

Videocon Industries Ltd. Vs. Rajesh Kumar Kedia

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Court : Mumbai Aurangabad

Decided On : Feb-14-2013

Judge : S.S. Shinde

Appeal No. : Civil Revision Application No.191 of 2011

Appellant : Videocon Industries Ltd.

Respondent : Rajesh Kumar Kedia

Judgement :

Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

2. The background facts of the case, as narrated in the revision application, are as under:

It is the case of the petitioner that the petitioner company is a company incorporated under the Companies Act, 1956. The plaintiff company is carrying on business of manufacturing and sale of various electronic items such as Colour Television sets etc. and home appliances. The petitioner herein is Power of Attorney holder of the plaintiff and he has filed Special Civil Suit No.94 of 2008 in the Court of 3rd Joint C.J.S.D., Aurangabad for recovery of an amount of Rs.43,74,361/- against the defendant.

3. It is the case of the plaintiff / petitioner that the defendant / respondent opened account with Ranchi Branch of plaintiff company and purchased goods from

petitioner company from time to time. On 15th September, 2007, the accounts were settled between the plaintiff and defendant and it was found that a sum of Rs.40,91,611 was due and payable by the defendant to the petitioner / company. Therefore, the plaintiff has filed Special Civil Suit No.94 of 2008 against the defendant for recovery of the amount.

4. It is the case of the petitioner that the defendant is the proprietor of the firm M/s Kedia Enterprises and the respondent is carrying on business of the said firm and looking the day to day affairs of the firm and, therefore, he is liable to pay the due amount to the plaintiff / company.

5. The defendant appeared in the matter and filed his written statement on record. The learned trial Court framed 12 issues below Exh.12A. The Issue No.12 is in respect of jurisdiction of the learned lower Court and, therefore, as per the order dated 2nd March,2011, the Court has decided to decide issue No.12 as a preliminary issue.

6. It is the case of the petitioner that the petitioner has already filed examination-in-chief by way of affidavit as contemplated under the provisions of Order 18 of the Civil Procedure Code on 27th January, 2011 and the petitioner has also produced the original documents on record. Thereafter, the learned trial Court has heard the matter in respect of Issue No.12 and the Court came to the conclusion that the Court has no jurisdiction to try the present suit and plaint was ordered to be returned for presenting to the Court in which suit should have been instituted. Being aggrieved and dissatisfied with the order dated 11th July, 2011 below Exh.12/A in Special Civil Suit No.94/2008 passed by the 3rd Joint C.J.S.D., Aurangabad, the petitioner filed this civil revision application.

7. The learned Counsel appearing for the revision petitioner submits that the plaintiff has already filed on record an affidavit in lieu of examination-in-chief and under such circumstances, hearing of Issue No.12 as preliminary issue to decide the point of jurisdiction was uncalled for. It is submitted that the issue in respect of jurisdiction of the Court is a mixed question of law and facts, and therefore, it cannot be decided as a preliminary issue. It is further submitted that the trial Court is having jurisdiction to try the suit as per section 20(C) of the Civil Procedure

Code since cause of action has partly arisen at Aurangabad and, therefore, the Court at Aurangabad has jurisdiction to try the suit. The plaintiff company is having its registered office at Chitegaon, Taluka Paithan, District Aurangabad, which is within the jurisdiction of learned Court at Aurangabad and hence, as per the provisions of law, the said Court is having jurisdiction to try the suit. The defendant has handed over cheque of Rs.40,91,611/- on 23rd October, 2007 to the plaintiff at Aurangabad and hence, cause of action has also partly arisen at Aurangabad. It is further submitted that there is an agreement between the parties in respect of jurisdiction of the Court at Aurangabad. In that regard, it is pertinent to note that the plaintiff has produced the invoices on record and at the top of invoice, it has been mentioned specifically as "Subject to Aurangabad Jurisdiction only" and hence, in such circumstances, if any dispute arises in respect of transaction between the petitioner and respondent, Aurangabad Court has jurisdiction in respect of the subject matter of the suit. The trial Court has not properly appreciated the documentary evidence filed on record by the petitioner and as such, came to wrong conclusion.

It is submitted that since the hearing of the suit has already commenced, it was not necessary to consider and decide the issue of jurisdiction as a preliminary issue. The trial court should have proceeded to hear the suit on merits instead of framing preliminary issue on the aspect of jurisdiction. The learned Counsel further submitted that the registered office of the plaintiff is at Aurangabad, cheque was also given by respondent at Aurangabad. Therefore, relying upon the pleadings in the petition and grounds taken therein, the learned Counsel for the petitioner submits that the concerned Court at Aurangabad should have held that the Court at Aurangabad has jurisdiction to hear the suit of the plaintiff / petitioner. The learned Counsel for revision petitioner pressed into service exposition of the Supreme Court in case of *New Moga Transport Co., through its Proprietor Krishanlal Jhanwar V. United India Insurance Co. Ltd. and others* ((2004)4 SCC 677) and submitted that the Supreme Court in the facts of that case, has taken a view that normally, under clauses (a) to (c) of Section 20 the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the defendant and can file a suit at a place where the cause of action arises. If the defendant desires to be protected from being dragged into a litigation at some

place merely because the cause of action arises there it can save itself from such a situation by an exclusion clause.

