State of Maharashtra Vs Sarvodaya Industries, Akola

Court: Bombay High Court (Nagpur Bench)

Date of Decision: July 25, 1974

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 15, 15, 16, 16, 17, 17

Citation: (1974) MhLj 966

Hon'ble Judges: B.A. Masodkar, J

Bench: Single Bench

Advocate: V.S. Sohoni, Authorised by Additional Govt. Pleader, for the Appellant; M.J. Chandurkar, for the Respondent

Judgement

B.A. Masodkar, J.
The only question involved in the present revision is whether the preliminary issue raised at the request of the present

applicant-defendant, the State, that the Akola Court had territorial jurisdiction to try the suit filed by the non-applicant-plaintiff, was correctly

decided.

2. The look at the plaint shows that it is a claim made by the plaintiff upon the allegations that it is carrying on a business of manufacturing Poha

from Dhan in Akola district. For that purpose they have to import raw materials. They had entered into an agreement with M/s Chule brothers of

Gondia for purchase of Poha in November-December, 1964. The Collector, Akola, had given them licence to import the necessary Dhan. It is

further grievance that their import for the purpose of manufacture of Poha so arranged was affected by an action taken by the defendant No. 2

mala fide and without legal authority, who stopped its movement. Because of that, the plaintiff complains, as can be seen from further allegations,

that their business in Akola was affected and they Suffered losses and that is the basis for claiming damages. Defendant No. 2 is said to have acted

on behalf of or under the authority of defendant No. 1, present applicant. The plaintiff has given details in para 6 of the claim, which more or less

show the amount of loss on account of withholding the raw material and keeping the factory idle. The loss in business complained of is stated to

have occasion within the territorial jurisdiction of the Akola Court. The suit on that basis is filed in that Court.

3. Thus the plaintiff''s cause as led in Akola Court is that they have Suffered damage or loss because of the illegal action of defendants 1 and 2

together, particularly of defendant No. 2 acting for defendant No. 1. The case, clearly is one based on the cause of action having arisen within the

jurisdiction of Akola Court. The trial Court has answered the issue of jurisdiction by holding that the cause of action for the purpose of damages

would arise only on the proof of loss and the place where the loss is suffered, i.e., the place of business which is affected would offer sufficient

nexus for upholding the jurisdiction.

4 This order is questioned in the present revision. It is to be observed that the submission made by the learned counsel appearing for the applicant

appears to be that this is a suit which must be governed by section 19 of the Code of Civil Procedure. The State being a party cannot be treated as

residing within the limits of Akola Court and the only remaining relevant factor was the place where the wrong complained of was done to the

person or business of the plaintiff. Therefore, it is submitted that only the Bhandara Court will have jurisdiction for stoppage alleged Occurred

within its limits.

5. For the proposition that the State cannot be deemed to reside at each and every place, reliance is placed on Govindarajulu Naidu v. Secretary

of State AIR 1927 Mad. 689 and Anath Bandhu Deb Vs. Dominion of India, .

6. In Madras case the provisions of Clause 12 of the Letters Patent along with the provisions of section 19 of the CPC were being considered in a

suit brought for the recovery of goods or price of goods confiscated by Collector of customs. It was held that the word ""resides"" must be taken to

refer to natural persons and not to legal entities such as limited companies or Government. In Calcutta decision the case was being considered u/s

20 of the CPC and the phrase ""carrying on business"" or ""residing within jurisdiction"" was pressed in to hold that territorial jurisdiction cannot be

found against Union of India. The Court, after referring to the pleadings, came to the conclusion that no part of the cause of action arose within its

jurisdiction and the Union of India cannot be treated to carry on business or reside within its jurisdiction.

7. In Union of India (UOI) and Another Vs. Ladu Lal Jain, the provisions of section 20, clauses (a) and (b) of the CPC were considered with

reference to the activity of the Government. It was found that the expression "voluntarily resides" or "personally works for gain" could not be

appropriately applied to the case of the Government. However, the Government can carry on business, and activity of railways is one such act of

carrying of business. Therefore, Union of India could be sued in a Court within whose territorial jurisdiction the head-quarter of the railway, run by

the Union, is found to be located. In The State of Uttar Pradesh and Others Vs. Raja Ram Lal, the Court was considering the provisions of section

20 (c) along with sections 20, 19 and 80 (c) of the Code of Civil Procedure. The suit was filed by the plaintiff who was initially employed in the

services of the State of Uttar Pradesh and his services were later on terminated. He was re-employed and his services were again terminated. He

was resident of Varanasi and during the terms of service he was not employed there. However, for the purposes of recovery of arrears of salary,

travelling allowance and refund of security deposit he filed the action in Varanasi Court, after serving the notice on the Collector of Varanasi. The

