

Ramnarayan and ors. Vs. Firm Mangeram Radheshyam Hardoi (U.P.) and anr.

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Court : Madhya Pradesh

Decided On : Nov-13-1978

Reported in : AIR1979MP61

Judge : C.P. Sen and ;B.C. Verma, JJ.

Acts : [Specific Relief Act, 1963](#) - Sections 34; Code of Civil Procedure (CPC) - Sections 9 - Order 7, Rule 7

Appeal No. : First Appeal No. 222 of 1976

Appellant : Ramnarayan and ors.

Respondent : Firm Mangeram Radheshyam Hardoi (U.P.) and anr.

Advocate for Def. : A.B. Choubey, Adv.

Advocate for Pet/Ap. : Y.S. Dharmadhikari, Adv.

Disposition : Appeal dismissed

Judgement :

B.C. Verma, J.

1. The lower Court has accepted the preliminary objection raised by the defendants-respondents to the maintainability of the suit for the relief of bare declaration without claiming any further relief. The suit has accordingly been dismissed. The plaintiffs challenge this dismissal of their suit by this appeal.

2. The case of the plaintiffs is that plaintiff No. 4 is a partnership firm. It had entered into certain commercial transactions with defendant No. 1 which is a partnership firm trading at Hardoi in U. P. Defendant No. 2 is one of the partners of the said firm. According to the plaintiffs appellants, defendant No. 1 was the commission agent and used to supply Singdana to plaintiff No. 4 on approval. The transactions ranged between Feb. 1975 to April 1975. Thereafter some dispute appears to have arisen between the parties. There was exchange of letters, telegrams and notices between the parties.

3. On 16-4-1975, plaintiff No. 4 required 5 wagons of Singdana to be sent to it. However, on 17-4-1975, defendant No. 1 was asked not to make purchases at higher rate. Defendant No. 1 nevertheless purchased two trucks of Singdana at Rs. 350/- per quintal for plaintiff No. 4. It appears that defendant No. 1 purchased Singdana at Rs. 360/- per quintal and also at Rs. 362.50 per quintal. It appears that defendant No. 1 wanted to sell certain quantity of Singdana to plaintiff No. 4. Sometime in May 1975, some quantity of Singdana was sent to plaintiff No. 4 at Itarsi and the railway receipt and demand draft were sent through the Bank. They were not honoured by plaintiff No. 4. The plaintiffs alleged that on 26-6-1975 accounts between the parties of all their dealings were settled at Itarsi and a sum of Rs. 1,02,521/- was found due to defendant No. 1 from plaintiff No. 4. According to the plaintiffs, this was in final settlement of all the dues. However, defendant No. 1 alleged that it had certain more dues outstanding against the plaintiffs and made a demand for the same alleging that plaintiff No. 4 had committed breach of contract to purchase 5 wagon-load of Singdana and was liable for damages. The total amount then claimed by defendant No. 1 was Rupees 41,509.60. It is the plaintiffs' allegation that no such amount was due to defendant No. 1 from either of them and the claim was false. According to them, accounts were settled finally on 26-5-1975 at Itarsi and nothing was due from them to defendant No. 1. The precise allegation in this behalf is contained in para 11 of the plaint which is as

follows:

'11. That the plaintiffs are, therefore, entitled to a declaration that they have to pay nothing to defendants on account of any transaction. They are, therefore, filing this suit for declaration that no amount or Rs. 41,509.60 N.P. Claimed in the notice, dated 22/24-7-75 is due by any of the plaintiffs to defendants'

With these allegations, the plaintiffs claimed the following relief:

'That it be declared that the plaintiffs 1 to 3 had no dealing with the defendants and they have to pay nothing to the defendants in respect of any dealings or breach of contract and so also accounts of defendants with plaintiff No. 4 have been settled and have been fully cleared and nothing is due by plaintiff No. 4 to the defendants.'

4. The defendants-respondents while challenging the suit on merits also contended that the suit for mere declaration without claiming further relief of injunction preventing them from recovering the amount due under the contract was not maintainable.

5. The lower Court on the pleading of the parties, among others, framed issue No. 5 as under:

'Whether the suit for bare declaration without claiming the relief of injunction is not maintainable?'

This preliminary objection as to the maintainability of the suit has found favour with the lower Court which dismissed the suit as not maintainable in view of Sec. 34 of the [Specific Relief Act, 1963](#).

6. Shri Y.S. Dharmadhikari, Learned counsel for the plaintiffs-appellants, contends that Section 34 of the Specific Relief Act is not exhaustive of the declaratory reliefs. Such reliefs, according to the learned counsel, can also be granted under the general law. The present relief claimed by the plaintiffs, according to the learned counsel, may not fall strictly within the ambit of Section 34 of the Act and yet such a suit and particularly one arising out of commercial transactions is maintainable. Shri A.R. Choubey, learned counsel for the defendants-respondents,

on the other hand, contends that even if a declaratory relief could be granted apart from Section 34 of the Act, the scope is very limited.

