Indo-Swiss Trading Co. and Others Vs Ghatal Steam Navigation Co. and Others

Court: Calcutta High Court

Date of Decision: Jan. 13, 1978

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 2 Rule 2, Order 2 Rule 2(3), Order 2 Rule 2(3), Order 23 Rule 1, Order 23 Rule 1(3)

Citation: 82 CWN 419

Hon'ble Judges: P.K. Banerjee, J; B.N. Maitra, J

Bench: Division Bench

Advocate: Ranjit Kumar Banerjee and Ashok Kumar Sen Gupta, for the Appellant;Noni Coomar Chakravorty and Amitava Choudhury, for the Respondent

Final Decision: Allowed

Judgement

B.N. Maitra, J.
The facts of the may be briefly stated in order to arrive at a decision on this knotty point. It has been alleged that the

plaintiff No. 1 company and the defendant No. 2 company used to run a joint ferry service to and from Ahiritola Sadar Ghat to Bandhaghat on the

footing of a joint licence from 21-5-1936, the period of the licence being ten years. That period was over, but both the companies jointly ran that

ferry service. On the 12th July, 1966, a fresh written agreement was arrived at between them in respect of the said joint ferry service. On 18-11-

75, the defendant No.1 company terminated such agreement. Soon after that, namely, on the 24th November, 1975, the other company, namely,

the plaintiff No. 1 company instituted Title Suit No. 2026 of 1975 for a declaration that the said agreement of the 12th July, 1966 was still

subsisting and for permanent injunction. Ultimately, on the 15th July, 1976, the suit was withdrawn, but no liberty to institute a fresh suit was given.

Then the plaintiff No. 1 company instituted the present Title suit for a declaration, for framing a scheme, for accounts and other reliefs. The

defendant No. 1 company appeared and put in an application for rejection of the plaint in accordance with the provisions of Order VII, rule 11

read with the section 12 of the Code of Civil Procedure.

The trial court heard both the parties and allowed the objection to prevail and rejected the plaint. Hence the present appeal.

2. The case has been argued for several days. But the decision can be arrived at without dilating much on the facts of the case. It has been first

contended by Mr. Ranjit Kumar Banerjee appearing on behalf of the appellant that the trial court fell into a grave error in rejecting the plaint under

Order VII, rule 11 of the Code of Civil Procedure. He referred to several decisions including those reported in Mayadas Bhagat Vs. Commercial

Union Assurance Co., Ltd. , and S. Bhagat Singh Vs. Satnam Transport Co. Ltd. and Others, . It has been stated that for the purpose of rejection

of plaint, the court is empowered only to look into the plaint itself and not to any other extraneous matter.

3. Mr. Noni Coomar Chakravorty appearing for the respondents joined issue and referred to latest case of the Supreme Court reported in T.

Arivandandam Vs. T.V. Satyapal and Another, . He has stated that the court is empowered to throw out the plaint in limine and this power has

been exercised rightly by the court below.

4. The provisions of Order VII, rule 11 of the CPC show :

The plaint shall be rejected in the following cases :-

(a) Where it does not disclose a cause of action;

(b) Where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the

court, fails to do so

(c) Where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the

court to supply the requisite stamp-paper within a time to be fixed by the court, fails to do so;

(d) Where the suit appears from the statement is the plaint to be barred by any law;

(e) Where any of the provisions of rule 9(1A) is not complied with and the plaintiff on being required by the court to comply therewith within a time

to be fixed by the court fails to do so.

5. The last clause has been intraduced by a Calcutta amendment and hence rule 11 runs into five clauses. Clause (a) relates to one of cause of

action. This clause has no application because the plaint of this suit discloses a cause of action. Clauses (b) and (c) have no manner of application

because here there is no question of valuation. Clause (e) covered by the amendment of the Calcutta High Court is not applicable either inasumch

as there is no time limit to comply with Court''s order. Then about clause (d), which shows that the plaint shall be rejected where the suit appears

from the statement in the plaint to be barred by any law. The provisions of clause (d) are too clear to refer to any case law and to lay down the

proposition that for the purpose of rejecting the plaint under that provision, one has to refer to the statements of the plaint itself and to no other

document. If any authority is required for the purpose, three case laws cited by Mr. Banerjee may be referred to in this connection. It will appear

from the two Calcutta cases, which were followed by Punjab High Court, that for the purpose of rejecting the plaint, the court must confine its

attention to the statements of the plaint itself and not to any other document or to the plaint of the earlier suit.