The learned Counsel also invited my attention to para 19 of the said judgment and submitted that the intention of the parties can be culled out from use of the expressions "only", "alone", "exclusive" and the like with reference to a particular court. It is submitted that the revision petitioner herein has mentioned on the top of the invoices, which are placed on record before the trial Court, as "Subject to Aurangabad Jurisdiction only". Therefore, in the light of aforesaid pronouncement of the Supreme Court, the trial Court should have held that the Court has jurisdiction to try the suit. In addition to the judgment of the Supreme Court, the learned Counsel also placed reliance in case of *R.S.D.V. Finance Co. Pvt. Ltd. v. Shree Vallabh Glass Works Ltd.* (AIR 1993 SC 2094) in support of his contention that the Court at Aurangabad has jurisdiction to try the suit filed by the revision petitioner herein. Therefore, the learned Counsel for the petitioner prayed that this revision application may be allowed.

8. The learned Counsel appearing for the respondent invited my attention to the averments in the affidavit-in-reply filed on behalf of respondent sole and submitted that it is not correct to say that on 15th September, 2007 the accounts were settled between the plaintiff and the defendant and, it was found that a sum of Rs. 40,91,611/- was due and payable by the defendant to the revision petitioner as contended by them. It is submitted that the respondent is carrying business of sale of electronics appliances at Durga Market situated at Katrasagarh, District Dhanbad in Jharkhand State. The respondent is not responsible for any payment to the revision petitioner. The suit has been filed by the revision petitioner just to harass the respondent. He submitted that considering the allegations made in the plaint and the documents filed along with the suit, the Court at Aurangabad is not having jurisdiction to try the said suit since no any transaction has taken place in the territorial jurisdiction of Aurangabad court. It is submitted that the trial Court has rightly framed the issue of jurisdiction and decided it on the basis of the material / documents placed on record. The Court has rightly observed that the copy of the Dealer Profile on record shows that the defendant is resident of Durga Market Katrasagarh, Dhanbad (Jharkhand State) and the copy of the account

statement of the defendant shows that the transactions mentioned had taken place at Ranchi (Jharkhand) and copies of 22 invoices show that the defendant is resident of Durga Market, Katrasagarh, Dist. Dhanbad, Jharkhand State. It is submitted that all these documents show that all the transactions have taken place in Jharkhand State as well as the promissory note and continuing security bond were executed between the parties at Katrasagarh, Ranchi, Jharkhand State which show address of defendant in Jharkhand State.

It is submitted that copy of the alleged cheque issued by the defendant is of State Bank of India, branch Katrasagarh, which was presented by the revision petitioner for clearance at Ahmednagar. Considering all these aspects, not a single transaction has taken place in the territorial jurisdiction of Aurangabad court nor there is any cause of action arisen in the territorial jurisdiction of Aurangabad. It is submitted that merely mentioning on the top of the invoices as "Subject to Aurangabad jurisdiction only", does not have any overriding effect on the provisions of section 20 of the C.P.C. It is submitted that the trial Court has rightly decided the issue of jurisdiction and came to the conclusion that not a single transaction occurred in territorial jurisdiction of Aurangabad Court and rightly returned the claim / plaint back to the petitioner for presenting the same before the proper court. The learned Counsel submitted further that the trial Court was correct in framing preliminary issue about jurisdiction since, if the Court at Aurangabad has no jurisdiction to entertain the suit, then unnecessary exercise of further trial would amount to wastage of time of the Court and also of the parties and would cause unnecessary harassment to the parties. Therefore, Counsel for respondent submitted that inference in the impugned judgment by this Court is not warranted. The learned Counsel for the respondent placed reliance on the judgment of Andhra Pradesh High Court in case of Grandhi Pitchaiah, Venkataraju and Co., v. Palukuri Jagannadham and Co., Calcutta and others (AIR 1975 AP 32) and submitted that merely mentioning the words on the document and in the facts of the present case, on invoice as "Subject to Aurangabad Jurisdiction only", will not exclude the jurisdiction of competent court to try the suit.