7. Having heard the learned counsel, we are of opinion that the appellants contention cannot be accepted and the appeal must fail. Decrees merely declaratory are an innovation and they first obtained an authoritative sanction in England by Section 50 of the Chancery Procedure Act, 1852. In India, this type of relief got a statutory recognition with the enactment of Section 15 of the Code of Civil Procedure, 1859, and was practically in the same terms as Section 50 of the Chancery Procedure Act. This Code of 1859 was repealed by the Code of 1877. In the same year was enacted the Specific Relief Act. The provision as to declaratory decrees was omitted from the Civil P. C. and incorporated in the Specific Relief Act as Section 42. This section of the Specific Relief Act, 1877 (old Act), has been replaced by Section 34 of the Specific Relief Act, 1963 (present Act), and is in the following terms:

'34. Any person entitled to any legal character or to any right as to any property, may institute a suit against any person denying or interested to deny his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. Explanation. -- A trustee of property is a 'person interested to deny' a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.'

8. It will thus be seen that Section 34 of the [Specific Relief Act, 1963](#) (old Section 42) merely gives a statutory recognition to certain well-recognised types of declaratory reliefs and further enacts a limitation on the grant of such relief in the shape of the proviso. Analysing the scope of this section, Dixit, J. (as he then was) in *Madanlal v. State of Madhya Bharat*, AIR 1955 Madh B 111 pointed out that in order to be able to seek a relief of declaration in terms of Section 42 (of old Act), the plaintiff must show that he has some legal character or some right to property

and that his opponent is denying or interested to deny such legal character or right. Legal character is the same thing as Legal status, i.e., a position recognised by law. Like view has been expressed by the Allahabad High Court in *Mahabir Jute Mills v. Firm Kedar Nath*, AIR 1960 All 254.

9. The aforesaid two decisions, however, do not say that grant of declaratory decree independent of Section 42 (old Act) or Section 34 (present Act) is prohibited. All that these decisions say is that the section permits grant of declaration as to legal character or right to property only when the same is being denied by the opponent or when the opponent is interested to deny it. In *Vemareddi Ramaraghava v. Konduru Seshu*, AIR 1967 SC 436, their Lordships of the Supreme Court, in para 11 at page 440 of their judgment have laid down the law as under:

'In our opinion, Section 42 of the Specific Relief Act is not exhaustive of the cases in which a declaratory decree may be made and the Courts have power to grant such a decree independently of the requirements of the section. It follows, therefore, in the present case that the suit of the plaintiff for a declaration that the compromise decree is not binding on the deity is maintainable as falling outside the purview of Section 42 of the Specific Relief Act.'

Similar view has again been reiterated by the Supreme Court in *Supreme General Films Exchange Ltd. v. Brijnath Singhji*, AIR 1975 SC 1810. It has been observed in that case that Section 42 cannot be deemed to be exhaustive of every kind of declaratory relief or to circumscribe the jurisdiction of Courts to give declarations of right in appropriate cases falling outside Section 42. These authorities now well settle the law that Section 34 does not exhaust the field of declaratory decrees and the Courts do have jurisdiction to grant declarations apart from the terms of that section.

10. Question then is whether the Court's jurisdiction to grant declaratory decrees is unfettered. The law has been stated succinctly in para 511, pp. 212-215 of *Halsbury's Laws of England* (Hail-sham Edition), Vol. 19, in these terms:

'Judgments and orders are usually determinations of rights in the actual circumstances of which the Court has cognisance, and give some particular relief capable of being enforced. It is, however, sometimes convenient to obtain a judicial decision upon a state of facts which has not yet arisen, or a declaration of the rights of a party without any reference to their enforcement. Such merely declaratory judgments may now be given, and the Court is authorised to make binding declarations of right whether any consequential relief is or could be claimed or not. There is a general power to make a declaration whether there be a cause of action or not, and at the instance of any party who is interested in the subject-matter of the declaration, and although a claim to consequential relief has not been made, or has been abandoned or refused, but it is essential that some relief should be sought or that a right to some substantive relief should be established'. (The underlined is ours).