6. If we apply that principle of law there remains no manner of doubt that the trial court committed a fundamental error in referring to the

statements of the previous title suit in dealing with this aspect of the matter. Of course, the decision referred to by Mr. Chakrabarty of the Supreme

Court is there. But also does not-advance matters because the Supreme Court has clearly stated that the summary power enjoined by Order VII,

rule 11 can be exercised where no clear right to sue is disclosed. But here the plaint clearly discloses that the plaintiff has a right to sue and it also

reveals that there is cause of action for the suit. So the guillotine applied by the trial court cannot be approved. It must, therefore, be held that the

trial court made a mistake in passing an order of rejection of the plaint in accordance with the provisions of Order VII, rule 11 of the Code of Civil

Procedure.

7. Then about the objection on the section 12 of the Code of Civil Procedure. Section 12 lays down :--

Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a

suit in respect of such cause of action in any court to which this Code applies.

Here also the trial court made a mistake in rejecting the plaint without framing issues. The written statement was not put in and so that was not the

stage of hearing the parties according to the provisions of Or. 10 Civil Procedure Code, Or. 14 lays down for provision for framing issues and

there are provisions for hearing of the suit on a preliminary issue or on the merits. This also was not complied with. It will be pertinent to point out

that for the trial in the mofussil court our High Court laid down definite rules which will be found in the High Court Civil Rules and Orders. For the

City and Session Court such rules were also framed by our High Court. If the suit is to be dismissed on a preliminary point, then issue will have to

be framed therefor. The court can apply its summary power of rejection of plaint when court-fees were not put in or the case comes within the

provisions of Order 7 rule 11 C.P.C. In other cases, it is not empowered to reject the plaint in such summary fashion. So, on that ground alone the

decision of the trial Court must be set aside.

8. Then the important question arises whether this appeal should be disposed of on that ground alone. It seems it will not be desirable to do so and

the contentions of both the sides will be referred to briefly.

9. Mr. Banerjee argued on behalf of the appellant that the cause of action of the present suit does not flow from the same transaction. Here the

cause of action is entirely different. The trial court made a clear confusion between transaction and cause of action. Mr. Chakrabarty appearing on

behalf of the respondents, maintained the contrary and referred to the case of Wright v. Bennett in 1948 (1) AER 227. He has contended that it

would be found from that English decision that the cause of action of the two suits may not directly be the same over the facts, which are almost

identical. He has laid stress on the point that according to the provisions of Or. 23 R.1 (3) C.P.C. the subsequent suit will be barred on the subject

matter of the previous one. He has referred to the case in Gurbux Singh Vs. Bhooralal, and stated that at all events the subject-matter of the two

suits is identical and hence the trial court acted rightly in rejecting the plaint.

10. The aforesaid English decision is not on all fours with the present one. Moreover, in that case only an interlocutory order was passed.

11. Now about the implications of the section 12 C. P. C. According to the provisions of that section further suit will be precluded if there is a bar

of the provisions of Order 2 rule 2 (3) and order 23 rule 1 (3) and some other orders. The provisions of those two orders have only been referred

to by both the sides.

12. The provisions of order 2 rule 2 contemplate the exhaustion of all the reliefs claimable and available under the same cause of action, i. e.,

arising out of the same cause of action. Cause of action means the whole bundle of essential facts which must be proved by the plaintiff. It will be

pertinent to observe here that both the provisions of Or. 2 R.2 and Or.23 (1) have undergone considerable change after latest amendment of CPC

in 1977. But that is not very material for our present purpose as the suit was disposed of in 1976.

13. Nevertheless, the fact remains that in Or. 2 r. 2, there is reference to cause of action, whereas we find from Or. 23 r. 1, sub-rule (3) that there

is reference to subject-matter. So harmonious construction will have to be made. If a harmonious construction is made, then one can arrive at a

conclusion that the cause of action will be the test and the same cannot mean a transaction. The Judicial Committee has stated that cause of action

is different from transaction. The same principle of law runs through these provisions of Or. 2 r. 2(3) and Or. 23 (1) (3) C.P.C.