The learned Counsel also pressed into service exposition of the Supreme Court in case of Hakam Singh v. M/s Gammon (India) Ltd., (AIR 1971 SC 740) and

submitted that the Supreme Court held that the parties cannot by agreement confer jurisdiction on Court not possessed by it under the Code. But agreement that one of the Courts having such jurisdiction alone shall try dispute is not contrary to public policy and does not contravene Section 28 of the Contract Act. He also placed reliance upon the judgment of the Supreme Court in case of *Laxman Prasad v. Prodigy Electronics Ltd. and Anr.* (AIR 2008 SC 685) and submitted that the Supreme Court in the said judgment has considered the provisions of sections 20 and 35 of the Code of Civil Procedure and held that the plea that jurisdiction to try the suit is available at a place where agreement was entered or a place where defendant resides, is not tenable. It is submitted that in the facts of the present case, the entire transaction has taken place in the State of Jharkhand and, therefore, entire cause of action has taken place at the place of defendant and, therefore, the suit filed by the plaintiff / petitioner at Aurangabad is not maintainable as rightly held by the trial Court. Therefore, the learned Counsel for respondent submitted that this Court may not interfere in the findings recorded by the trial Court.

9. I have given careful consideration to the rival submissions, perused the averments in the application, annexure thereto, reply filed by the respondent and the judgments cited across the Bar by the learned Counsel for the parties. The first submission of the learned Counsel for the revision applicant - original plaintiff that the plaintiff has already filed on record affidavit in lieu of examination-in-chief and under such circumstances, hearing of issue No.12 as preliminary issue to decide the point of jurisdiction was uncalled for, cannot be accepted. The trial Court has rightly adjudicated the point of jurisdiction at the threshold after perusing the documents / evidence placed on record. The trial Court has adverted to various documents and after considering the said documents, view is taken by the trial Court that the said Court has no jurisdiction to entertain the suit. The second submission of the learned Counsel for the revision applicant that in view of provisions of section 20-C of the Code of Civil Procedure, the trial Court at Aurangabad has jurisdiction to try the suit, is devoid of any merits. The plaintiff is not able to demonstrate that cause of action has partly arisen at Aurangabad. It is not in dispute that the defendant is carrying on business of sale purchase of electronic items at Durga Market situated at Katrasagarh, District Dhanbad in

Jharkhand State. He is proprietor of the said firm in the name and style of M/s Kedia Enterprises and he is responsible for the dealing of the said firm. The defendant has opened credit account with Ranchi branch of the plaintiff company and purchased goods from time to time.

All the transaction between the plaintiff and defendant have taken place at Ranchi and plaintiff company opened account in the name of defendant with its Ranchi branch. The documents at Sr.No.4 and 5 which were placed on record by the plaintiff before the trial Court i.e. the promissory note and continuing security bond are considered by the trial Court and the trial Court held that the promissory note and continuing security bond were also executed by the parties at Katrasagarh, District Dhanbad in Jharkhand State. The cheque under dispute was of State Bank of India, branch Katrasagarh and the said cheque was presented for clearance at Ahmednagar (M.S.). Therefore, the trial Court recorded that no part of the transactions had taken place within the territorial jurisdiction of the Court at Aurangabad. Therefore, since no cause of action or part of cause of action has arisen at Aurangabad, the contention of the Counsel for the revision applicant that the trial Court is having jurisdiction to try the suit as per section 20-C of the C.P.C., deserves to be rejected.

10. The third contention of the learned Counsel for the revision applicant that the plaintiff company is having its registered office at Chitegaon, taluka Paithan, District Aurangabad, which is within jurisdiction of the learned Court at Aurangabad and hence the said Court is having jurisdiction to try the suit, cannot be accepted. The provisions of section 20 of the C.P.C. reads, thus:

"20. Other suits to be instituted where defendants reside or cause of action arises.-

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

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

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

Explanation I.-Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.-A corporation shall be deemed to carry on business at its sole or principal office in {Subs. by Act 2 of 1951, s.3, for "the States".} (India) or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

11. Upon careful perusal of the afore mentioned provisions of Section 20 of C.P.C., in the facts of this case, it will have to be held that none of the clause would come to the aid of the plaintiff to hold that the Court at Aurangabad has jurisdiction to try the suit. The respondent herein is residing at Durga Market, Katrasagarh, Dhanbad (Jharkhand State). The cause of action, wholly or in part, has not arisen within the jurisdiction of Aurangabad Court. The entire transactions have taken place at the place of defendant. A Court can have the territorial jurisdiction to try the suit in case, the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain or actually and voluntarily resides, or carries on business, or personally works for gain, or the cause of action, wholly or in part, arises within territorial jurisdiction of such Court. As observed earlier, in the present case, entire transactions have taken place between the parties in the State of Jharkhand. Another submission of the Counsel for the revision applicant that the defendant has handed over the cheque of Rs.40,91,611/- on 23rd October, 2007 to the plaintiff at Aurangabad and hence, cause of action has also partly arisen at Aurangabad, cannot be accepted

in the light of the fact that the said cheque was deposited by the plaintiff at Ahmednagar. Therefore, the Court at Aurangabad has no territorial jurisdiction to try the suit.

