Being aggrieved by and dissatisfied with such order issued under No. 57 dated 28.04.2006 the Defendant No. 2 has preferred this revisional application contending, inter alia, that the findings of the learned trial Court was not based on proper appreciation of the materials on record. There was No. material before the learned Court below that the cause of action of the suit arose at 225E, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020 and there was also No. material before the learned Court below on the basis of which it could come to a conclusion that part cause of action of the suit arose within the jurisdiction of the learned Court at Alipore, South 24 Parganas. The learned Court below has also failed to exercise his discretionary power vested under Order XIV Rule 2 CPC leaving the question undecided till trial and thereby the Defendant No. 2 is apprehending irreparable loss and prejudice. Therefore, the said order is not sustainable in law and is liable to be set aside.

5. The Plaintiff/ opposite party No. 1 had opposed the move and contended that the learned Court below has rightly rejected such petition which should not be interfered with because at the material time when cause of action arose the official address of the Petitioner was at 225E, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020 as noted in the cause-title of the plaint and at that time the office of the Defendant No. 2 situated at 225A, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020 and they received Summons from that address and entered appearance which prima facie proves that the cause of action arose within the jurisdiction of the learned Court below in the district of South 24 Parganas.

6. I have perused the impugned order and materials on record. It is contended by the learned Lawyer for the Petitioner that only to imbibe the jurisdiction of the learned Court below it was averred in the plaint that the Defendant No. 2 had its office at 225E, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020. It is further claimed that the Plaintiff conducted their business from their office at 41, Hazra Road, Kolkata - 700 019. From the office they have issued correspondences upon the Defendants on various dates. Negotiation was also undertaken for settlement of their disputes at joint meeting held in their office at the aforesaid premises at Hazra Road. The work at the site was operated and controlled by the Board of

Management of the Plaintiff company from their office at Hazra Road. It is further claimed that the cause of action of the suit arose at various dates in June, 2000, 22nd January, 2001, 8th March, 2001, 26th April, 2001 respectively and on various other subsequent dates continuing from day to day at the office of the Defendant No. 2 at 225E, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020. But in reality the office of the Petitioner at Acharya Jagadish Chandra Bose Road was not in existence at present and they are carrying on business on and from "Webel Bhawan" Block GP, Sector-V, Salt Lake, Bidhannagar, Kolkata - 700 091 within the district of North 24 Parganas. It is further contended by the learned Lawyer for the Petitioner that the question of jurisdiction to dispose of the instant suit will have to be decided in terms of Section 16 CPC which runs as follows:

Section 16. Suits to be instituted where subject-matter situate. - Subject to the pecuniary or other limitations prescribed by any law, suits, -

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the Defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the Defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation - In this section "property" means property situate in India.

7. He has further contended that in terms of Section 16 CPC suits for determination of any other right or interest in immovable property is to be instituted within the local limits of the Court within whose jurisdiction the property situates. He has referred to and relied upon the principles laid down in [Trustees for Improvement of Calcutta Vs. Bahadur Khan and Others](#), in support of such contention.

8. Learned trial Court has, however, decided the merit of this application in accordance with the provisions laid down in Section 20 of the Act which entitles a person to file a suit within the jurisdiction of a Court where part of the cause of

action arose.

9. In dealing with such question the learned trial Court has observed that the Defendant No. 2 has admitted in paragraph 2 of the application that they were carrying on business from 225E, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020 at one point of time but the said office is No. longer in existence and such a contention is in conformity with the contents of paragraphs 35 and 36 of the application wherein the Plaintiff has averred that the Defendant No. 2 in the year 2001 was carrying on business from the aforesaid premises.

10. I fully subscribe to the views so taken by the learned Court below that it is a mixed question of law and fact to decide as to whether at the time of institution of the suit the Defendant No. 2 was actually carrying on his business from 225E, Acharya Jagadish Chandra Bose Road, Kolkata - 700 020 or not. Under Order 14 Rule 2 CPC the Court is expected to pronounce judgement on preliminary issue so far as jurisdiction is concerned. But Rule 2(2) of Order 14 CPC also provides that where issues both of law and fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only it may try that suit first if that issue relates to (a) the jurisdiction of the Court or (b) a bar to the suit created by any law for the time being in force and for that the parties may, if it thinks fit, postpone the settlement of other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. Therefore, some discretionary power has been given to the learned trial Court to withhold his decision regarding jurisdiction if the point at issue relates to mixed question of law and fact. Therefore, apparently there is No. illegality or infirmity in the findings of the learned trial Court who has intended to reserve this point for his consideration at the time of trial on the basis of oral and documentary evidence. But the order passed upon such findings denies the rights and contention of Defendant No. 1 by rejecting the application on contest because the learned trial Court has not decided the merit of the application and kept the matter for adjudication at the time of trial. Therefore, I hold that rejection of the petition disentitles the learned Court to consider the merit in course of trial. The petition ought to have been kept alive for future consideration instead of rejection. The rejection of the petition under Order 7 Rule 10 CPC for the purpose of consideration of its merit at trial is not sustainable in law in as much as the reasoning assigned for future consideration of a point cannot be expressed by dismissal of the petition in the conclusion.

11. Therefore, I dispose of this revisional application by setting aside the impugned order directing the learned trial Court to dispose of the application filed by the Defendant No. 1 under Order 7 Rule 10 CPC on merit at the time of trial and in accordance with law. It is also made clear that the rights and contentions of both the parties on jurisdictional point are reserved for consideration by the learned Trial Court in due course.

12. Interim order, if any, stands vacated.

13. In view of above findings, the connected application being CAN 8388 of 2009 also stands disposed of.

14. Urgent certified photocopies of this order, if applied for, be supplied to the parties, on compliance of all requisite formalities.