14. The latest Privy Council case in 52 C.W.N. 812 P.C. (Md. Khalil v. Mohbub Ali) may be cited to show that the cause of action means every

fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment and it has no relation whatever to the

defence that may be set up. The Judicial Committee in the well-known case of Payana Reena Saminathan & Anr. Vs. Pana Lana Palaniappa,

reported in L. R. 41 IA 142 at page 148 has observed that the rule is directed to securing the exhaustion of the relief in respect of a cause of

action, and not to the inclusion in one and the same action of different causes of action, even though they arise from the same transaction. The

object of the rule is to exhaust all reliefs flowing from the same cause of action and not, if they arise from the different ones. Let the test of

exhaustion of such relief be applied to the facts of the present case. One other fact has to be mentioned because their Lordships have also stated

that the provisions of Or. 2 r. 2 do not require that when several causes of action arise from one transaction, the plaintiff is enjoined to sue all of

them in one suit.

15. It has also been stated in that case that another test that has to be applied is whether the evidence will be the same in both the suits. If the cause

of action is a recurring one or distinct or a subsequent one, evidently the provision of Or. 2 r. 2 C. P. C. will have no manner of application. The

suit for accounts confers a distinct cause of action for each year. So, it cannot be said that the prayer for accounts does not constitute a distinct

cause of action.

16. It has already been stated that the Court acted illegally in throwing out the plaint in limine. It should have framed issues, heard the parties and

thereafter decided the question whether the suit was maintainable in law or if provisions of Or. 23 r. 1 (3) and of Or. 2 r. 2 (3) were a bar to the

suit. For this, separate and distinct issues should have been framed. But without doing that, it dispose of the suit in a summary way.

17. Hence, the contention put forward by Mr. Chakravorty cannot be sustained. It is, therefore, held that the judgment of the trial court must be

set aside.

The appeal is, therefore, allowed. The judgment and decree appealed against be and the same is hereby set aside. The trial court will hear the suit

according to law.

In view of the facts of this case, there will be no order as to costs.

Banerjee, J.

18. I respectfully agree with what has been stated by my Lord that the appeal should be allowed and the case remitted back to the court below for

re-hearing and disposal of the same in accordance with law. But I would like to add some words of my own.

19. My Lord has discussed all the cases referred to before us. I only refer to the case relied upon by Mr. Banerjee and distinguished by Mr.

Chakravorty reported in XL Indian Appeals at page 56, Seth Kantylal v. National Bank Their Lordships of the Privy Council stated as follows (p

62) :

The question raised by this appeal is therefore a pure point of law. Both the District Judge and the Chief Court have clearly stated that the

decisions which they have given are based on the allegations in the plaint, and that for the purpose of such decisions these allegations must be taken

to be true in fact. This is a necessary consequence of the nature of the plea, and the same understanding must apply to the present judgment. In

asking the Court to decide an issue like the present (which is essentially a demurrer by whatever name it may be called) defendants must be taken

to admit for the sake of argument that the allegations of the plaintiff in his plaint are true modo et forma. In so doing they reserve to themselves the

right to show that these allegations are wholly or partially false in further stages of the action should the preliminary point be overruled, but so far as

the decision on the preliminary point is concerned, everything contained in the plaint must be taken to be true as stated.

It will appear that this has consistently been followed in all other cases which have been referred to and we are of the opinion that for the purpose

of considering that the plaint is to be rejected under Or. 7 r. 11 C. P. C., the Court cannot go into the other matters not available in the plaint itself.

But that does not, however, mean that the defendant cannot raise the question of maintainability or the question of Or. 23 r. 1 when the suit can be

barred u/s 12 of the Code of Civil Procedure, But at the stage of consideration under Or. 7 r. 11 these are not the questions which are germane

for the purpose. That only arises when issues are framed as my Lord has already said and the questions may be decided as preliminary issue.

While we direct the appeal to be allowed, we further point out that we have not decided these questions at all in this judgment and even if we have

made any comments on the facts of this case as appearing in the plaint itself, that is only for the purpose if deciding the case and will not be taken

to be a firm finding of fact on the questions which may afterwards be agitated in the court below at the time of preliminary issue or at the time of

trial.

The prayer for stay of operation of this order is rejected.