
(1945) 07 BOM CK 0022

Bombay High Court

Case No: None

Sankalchand Shah and Co.

APPELLANT

Vs

J. Prakash and Co.

RESPONDENT

Date of Decision: July 25, 1945

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10

Citation: AIR 1947 Bom 84

Hon'ble Judges: Blagden, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Blagden, J.

By a contract contained in a letter 1-9-1943, the present plaintiff firm, who carried on business in Bombay, in effect, agreed to sell to the present defendants, a firm carrying on business at Karachi, certain consignments of tea on various terms, one of which was that the defendants should deposit with the plaintiffs a sum of Rs. 4000 "as deposit money for the due fulfillment of these transactions." Subsequently certain disputes arose between the parties and, it is, I understand, common ground that the contract was not fulfilled. The present plaintiffs say that the defendants were guilty of a breach of contract by non-acceptance, and the present defendants say that the plaintiffs were guilty of a breach of contract by non-delivery. These disputes having arisen, the present defendants filed a suit in the Chief Court of Sind, Karachi, on 10-11-1944, claiming return of their deposit. They reserved, or claimed to reserve, the right to claim damages for breach of contract from the present plaintiffs. It is noticeable that the contract in question did not contain a clause of forfeiture, and therefore the mere fact, if fact it be, that the present defendants broke their contract would not in itself entitle the present plaintiffs to retain the deposit. They would have to show that in fact they suffered damages which equalled or exceeded Rs. 4000.

2. The present suit was started by the plaintiffs in this Court on 16-3-1945, an appreciable time after the defendants started their case, and the present is a motion for a stay of the plaintiff's suit u/s 10, Civil P.C., which provides as follows:

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title where such suit is pending in the same or any other Court in British India having jurisdiction to grant the relief claimed...

3. It is noticeable at once in this case that, as one would expect, the prayers of the respective plaintiffs in this suit and in the suit at Karachi are different. It was well held in this Court that is not in itself material. According to the decision of this Court in 44 Bom. L.R. 6991 the test is whether, if the first is determined, the matters raised in the second suit will be res judicata by reason of the decision in the prior suit. It is noticeable that what the learned Judge there said was "the matters" raised in the second suit: not some, but all, of them. A number of cases have been cited to me (but none of them precisely on all fours with the present one) by Mr. Vakil for the present plaintiffs, which show, as I think, quite clearly, that it is not enough that one or the other of the issues in the latter suit will be determined by the decision of the first suit, but it must be that all the issues in the second suit must-not may, but must-be determined by the decision in the first suit before Section 10, Civil P.C., can come into operation. I think the present case is very near the border line. The Karachi Court cannot determine all the issues before it without, to some extent, at any rate, investigating the question what, if any, damages the present plaintiffs suffered. I say "to some extent, at any rate" because (though the distinction is very fine) it is not absolutely essential that in determining that case the Court should determine in rupees, annas and pies what those damages are. It would be sufficient for the determination of the issues in that suit if the Karachi Court were satisfied that the present plaintiffs suffered damages which exceeded Rs. 4000: it would not have to determine the amount of the excess. That is one respect in which, I think, the matters in issue in the two suits are not absolutely identical, though they are very nearly so.

4. In case I am wrong in thinking they are not exactly the same, the further question arises whether the Karachi Court has jurisdiction to grant the relief claimed. The section is curiously ambiguous about this, because, of course, in a sense, the Karachi Court has jurisdiction; that is to say, if a suit were brought for damages for breach of contract at Karachi, against the defendants living in Karachi, it would have jurisdiction to grant that relief to the plaintiff. If, however, the section means, "having jurisdiction to grant to the party the relief in that suit" and nothing more, then it has no jurisdiction, because there is no provision in the Code itself for a counter-claim, and, as far as I am aware, the Karachi Court has no rules corresponding to the Bombay and Calcutta rules, which allow counter-claims. The

only way for the plaintiffs to get real relief, if this suit is stayed, would be for them to commence, without waiting for the determination of the present suit at Karachi, a cross suit and ask the Karachi Court to take the two suits together. If, as I am inclined to think, the narrower of the two interpretations of the word "jurisdiction" is the right one, it follows that the present motion fails on the ground, also, that the Karachi Court has no jurisdiction to grant the relief in the first suit which the present plaintiffs have claimed in the second suit. But I should prefer to rest my decision on the other ground, viz., that the decision of the Karachi Court in the first suit will not necessarily determine all the issues in the present suit because it is not necessary that the Karachi Court should decide the amount of the damages, (if there are any), which are claimed in the present suit. The result, therefore, is that the motion fails and must be dismissed with costs.