The Counsel for the revision applicant though vehemently argued that there is an agreement between the parties to the effect that the Court at Aurangabad will have jurisdiction in case any dispute arises between the plaintiff and defendant. Nothing has been placed on record as to by which agreement the plaintiff and defendant have agreed that the Court at Aurangabad will have jurisdiction in case of any dispute between the parties. In fact, it is the case of the defendant that there is no agreement to that effect. Further contention of the learned Counsel for the revision applicant that on the top of the invoices which are placed on record, it is mentioned "Subject to Aurangabad jurisdiction only" and hence, in such circumstances, if any dispute arises in respect of transaction between the applicant and respondent, Aurangabad Court has jurisdiction in respect of subject matter of the suit, cannot be accepted in absence of any agreement to that effect.

12. The Supreme Court in case of Hakam Singh (supra), on interpretation of Section 20 of the C.P.C., had taken a view that the parties cannot, by agreement, confer jurisdiction on Court not possessed by it under the Code. But, agreement that one of the Courts having such jurisdiction alone shall try dispute is not contrary to public policy and does not contravene Section 28 of the Contract Act.

In the facts of the case in hand, as observed earlier, the plaintiff has not brought anything on record to show that there is an agreement entered between the plaintiff and defendant that the Court at Aurangabad will have jurisdiction alone, in case some dispute arises. Mere mentioning on the top of invoices as "subject to Aurangabad jurisdiction only" will not confer jurisdiction on the court. The same view is reiterated by the Supreme Court in cases of M/s Shriram City Union Finance Corporation Ltd., v. Rama Mishra (AIR 2002 SC 2402), New Moga Transport Co. (supra). The learned Counsel for the revision applicant, in support of his contention that since it is mentioned on the top of invoices as "subject to Aurangabad jurisdiction only", placed reliance upon reported judgement of the Supreme Court in case of New Moga Transport Co. (supra). Upon careful reading

of para 14 of the said judgement, the submission of the Counsel for the applicant, cannot be accepted for the reason that there is no agreement entered into between the parties in the present case that any dispute between them shall be tried in any one of such Courts which have jurisdiction. The Supreme Court in para 14 of the said judgement held, thus:

"14. By a long series of decisions it has been held that where two Courts or more have under the CPC jurisdiction to try a suit or proceeding an agreement between the parties that the dispute between them shall be tried in any one of such Courts is not contrary to public policy and in no way contravenes Section 28 of the Indian Contract Act, 1872. Therefore, if on the facts of a given case more than one Court has jurisdiction, parties by their consent may limit the jurisdiction to one of the two Courts. But by an agreement parties cannot confer jurisdiction to a Court which otherwise does not have jurisdiction to deal with a matter. (See *Hakam Singh v. M/s. Gammon (India) Ltd.* (AIR 1971 SC 740) and *M/s. Shriram City Union Finance Corporation Ltd. v. Rama Mishra* (AIR 2002 SC 2402)."

13. Upon careful perusal of the impugned judgment, it appears that the Court has considered the case of revision applicant - plaintiff in the light of the documents placed on record and held that the defendant is not residing within the territorial jurisdiction of the Court of C.J.S.D., Aurangabad. So far cause of action is concerned, all the transaction between the parties had taken place at Katrasagarh, Ranchi in Jharkhand State. The important documents like promissory note and continuing security bond were also executed between the parties at Katrasagarh, District Dhanbad in Jharkhand State. The cheque was drawn on S.B.I., Katrasagarh and it was presented at Ahmednagar. No part of transaction has taken place within the jurisdiction of Court at Aurangabad. The trial Court has also considered the effect of the words "subject to Aurangabad jurisdiction only" on the invoices produced by the plaintiff and held that same is not sufficient to hold that the Court at Aurangabad has jurisdiction to try the suit. This Court is in complete agreement with the findings recorded by the Court below.

14. The Supreme Court in case of *Laxman Prasad* (supra), held in para 21, thus:

"21. Section 20 has been designed to secure that justice might be brought as near as possible to every man's hearthstone and that the defendant should not be put to the trouble and expense of traveling long distances in order to defend himself."

Therefore, it follows from the authoritative pronouncement of the Supreme Court in Laxman Prasad (supra) that Section 20 has been designed to secure that justice might be brought as near as possible to every man's hearthstone and that the defendant should not be put to the trouble and expense of traveling long distances in order to defend himself.

15. Therefore, taking overall view of the matter, in my opinion, the impugned judgment and order needs no interference. The Civil Revision Application is devoid of any merits and the same stands dismissed. Rule stands discharged with no order as to costs.

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