Champaklal Mohanlal Vs The Nectar Tea Company

Court: Bombay High Court

Date of Decision: Oct. 13, 1932

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 20(c)

Citation: AIR 1933 Bom 179 : (1933) 35 BOMLR 168 : (1933) ILR (Bom) 306

Hon'ble Judges: Rangnekar, J

Bench: Single Bench

Judgement

Rangnekar, J.
This application arises out of a suit brought by the plaintiffs against defendant No. 1, defendant No. 2 being formally joined

as he was a partner of the plaintiffs in their business. The facts material for the purposes of this application are The plaintiffs and defendant No. 2

carry on business at Surat in the name of Jolly Bros. & Sons, and on November 4, 1928, they entered into an agreement with defendant No. 1,

who carries on business at Mutupalayam in Coimbatore District in the Madras Presidency, under which the latter agreed to employ the plaintiffs as

their solo agents to canvass orders for them in respect of tea and coffee in the six districts between Umergaum and Ahmedabad, including the

Surat District, in the Bombay Presidency. On November 10, 1928, however, the defendants by their letter of that date cancelled the said

agreement. The plaintiffs, therefore, sued for damages for breach of the agreement, and for the recovery of a sum of Rs. 500 which under the

agreement they had deposited with defendant No. 1.

2. The defendants raised various defences, one of which was that the Surat Court had no jurisdiction to entertain this suit. This defence was

accepted by the trial Court, which returned the plaint to bo presented to the proper Court, and this order of the trial Court was confirmed in

appeal by the District Judge of Surat. The plaintiffs now apply in revision of that order. The only question is, whether the Surat Court has

jurisdiction to entertain the suit.

3. Paragraph 7 of the plaint sets out the facts showing that the Court had jurisdiction to entertain the suit. They are as follows: The work Under the

agreement with defendant No. 1 was to be performed within the jurisdiction of the Surat Court; the amount of commission had to be paid at Surat;

the breach had resulted in damages to them which had occurred to them at Surat; the letter of defendant No. 1 dated November 10, 1929, was

received in Surat; and the amount of Rs. 500 was sent from Surat and was to be received by them there.

4. The learned trial Judge framed an issue as to jurisdiction, and examined plaintiff No. 2. It may be stated here that the contract between the

parties, as it appears from the agreement and correspondence put in, was brought about through the intervention of one Mr. Shroff. I am not told

who this Mr. Shroff is. Plaintiff No. 2 who was examined by the Court on the issue had no personal knowledge of the contract. In any ease there is

no dispute about the following facts : that the agreement Was entered into in Madras ; that the plaintiffs were to act as sole agents in the Surat

District and to secure business for the defendant in that District; and finally the sum of Rs. 475 forming part of the deposit amount of Rs. 500 was

sent from Surat to the defendants.

5. It will be seen from these facts that the plaintiffs'' claim is for a breach of an agreement on the part of the defendant company to employ them in

Surat as their sole agents for the purposes of canvassing orders for tea and coffee in that district. The material terms of the agreement are, that the

sole agents had to furnish a fixed cash deposit of Rs. 500 to be paid to defendant No. 1, and this deposit was to bear nine per cent, interest and to

remain with defendant No. 1 for the full contract period. All the moneys realised in respect of the orders were to be sent by the plaintiffs to the

defendant at Madras. Clause 7 states:-

The sole agents shall furnish to the company monthly report of orders booked and executed showing therein the commission due to them, so as to

reach the office on the last day of every month. The commission account will be verified upon the amount for all orders executed and moneys

realised and paid for to the agents as they desire to do.

6. Clause 10 relates to the renewal of the agreement and. runs as follows:

When the agreement becomes cancelled and the agents do not like to continue to work for the company, it is essential before the settlement of the

accounts of the agents that all records connected with the company, such as order books, samples, etc., or any other documents that might be in

possession of the agents should be returned to the company in good order "Railage Paid" and on due satisfaction, the deposit amount will be

ordered to bo refunded to the agents and accounts settled.