It can at once be seen that a declaration falling outside Section 34 of the Specific Relief Act will be governed by the general provisions of the Civil P. C. like Section 9 or Order 7, Rule 7, in the decision in *Supreme General Film Exchange Ltd. v. Brijnath Singhji*, AIR 1975 SC 1810, it is ruled that the circumstances in which a declaratory decree under Section 42 should be awarded is a matter of discretion depending upon the facts of each case. Thus where the act complained of deprives the plaintiff of certain present rights to property and the declaratory decree has the effect of giving present relief as well, the Courts shall have power to make such a declaration. In *Sheo Singh Rai v. Mst. Dakho*, (1877-78) 5 Ind App 87 (PC), the law is very precisely stated in the following terms: '.....a declaratory decree ought not to be made unless there is a right to some consequential relief which, if asked for, might have been given by the Court or unless in certain cases a declaration of right is required as a step to relief in some other Court.'

11. The conclusion we have thus reached may be summarised thus: Thus Court's power to grant declaratory decrees is not limited to the terms of Section 34 (present) or Section 42 (old) of the Specific Relief Act. Declaratory decrees can well be made by the Courts under the general provisions of the Civil P. C. as Section 9 or Order 7 Rule 7, of the Code. The exercise of jurisdiction to grant such declaratory reliefs beyond the terms of that section shall depend upon the facts of

each case. Such a declaration may be granted when it is essential as a step to a relief in some other case or when a declaration in itself is a substantial relief and has immediate coercive effect.

12. It is well settled that it is not an absolute right to obtain a declaratory decree. The Courts have a discretion in the matter of grant of such declaratory reliefs. The Courts must exercise sound judgment while granting or refusing such reliefs. Danger to involve the opponent in vexatious litigation should be carefully avoided. The instant case presents a glaring instance of a vexatious litigation ingeniously designed to coerce a merchant at Mardoi in U.P. to run down to Hoshangabad in M. P. to defend an action. Obviously the declaration sought for does not fall within the purview of Section 34 of the Act. It is also not one to enable the appellants to seek further relief in some other forum. It cannot as well be termed to be a substantial relief in itself and does not have any immediate coercive effect. No infringement of legal right is demonstrated for the vindication of which the declaration sought for can be said to be necessary. All that is alleged is that the defendants-respondents have made a demand on the plaintiffs-appellants for a sum of Rupees 41,509.60 vide notice, dated 22/24-7-1975. The issuance of such a notice can by no stretch be said to be infringing any legal right or character which the appellants may have. The appellants are thus not entitled to the declaration sought for either under Section 9 or Order 7, Rule 7, of the Civil P. C. It appears that the appellants have forestalled this action on receipt of a notice of demand from the defendants-respondents. Such devices by litigants are not unknown. The conduct of the appellants in rushing to Court, disguising the suit as one for declaration on payment of Rs. 30/- as Court-fee completely disentitles them to grant of any declaratory decree even if they were otherwise held entitled to it.

13. Learned counsel for the appellants strongly relied upon a passage from Benjamin's Sale of Goods, 1st Edition, para 1352 at p. 680 and decisions reported in Fairclough Dodd and Jones Ltd v. Vantol, Ltd., (1956) 3 All ER 921 and Household Machines Ltd. v. Cosmos Exporters Ltd., (1946) 2 All ER 622. The passage, which is based on these two English decisions, runs thus :

'In appropriate circumstances, the buyer may obtain a declaration setting out his legal rights against the seller. A declaration may be made before any breach of contract has occurred, and may thus guide the parties in the implementation of a contract whose performance is spread over a long period. For instance, the buyer may ask the Court to determine whether he is still bound by the contract, or whether he is entitled to repudiate his remaining obligations. Even where the defendant is liable to pay damages, the plaintiff may claim only a declaration that the defendant was in breach of contract and that the damages for the loss caused by the breach amounted to a stated sum.'

The passage cited really does not render any help to the appellants. True it is that it permits a purchaser to obtain declaration of 'legal rights' against a seller even before a breach has occurred. Even such a relief is permissible only in 'appropriate case' and not as a general rule or as a matter of course. The passage itself says that the declaration may be made only to guide the parties in the implementation of a contract whose performance may be spread over a long period. This passage, therefore, does not serve as an authority to say that it is permissible to grant a declaratory decree that no pecuniary liability arising out of a commercial transaction attaches to a plaintiff. The decision in *Fairclough Dodd & Jones Ltd. v. Vantol Ltd.* (supra), only indicates that a declaratory judgment may be obtained as to the effect of a contract. In *Household Machines Ltd. v. Cosmos Exporters Ltd.* (supra), the declaration sought was of substantial right, viz., that the seller was bound to indemnify the buyer for anything which can be adjudged by a Court of law to be due from him to a third party and can be handed on to the seller. This relief was granted with a view to shorten litigation. These two cases are thus clearly distinguishable.

14. The suit has thus been rightly held to be not maintainable. The appeal is dismissed with costs. Counsel's fee as per schedule.