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Court : Guwahati

Decided On : Feb-20-2006

Judge : A.H. Saikia, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 16, 20 and 21 - Order 14, Rule 2

Appeal No. : CRP No. 135 of 2003

Appellant : Pawan Kumar Agarwal and anr.

Respondent : State Bank of India

Advocate for Def. : B. Kalita and S. Dutta, Advs.

Advocate for Pet/Ap. : S.K. Kejriwal, Adv.

Disposition : Petition dismissed

Judgement :

A.H. Saikia, J.

1. Heard Mr. S.K. Kejriwal, learned Counsel, for the petitioners and Mr. B. Kalita, learned senior counsel assisted by Mr. S. Dutta, learned Counsel representing the Bank/respondent.

2. By means of this application, the petitioner has challenged the order dated 10.4.2003 passed by the learned Civil Judge (Sr. Division), Tinsukia in Title Suit No. 12/94 rejecting the petition that questioned the jurisdiction of the Court concerned and holding that the learned Court at Tinsukia had the jurisdiction to try the related suit.

3. The basic prayer, in this application, is that the petitioners actually and voluntarily reside at Dibrugarh and the immovable properties, being the subject-matter of the suit also situate therein and as such in view of Sections 16 and 20 of CPC, the Tinsukia Court has no jurisdiction to try such suit.

4. Mr. Kejriwal, the learned Counsel has strenuously argued that the learned trial Court took absolutely an erroneous view, while deciding the preliminary issue, i.e., 'whether this Court has jurisdiction to try the suit', to the effect that since the defendants/petitioners took an agricultural loan of Rs. 2,83,000 only from the Bank/respondent that situated at Tinsukia, the cause of action arose at Tinsukia and in view of Section 20 CPC, the Tinsukia Court had the jurisdiction to try the suit. According to him, the learned Judge acted illegally and without jurisdiction in ignoring the provision of Section 16 CPC though he did mention about the said provision in the impugned order. It is contended that the petitioners' case falls under Section 16(d) CPC which provides that suit for the determination of any other right or interest in immovable property shall be instituted in the Court within local limit of whose jurisdiction the property is situated and this point was specifically pleaded before the Court below contending that the immovable property in question was situated at Dibrugarh.

5. The learned Counsel for the petitioners, in support of his argument, has relied on a decision of the Apex Court reported in Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr. : AIR 2005 SC4446 . Dealing with the scope and applicability of Section 16(d) of CPC in a suit for specific performance of agreement of sale of immovable property seeking relief of execution of sale deed and delivery of possession, the Apex Court held that in such case, the Court within whose territorial jurisdiction the immovable property was situated, had the competent jurisdiction to try the suit and such suit was covered by Section 16(d)

C.P.C.

6. It transpires from close perusal of the records and the impugned order dated 10.4.2003 that the related Title Suit was filed in the year 1994 by the respondent/Bank against the defendants/petitioners before the Tinsukia Court for recovery of Rs. 6,12,962.61 under term loan account with interest thereon as the loan was granted by that Bank to the petitioners as agricultural loan to the tune of Rs. 2,83,000 which now with interest accrued therein came up to Rs. 6,12,962.61 as noted above.

7. It is also seen that a formal application was moved only in the year 2002, i.e., 20.11.2002 by the petitioners, who filed their written statement earlier raising this jurisdictional point as preliminary issue, before the Tinsukia Court under Order 14, Rule 2 read with Section 21 CPC alleging that the Court had no jurisdiction to try this suit due to lack of jurisdiction and as such the Court had to decide the jurisdictional point first by framing a preliminary issue before deciding the entire matter as such issue was not yet framed despite filing of the written statement by the petitioners with specific pleading therein to frame preliminary issue in this regard.

8. However, by impugned order dated 10.4.2003, in deciding the preliminary issue regarding the jurisdiction having been framed, it was held that since the loan was taken from the Tinsukia Branch of the said Bank, the cause of action arose within the jurisdiction of the Tinsukia Court and accordingly the Tinsukia Court had the jurisdiction and the preliminary issue was decided accordingly.

9. It is gathered from the perusal of the records that the immovable properties are situated at Dibrugarh. However, though at the relevant time, there was a Branch of the Bank at Dibrugarh, the petitioners preferred to get the loan sanctioned as mentioned above from the present Branch of this Bank at Tinsukia which was at the relevant time within the Dibrugarh District. In other words, during the relevant period, Tinsukia Bank was under the jurisdiction of Dibrugarh Court. Significantly, the respondent-Bank filed the suit for recovery of loan amount with interest thereon only in the year of 1994 before the competent Court at Tinsukia having territorial jurisdiction at the relevant time though later on Tinsukia District was

curved out from Dibrugarh District. It also appears that after the bifurcation of the Dibrugarh District, no steps were taken by the petitioners in this aspect though the case was pending since 1994. The matter was agitated only in 2002 by filing a formal application to decide the jurisdictional point by way of framing a preliminary issue. Even no cogent reason has been set out as to why it took 8 years to make a prayer for such decision a on jurisdictional point. It is nothing but simply a dilatory tactics adopted by the petitioners to dilly-dally the matter that pertains to recovery of public money which remained outstanding against the petitioners for years due to their sheer default in making repayment of the loan granted by the Bank.

10. Needless to mention that it is nobody's case that this suit was instituted by the Bank for a decree for declaration of right, title and interest over the immovable properties of the petitioners but a suit only for recovery of the agricultural loan amount with interest accrued thereon that was granted on hypothecation of the immovable properties being situated at Dibrugarh as described in the Schedule to the plaint. Further it is also admitted fact that the loan in question was sanctioned from Tinsukia Bank at Tinsukia and the cause of action of the suit, hence, arose at Tinsukia. Since suit was in the nature of money suit and the cause of action of the suit arose at Tinsukia, the ratio laid down in H. C, Lal Modi's case (supra) is not applicable to this case in view of the attending facts and circumstances of the case at hand.

11. In the premises of the attending facts and circumstances of the case and upon hearing the learned Counsel for the parties, this Court is of the view that the Tinsukia Court has the jurisdiction to try the case as the cause of action arose within the jurisdiction of the Tinsukia Court as the loan was sanctioned and disbursed by the Tinsukia branch of the Bank and consequently, this Court finds no illegality and or jurisdictional error to upset the impugned order.

12. Since the suit involving public money has been pending before the learned trial Court since 1994, the learned Civil Judge (Sr. Division), Tinsukia, is directed to make an endeavour to dispose of the Title Suit On 12/94 as expeditiously as possible and in any case within a period of six months from the date of receipt of the certified copy of this order.

13. In the result, this petition stands dismissed. Interim order passed earlier stands vacated.

14. Send down the records immediately.

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