

Varun Resorts Ltd. Vs. Pan Electrical Services and Others

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Court : Mumbai Goa

Decided On : Aug-01-2013

Judge : R.C. Chavan

Appeal No. : First Appeal No.20 of 2012

Appellant : Varun Resorts Ltd.

Respondent : Pan Electrical Services and Others

Judgement :

Oral Judgment:

This appeal questions the judgment and decree passed by the learned Civil Judge, Senior Division, Mapusa whereby he dismissed the suit for want of jurisdiction.

2. The plaintiff/ appellant had filed a suit against the respondent/ defendant for recovery of a sum of Rs.12 Lakhs with interest. According to the plaintiff, the plaintiff had placed an order for delivery of Diesel Generating set ('D.G. set' for short) to the defendant some time in the year 2006. This D.G. set was delivered and also commissioned by the defendant. It was then suggested that the plaintiff may go for another D.G. set and, therefore, an order for another D.G. set was placed and as desired by the defendant, full payment of Rs.12 Lakhs was made by a cheque drawn on bank at Mumbai. The defendant has its place of business at Mumbai. This D.G. set was not delivered and, therefore, the plaintiff filed a suit for

recovery of money which has been paid towards delivery of this D.G. set.

3. The defendant appeared and filed written statement raising, among other grounds, a preliminary objection that the entire transaction had taken place at Mumbai and the defendant has its place of business at Mumbai and, therefore, the Court at Mapusa, Goa lacks jurisdiction to try the suit. Learned trial Judge framed necessary issues which included issue no.3 which read as under:

"1. Whether the plaintiff proves that they are entitled to recover sum of Rs.12,00,000/- along with interest @ 21 % per annum from 1.11.07 till actual payment ?

2. Whether plaintiff proves that on account of non-installation of second diesel generator set plaintiff suffered loss of Rs.1,02,000/-?

3. Whether defendants prove that this court has no jurisdiction to entertain suit ?"

4. Whether defendants prove that plaintiff are in total grand due to pay them sum of Rs.5,99,860/- of which amount is payable to the defendants, Delta Engineering and Concept India, Mumbai ?

5. What relief What order ?

4. The defendant then applied that this issue no.3 may be decided prior to recording the evidence of the plaintiff. The plaintiff replied to this application stating that issue no.3 involves disputed questions of law and fact and it cannot be decided on the basis of arguments, and therefore, denied that issue no.3 may be argued or decided prior to recording of evidence of the plaintiff. Learned Judge, however, seems to have proceeded to decide the issue no.3 as a preliminary issue. Learned Judge went on to hold that the Court had no jurisdiction to entertain the suit and rather than returning the plaint for presentation to proper Court, proceeded to dismiss the suit for want of jurisdiction. Aggrieved thereby, the plaintiff has filed this appeal.

5. I have heard the learned Counsel for the appellant as well as the learned Senior Counsel for the respondent.

6. The pleadings would clearly show that the plaintiff had specifically alleged that the representative of the defendant had come to Goa and the transaction in respect of delivery of second D.G. set was finalised at Goa. Therefore, according to the plaintiff, the Court at Mapusa, Goa had jurisdiction to try to suit.

7. In the written statement filed by the defendant, the defendant does not dispute the fact that it had delivered one D.G. set to the plaintiff at the plaintiff's Resort in Goa. However, the defendant denied that further transaction about offer to supply, install and commission another D.G. set took place at Goa. The defendant further had stated that in fact a sum of Rs.5,99,860/- was recoverable from the plaintiff and the defendant had called upon the plaintiff to pay this amount first and informed the plaintiff that order would otherwise be cancelled.

8. Now, when the parties had disputed as to where the transaction actually took place, learned trial Judge should have seen that the issue of jurisdiction could not have been decided on the basis of the arguments alone and it was necessary for the learned Judge to record evidence. Therefore, he should not have decided the issue as a preliminary issue in the face of specific request by the plaintiff in the reply to the defendant's application that the issue could not have been decided on the basis of argument. Learned Counsel for the respondent submitted that there was no specific prayer by the plaintiff that evidence should be recorded. The necessity for recording evidence has clearly been stated by the plaintiff in the reply filed and, therefore, the learned Judge should have seen that the evidence was required to be recorded in this case.

9. When the issue of jurisdiction is raised in which there are factual contentions about the place where the offer was made or accepted, it would normally be necessary for a Civil Court to record evidence, not only on the issue of jurisdiction, but on all the issues, since the evidence on the transaction itself may not be different from the evidence in respect of the place where the transaction took place. In order to save the time spent in the trial Courts, the Courts have consistently held that in such a case, the trial Court should record evidence on all the issues and proceed to decide all the issues, so that should the Appellate Court upset the findings of the trial Court on the issue of jurisdiction, there may be no

need to again remit the matter back to the trial Court for fresh decision. In fact, in this case, the plaintiff's affidavit in lieu of evidence was already filed on record and, therefore, the trial Court could have promptly proceeded to decide all the issues, including the issue of jurisdiction which has been raised.

10. In view of this, the appeal is allowed. The impugned judgment and decree is set aside. The matter is remanded back to the trial Court with a direction to decide the suit afresh in the light of the observations above, expeditiously.

11. The parties shall appear before the trial Court on 02/09/2013.

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