Court viewed the claim in suit in different parts. Applying the principle that debtor must seek creditor, the suit filed at Varanasi with respect to the

security amount of Rs. 500 was found to be within the jurisdiction of Varanasi Court, but for other reliefs the suit was adjudged as without

jurisdiction. While considering the provisions of sections 19 and 20, the Court observed:

Sections 19 and 20 of the CPC are material on this point. The present suit is for compensation for wrong done to a person or it can be said to

relate to his movable property also. Section 19, CPC clearly lays down that such a suit can be instituted in the Court within whose jurisdiction the

wrong was done or in the Court within whose jurisdiction the defendants resides or carries on business, or personally works for gain. A

corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place

where it has also a subordinate office, at such place. This has been clarified in Explanation II to section 20, CPC though it is not laid down that the

Explanation shall apply to other sections also. The provisions thereof can usefully be applied while interpreting similar words used in section 19,

Civil Procedure Code. It is thus in respect of the cause of action arising at a place that the Corporation shall be deemed to carry on business at a

place where it has a subordinate office; but if the cause of action did not arise there, the existence of a subordinate office shall not entitle the plaintiff

to institute a suit at any place of his choice. The office of the Collector of Varanasi could be deemed to be a subordinate office of the State

Government, and the suit could be filed at Varanasi, if any cause of action had arisen within the district of Varanasi. To put it differently, the State

Government could be deemed to carry on business at Varanasi only in respect of any cause of action arising, at Varanasi or within the jurisdiction

of the Collector of Varanasi.

That finding was tried to be fortified by referring to clause (c) of section 20, CPC with an observation that no part of cause of action arose within

the jurisdiction of Varanasi Court.

8. The close look at this judgment shows that for the purpose of section 19, the office of the Collector of Varanasi is treated to be the subordinate

office of the State Government. But only because no part of cause of action arose within the jurisdiction of Varanasi Court, the Allahabad High

Court took the view that the suit was not entertainable on those reliefs by Varanasi Court.

9. In Gokuldas Melaram v. Baldevdas AIR 1961 Mys. 188 the Mysore High Court decided a question of territorial jurisdiction in the matter of

seeking reliefs for malicious prosecution by the fact that summons of such a case was served at a place on the plaintiff where the suit was brought.

This answer was given upon the view that even if section 19 of the CPC was determining the jurisdiction of the Court, the suit for malicious

prosecution had to be instituted where cause of action arose. The service of summons of a criminal case commenced by the defendant would

answer that part of section 19. Between two sections, i.e., sections 19 and 20 it was observed that section 19 was an extension of section 20, the

latter being a residuary section. There are observations in the body of the judgment that the provisions of section 19 to some extent overlap section

20 and the reading of the provisions of section 19 appears to be made as providing for institution of a suit for compensation for wrongs to person

or movables, either in the Court within whose jurisdiction the wrong is done or the defendant resides or carries on business or personally works for

gain. In D. Munirangappa v. Amidayala Venkatappa and another AIR 1965 Mys. 316 the provisions of section 20 (c) were held to contain a

broad principle permitting the institution of a suit within the jurisdiction of Courts where even a smallest part of cause of action has arisen.

10. In T.R.S. Mani Vs. I.R.P. (Radio) Private Ltd., , where cause of action involved termination of services of the plaintiff and it took effect at

Madras, though the defendant carried on business at Calcutta, jurisdiction was answered by referring to the provisions of section 20 (c) that the

Madras Court would have power to entertain the suit.

11. As far as this Court is concerned, in an action against the Insurance Company upon the death of the assured it was found that the place of

death of such an assured can be treated as the place where cause of action wholly or in part arose within the meaning of section 20 (c) of the Code

of Civil Procedure. The Light of Asia Insurance Company Ltd. Vs. Bai Chanchal, . The Court observed that in the face of the plain words of

section 20, there was no escape from the position that the company is liable to be sued at the place where the insured died. That answer was

furnished because of the nature of insurance contract and its possible effects as well obligations underlying the same. The matter was found to rest

within the compass of section 20 itself.

12. Now turning to the material provisions of the Code of Civil Procedure, there are 6 sections under the head ""place of Suing"" in Part I. Those are

sections 15 to 20. The approach while determining the matters relating to the territorial jurisdiction, therefore, must be to so construe and apply all

these provisions so that they will cover each and every cause of action and each and every case amenable to relief by virtue of the provisions of

section 9 of the Code. Any construction that will whittle down the remedy is not contemplated. Section 15 is general in terms and declares that the

suit has to be instituted in a competent Court. Section 16 indicates the normal rule that suits are to be instituted where the subject-matter of the suit

Institute. Section 17 provides for contingency where the immovable property is situated" within the jurisdiction of different Courts and it is

provided that the suit may be instituted within the local limits of whose jurisdiction any part of the property is situate. Section 18 deals with those

cases where there is uncertainty about the local limits of jurisdiction and the choice of place is indicated for the institution of suit, That also deals

which immovable property. Sections 19 and 20 (c) may now be extracted which read as under:

19. Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the

jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of

another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose Jurisdiction:-

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(c) the cause of action, wholly or in part, arises.