7. Clause 11 provides for payment of nine per cent, commission on the net amount of the invoice to be paid to the agents, such amount being

credited after the invoice amount was realised, and the account settled every month.

8. Into the causes which led defendant No. 1 to cancel the contract it is unnecessary to enter. It is clear on these facts that the claim was in respect

of damages which the plaintiffs alleged they had sustained by the wrongful breach of the agreement on the part of defendant No. 1, and for

recovery of Rs. 500 admittedly lying with defendant No. 1.

9. Section 20(c) of the CPC states that ""subject to the limitation aforesaid, every suit shall be instituted in a Court within the local limits of whose

jurisdiction-the cause of action, wholly or in part, arises."" The question is, whether the cause of action in this case arose within the jurisdiction of the

District Court in part, as it is conceded that the whole cause of action did not arise within such jurisdiction. ''A cause of action'' means, as the

authorities show, every fact which it is necessary for the plaintiff'' to prove in order to support his right to the judgment of the Court. In the Code of

1882 we had explanation III to this section which ran as follows:-

Explanation III-In suits arising out of contract, the cause of action arises with in the meaning of this section at any of the following places, namely:-

(1) The place where the contract was made;

(2) the place where the contract was to be performed or performance thereof completed;

(3) the place where in performance of the contract, any money to which the suit relates was expressly or impliedly payable.

10. Although that Explanation has been omitted from the present Code, it is nevertheless a correct statement of what the law is. Therefore,

performance of the contract is part of the cause of action, and a suit in respect of breach can always be filed at the place where the contract should

have been performed or its performance completed. As early as 1887 this Court laid down this principle in Dhunjisha Nusserwanji v. A.B. Fforde

ILR (1887) Bom. 649 In that case Mr. Justice Farran observes as follows at page 652 :-"" None of the Courts have doubted that the breach of a

contract, occurring in the place where its performance has been stipulated for, constitutes part of the cause of action."" The same opinion was

expressed in a still earlier case in DeSouza v. Coles (1868) 3 M.H.C.R. 384 by Mr. Justice Holloway in this way (p. 413): ""The place at which an

obligation is to be performed is its seat, and the place of jurisdiction."" Supposing A in Bombay orders goods from B at Delhi, which the latter

promises to deliver in Bombay, but after the contract B changes his mind and cancels the contract, it is difficult to see why a Court in Bombay has

no jurisdiction, as the contract had to be performed in Bombay by delivery of the goods to A in Bombay. Exactly the same question arose in Ram

Lal v. Bhola Nath ILR (1920) All. 619 and the view taken there is the same. Similarly, if A agreed at Madras to employ B on behalf of his

business at Surat but after the agreement is made refuses to employ him or cancels the agreement, I am unable to see why it cannot be said that

Surat Court has no jurisdiction, as the contract was intended to be performed in Surat, and prima facie the place of performance is the place of the

breach of the contract. In his CPC (9th Edn.) Sir Dinshaw Mulla at page 104 observes, ""The performance of a contract is part of the cause of

action and a suit in respect of breach can always be filed at the place where the contract should have been performed or its performance

completed,"" and he mentions several cases as authorities for this proposition. It is not necessary to refer to them. Therefore, although in this case

the contract was made in Madras, even assuming the breach took place in Madras because the letter cancelling the agreement was sent from

Madras, there can be little doubt that the contract was intended to be performed within the jurisdiction of the Surat Court, at least in part and that

being the case, I think the Court would have jurisdiction to try this suit.

11. But assuming that this position is not tenable, there remains the second part of the plaintiffs'' case in the suit, and that is the recovery of the

amount of Rs. 500 deposited with defendant No. 1. Now it is clear that moneys deposited in this way, that is to say, moneys paid as a deposit,

impliedly mean that it is a security for completion of the contract and a guarantee of good behaviour and faithful performance of the obligations of

the party making the deposit under the contract. Now here the plaintiffs'' case is that the agreement was wrongfully put an end to by defendant No.

