

Meridian Industries Ltd. Vs. Devdoot Gln Mill Ginning and Oil Mill Unit

Meridian Industries Ltd. Vs. Devdoot Gln Mill Ginning and Oil Mill Unit

SooperKanoon Citation : sooperkanoon.com/431839

Court : Andhra Pradesh

Decided On : Mar-21-2005

Reported in : 2005(3)ALD511

Judge : K.C. Bhanu, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 10 and 151

Appeal No. : CRP No. 4937 of 2004

Appellant : Meridian Industries Ltd.

Respondent : Devdoot Gln Mill Ginning and Oil Mill Unit

Advocate for Def. : S. Surender Reddy, Adv.

Advocate for Pet/Ap. : V. Ravi Kiran Rao, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.C. Bhanu, J.

1. Challenging the order dated 12-8-2004 in I.A. No. 1 of 2004 in O.S. No. 27 of 2003 on the file of Senior Civil Judge, Adilabad, the present civil revision petition has been filed.

2. Originally, the respondent herein filed a suit in O.S. No. 27 of 2003 for recovery of an amount of Rs. 1,20,196/- with interest and the petitioner herein is disputing the suit on the ground of territorial jurisdiction. Earlier, the petitioner herein also filed a suit in O.S. No. 831 of 2003 on the file of II Additional Subordinate Judge, Coimbatore, for recovery of a sum of Rs. 1,88, 6111/- and the said suit is pending. According to the petitioner, the present suit in O.S. No. 27 of 2003 is filed as a counterblast to the suit in O.S. No. 831 of 2003. While so, the petitioner herein filed an application under Section 10 read with Section 151 of the Code of Civil Procedure (for brevity 'CPC') to stay the O.S. No. 27 of 2003 in view of the pendency of earlier suit in O.S. No. 831 of 2003 on the file of II Additional Subordinate Judge, Coimbatore. The Court below after considering the evidence available on record dismissed the said application on merits.

3. The respondent therein filed the counter-affidavit stating that the petitioner has no locus standi to file the petition under Section 10 of the CPC. The deponent is not the director of the firm. The respondent-plaintiff filed a suit for recovery of Rs. 1,20,196/- as the goods were supplied as per invoice and it is the subject-matter of the Court below and that Section 10 of the CPC has no application.

4. Based on the material available on record, the learned Senior Civil Judge came to the conclusion that the subject-matter in both the suits is different and therefore, the present petition filed under Section 10 of the CPC is not maintainable and accordingly dismissed. Challenging the same the present civil revision petition.

5. The learned Counsel appearing for the petitioner contended that the dispute made by both the parties in both the suits is relating to the supply/non-supply of cotton in the month of July, 2002 by the respondent herein. Since the petitioner has instituted the suit prior to the institution of the suit filed by the respondent herein, the proceedings in O.S. No. 27 of 2003 on the file of Senior Civil Judge, Adilabad have to be stayed. He further contended that in both the suits parties are same and the issues also directly or substantially are one and the same and hence, he prays to allow the revision petition.

6. On the other hand, the learned Counsel for the respondent contended that the issue involved in both the suits is not one and the same as O.S. No. 27 of 2003

was filed with regard to the recovery of balance amount from the defendant. Whereas O.S. No. 831 of 2003 was filed with regard to the damages along with breach of contract and hence, there is no error of law apparent on the face of the record so as to calling interference by this Court.

7. As seen from the record, O.S. No. 831 of 2003 is filed before the II Additional Subordinate Judge, Coimbatore, by the petitioner herein for the loss suffered by them only due to the breach of contract and non-supply of cotton by the defendants therein as agreed. Therefore, the defendants therein are liable for loss caused to the plaintiff therein. Whereas O.S. No. 27 of 2003 is filed by the respondent herein for recovery of Rs. 1,20,196/- towards the supply of goods as per the invoice.

8. Section 10 of the CPC which provides that where a suit is instituted in a Court to which the provisions of the Code applies, the Court will not proceed with the trial of the suit, in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, and that the Court in which the previous suit is pending is competent to grant the relief claimed. The underlying object of the Rule contained in Section 10 of the CPC is to prevent the Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject-matter and the same relief.

9. The learned Counsel for the respondent relied upon a decision reported in *Karri Satyanarayana v. Pichika Veerraju*, 1996 (1) ALD 616, wherein this Court held that:

'...There is no doubt that certain common issues do arise in both the suits but as already pointed out supra for Section 10 CPC to apply, there must be identity of subject-matter and mere fact that one of the questions in issue is the same as in the other suit would not make the subject-matter identical. If that is so, the provisions of Section 10 CPC are not attracted to the facts of the case and the application filed by the defendants under Section 10 CPC should be held to be incompetent...'

10. The learned Counsel for the petitioner, on the other hand, relied upon a decision reported in *British Indian Corporation. Ltd. v. Rashtraco Freight Carriers, :* (1996)4SCC748 , wherein the Apex Court held as follows:

'...Section 10 of CPC envisages that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same tide where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed...'

11. From the above, it is clear that the issue must be directly or substantially in both the suits must be one and the same. It is seen that the claim of the petitioner herein in O.S. No. 831 of 2003 on the file of II Additional Subordinate Judge, Coimbatore, is due to the loss suffered by the plaintiff due to the breach of contract and non-supply of cotton as agreed by the defendants. Whereas in O.S. No. 27 of 2003 on the file of Senior Civil Judge, Adilabad, for recovery of certain amount towards the cost and interest for the goods purchased by the defendants therein. The cause of actions are entirely different, hence, there is no issue directly or substantially in both the suits.

12. Therefore, the learned Senior Civil Judge, Adilabad did not give any illegal finding or perverse finding in dismissing the application filed by the revision petitioner herein. There is no error of law apparent on the face of the record so as to calling interference by this Court. Since the issue in both the suits is not shown to have been directly or substantially in issue, the stay as prayed for cannot be granted. Hence, it is at best a case for joint trial but not for exercising the powers under Section 10 of the CPC. There are no grounds to interfere with the order under impugned.

13. In the result, civil revision petition is dismissed. No costs.