13. Provisions of section 19 are specific in subject and clear in its operation. Firstly, it governs a suit seeking restitutive reliefs of compensation on

the basis of wrong done to the person or to movable property. Secondly it offers and furnishes option or choice if the conditions indicated by the

qualifying clause are satisfied in that wrong complained of was done within the local limit of one Court while the defendant in fact resides or carries

on business within the local limits of jurisdiction of another Court. Unless both these conditions together are available, no question of option or

choice for forum can conceivably arise. The conjunction ""and"" in the qualifying clause is very much indicative of this result. Leaving aside the cases

where these conditions together are not available, the matters of such suit are still governed by other provisions of the Code. It is noticeable that in

the body of section 19 the phrase ""the cause of action, wholly or in part"" has not been used and it only finds place in section 20 of the Code. In a

suit for compensation ""wrong done"" or ""complained of"" is the cause of action by which Code understands and contemplates all the bundle of

necessary facts capable on proof of sustaining the relief claimed. Compensation clearly posits or injury resulting in loss and damage. Mere injury on

wrong without anything more would not suffice to sustain the claim for compensation. It is clear that the phrase ""wrong done"" is not used in any

narrow sense but has to be understood in all its amplitude so as to afford forum and necessary relief. That clearly takes in both cause and effect.

Injury or act actual wrong may occur at place A but it''s effect may be felt at places other than ''A'' and may affect places ''B'' or ""C"". Act or

actions taking place at a given place may still give rise to results affecting persons or property at places quite different and at all these places and

for all those effects, cause would arise seeking compensation. Without resultant loss or it''s proof restitutive justice may not afford any relief nor

there could be any remedy in vaccum. Thus the phraseology used by section 19 about ""the wrong done"" would clearly take in not only the initial

action complained off but it''s resultant effect.

14. Putting the matter in terms of section 20 (c) the resultant damage would surely be the part of cause of action and would feedback the answer

for jurisdiction. Assuming, therefore, that both sections are to be read together the same would indicate a overlapping which is not at all attributable

to such legislative scheme. It is enough to answer that section 19, which deals with cases of compensation for wrong done to the person or

movable property, is wide enough to take in those places where plaintiff or person complaining actually suffered the loss because of the alleged

wrongful act notwithstanding the place of such wrongful act clearly furnishing place of action. The phrase ""wrong done"" is indicative of completed

action as stated supra and is wide enough to take in the results as the basis for the purposes of restitution. The Court within whose local jurisdiction

damage was caused or suffered or sustained would clearly answer the requirements of section 19 for the purposes of suits mentioned therein. The

matters of option afforded are not relevant nor decisive for this purpose nor the provisions of section 20 (c). The extract of the provisions of

section 20 (supra) by it''s opening part indicates that section 19 is treated as a limitation upon the generality of the provisions of section 20 itself.

Reading both sections together if a case is not squarely answered by the earlier sections then it may still be answered by section 20 itself, It''s terms

are thus residuary. Turning to suits for compensation, if any narrow construction is to be placed on the phrase ""wrong done"" available in section 19

then the matter still can be answered by section 20 (c) of the Code. For then section 19 would indicate and only operate as ""part of cause of

action"" having in mind only the initial act or cause indicated by ""wrong done"" and not it''s effect and though the latter as of necessity must be

established to have relief, for that reliance will have to be placed on the intendments of clause 20 (c) of the Code. Such dichotomy is not indicated

nor such exercise necessary for in the structure of section to itself both parts of cause of action, i.e., the initial act and it''s effect are capable of

being worked out. Therefore, by it''s contemplation a suit filed in a Court within the local limits of whose jurisdiction the damage was suffered

would still uphold it''s jurisdiction.

15. Turning to present pleadings about the cause of action, those are, as must be, based on the loss that was suffered by the plaintiff within the

territorial limits of Akola Court because of a wrongful intervention outside the limits of that Court. It is well settled that unless there is proof of loss,

no claim for damages or compensation can at all be sustained. Mere allegation of wrong is not the whole cause of action. It is the resultant effect

that furnishes cause of action. Therefore, the damage that was Suffered by the plaintiff was the part of the cause of action i.e. ""the wrong done"" and

that arose within the jurisdiction of Akola Court. Though, therefore, the complaint of the plaintiff was against the action by defendant No. 2 being

without the limits of Akola Court, it follows that as he was affected by that action for all purposes in his business within the jurisdiction of that Court

all the requirements of section 19 of the Code have been fully answered and the suit was properly laid in Akola Court.

16. In the result there is no merit in the present revision and the same Would stand dismissed with costs.