

Ots Ltd. Vs. Mps Greenery Developers Ltd. and ors.

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Court : Kolkata

Decided On : Apr-07-2014

Judge : I. P. Mukerji

Appellant : Ots Ltd.

Respondent : Mps Greenery Developers Ltd. and ors.

Judgement :

ORDER

SHEET GA NO.633 OF 2014 WITH CS NO.43 OF 2014 GA NO.555 OF 2014 GA NO.795 OF 2014 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE OTS LTD.Versus MPS GREENERY DEVELOPERS LTD.& ORS. BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 7th April, 2014.

Mr.A.Mitra, Mr.J.Chowdhury, Mr.S.Ghoshfor plaintiff.

Mr.M.Bose, Mr.S.Chatterjee for defendant no.1 The Court : The amendment application GA No.795 of 2014 is treated as on the days list and disposed of by passing orders prayed for, inasmuch, this Court is of the view that the same when allowed would resolve the entire controverRs.between the parties, without causing any prejudice to the defendants.

In the application for revocation of leave under Clause 12 of the Letters Patent and for ancillary reliefs, Mr.Bose, learned counsel for the fiRs.defendant makes the

following submissions: The agreement, as pleaded in the plaint, was executed within the jurisdiction of this Court.

No such agreement was entered into between the parties within the said jurisdiction.

At this stage, the Court has to go by the averments in the plaint.

I did not allow Mr.Bose to refer to any documents annexed to the plaint.

In this kind of an application, it is to be shown from the plaint itself that the suit is barred by law.

The plaint says that the agreement was entered into within the jurisdiction of this Court.

At this point of time, this has to be taken as true.

But it is always open for the defendants to displace this statement of fact by adducing evidence at the trial that no such agreement was entered into within the jurisdiction of this Court.

If that is successfully done, the Court will immediately lose jurisdiction over the matter.

I am of the opinion that raising of this issue, as a preliminary issue at the trial, subject to the ruling of the Honble Judge trying the suit would sub-serve the purpose of justice.

The next point taken by Mr.Bose is that there is misjoinder of causes of action.

The causes of action against the defendants are separate and distinct.

Separate causes of action against different defendants have been joined in this suit, which makes it bad for misjoinder of causes of action.

The plaint has been skillfully drafted.

It pleads that an agreement was entered into between the plaintiff and the defendants.

It does not say whether the agreement was entered into between the plaintiff and the defendants jointly.

Neither does it say that a separate agreement was entered into with each defendant.

The defendants are fixed with joint liability.

In this state of affairs it is not possible, on scrutiny of the plaint, to say that the suit is barred for misjoinder of causes of action.

This point again can be proved by adducing evidence, at the trial of the suit.

Since this point is also jurisdictional, it may be tried as a preliminary issue subject to the ruling of the Honble Judge trying the suit.

This application for dismissal of the suit [GA No.555 of 2014] is disposed of with the above observation.

Now, I come to the interim application.

Mr. Bose for the fiRs. defendant points out that the admission, which has been made the basis of claiming the interim order was made by MPS Transportation and Logistics PVT.Ltd., which is now made a party by amendment and which was not a party at the time of institution of the suit.

This company was not a party to the contract.

To this, Mr. Mitra submitted that there was an arrangement between the plaintiff and the defendants whereby this company would receive and pay the bills.

Now, on this submission, it is difficult to hold that a clear cut case of admission is made out because this company is admittedly not a party to the agreement and was not a party to the suit, initially.

Whether a subsequent arrangement for bills to be raised upon and paid by this company could fix them with liability would come out at the time of trial of the suit.

Meanwhile, in terms of the order dated 31st January, 2014, the Joint Special Officers were able to inventorise three vehicles and take symbolic possession thereof.

Three were not available.

Now, it is submitted on behalf of the fiRs.defendant that all the vehicles were sold out before institution of the suit.

I direct the Joint Special Officers to visit the spot and such other places as may be required to inventorise all the six vehicles by tracing the vehicles to their transferees.

They will file a report as to which of the six vehicles have been transferred, on what date and to which party.

Also whether the transfer has been recorded with the registering authority.

The Joint Special Officers will be paid further remuneration by the plaintiff, equal to the initial remuneration paid.

They will file a report by the returnable date, which is fixed as 28th April, 2014.

The defendants will not transfer or part with possession of the vehicles, which are found to be in their ownership or possession by the Joint Special Officers till the decree is passed.

The earlier interim order is modified accordingly.

Certified photocopy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(I.

Pkd.

A.R.[C.R.].P.MUKERJI, J.)

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