1, and on that case it must follow that this amount becomes a debt received by defendant No. 1 to the use of the plaintiffs. If, therefore, it is a debt

for money received to the use of another, then the question would be whether a suit to recover such a debt can be brought in Surat where the

creditor resides. In the case of Phillips v. London School Board [1898] 2 Q.B. 447 Lord Mansfield is quoted as observing: ""When the defendant

has received money which in justice and equity belongs to the plaintiff, under circumstances which render a receipt by the defendant to the use of

the plaintiff, an action for money had and received may be maintained,"" The debt thus used to be a charge technically in England as moneys

received by the defendant to the use of the plaintiff.

12. Apart from this there is another aspect as to the nature of this debt, and I see no answer to it. The principle of law is that unless the right is

excluded by the terms of the contract, money paid for consideration which fails may be recovered back as a debt for moneys received by the

defendant to the use of the plaintiff. It was held in Ashkpitel v. Scrcombe (1850) 5 Exch. 147 that money paid as a deposit upon applications for

shares in a projected company, which is afterwards abandoned, may be recovered back from the promoters or directors who received the money.

If then it is a debt for money received, whether because the defendant on breach of the agreement had no right to retain it and the money in law

and justice belonged to the plaintiffs, or as a debt on failure of consideration, the relationship, then, that arises between the plaintiffs and the

defendant would be that of creditor and debtor. Section 49 of the Indian Contract Act deals with the place of performance, and the principle laid

down there is that where no place is fixed for the performance of the promise, it is the duty of the debtor to apply to the creditor to appoint a

reasonable place for the performance of the promise and to perform it at such place. If the debtor fails to apply, then, as pointed out by the Judicial

Committee of the Privy Council in Soniram Jeetmull v. R.D. Tata & Co. (1927) L.R. 04 IndAp 265 29 Bom. L.R. 1027 the law that would apply

would be the law in England on the principle that the debtor must find his creditor. Their Lordships observe at page 271:-

Their Lordships do not think that in this state of the authorities it is possible to accede to the present contention that Section 49 of the Indian

Contract Act gets rid of inferences, that should justly be drawn from the terras of the contract itself or from the necessities of the case, involving in

the obligation to pay the creditor the further obligation of finding the creditor so as to pay him.

In this case admittedly there is no indication appearing on the face of the contract or in the evidence or other circumstances of the intention of the

parties where on breach of the agreement the deposit was to be returned. But the plaintiffs, however, allege in the plaint, and that statement has

been overlooked by both the Courts below, that as soon as they received the defendant''s letter the plaintiffs called upon defendant No. 1 to return

the sum of Rs. 500. That being the case, it is clear, the creditor, that is to say, the plaintiff''s in this case, appointed Surat as the place for the

performance of the contract. But supposing that no place was appointed, it can hardly be contended that a man residing at Surat would fix Madras

as the place of performance for the return of Rs. 500, and on the principle to which I have referred it must follow that it would be the duty of

defendant No. 1 to return the sum of Rs. 500 to the plaintiffs at Surat. I am unable to accept the view taken by the lower Courts that this amount

was a deposit and not a debt and that therefore the rule that the debtor should find his creditor did not apply. As I have shown above, the moment

the agreement is broken there is either failure of consideration or there is an equity in favour of the plaintiffs, which impliedly makes the retention of

the sum of Rs. 500 a debt due by defendant No. 1 to the plaintiffs.

13. In this view, therefore, I think the order made cannot be sustained, and the rule must be made absolute. Case sent back to the trial Court for

trial on the merits. Opponent No. 1 to pay the costs of the petitioner of this application. Costs in the lower appellate Court and costs in the trial

Court will be costs in the cause.