

Pratyush Chatterjee Vs. Super Auto Forge Pvt. Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/507855

Court : Madhya Pradesh

Decided On : Nov-17-1999

Reported in : 2000(1)MPHT458

Judge : V.K. Agrawal, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 15 to 21 - Order 7, Rule 11
- Order 43, Rule 1; [Companies Act, 1956](#)

Appeal No. : Misc. Appeal No. 721/1999

Appellant : Pratyush Chatterjee

Respondent : Super Auto Forge Pvt. Ltd. and anr.

Advocate for Def. : None

Advocate for Pet/Ap. : P.M. Dubey, Adv.

Disposition : Appeal allowed

Judgement :

ORDER

V.K. Agrawal, J.

1. This Miscellaneous Appeal under Order 43 Rule 1 (a) of C.P.C., is directed against the order dated 18-3-99 in Civil Suit No. 5-B/98 by XIth Additional District

Judge, Jabalpur allowing the application under Order 7 Rule 11 of C.P.C. and directing that the plaint be returned for presentation to the competent Court at Madras (Tamil Nadu).

2. The facts leading to the present appeal stated in brief are that the plaintiff-appellant filed a suit for rendition of accounts and recovery of the amount due to him. The plaintiff alleged that initially he was one of the partners in the partnership firm under the name and style of 'Premier Agency'. The said firm was created for carrying on the business of Agency and Liaisoning. The firm was dissolved on 23-3-90; and the plaintiff thereafter became the sole proprietor of the said firm 'Premier Agency'. It was further alleged that the defendant-respondent No. 1 is a Private Limited Company duly registered under the [Companies Act, 1956](#). The defendant-respondent No. 2 is the Director of the said Company. The plaintiff-appellant entered into an agreement to act as an agent of the defendants and for liaisoning, in relation to various supply contracts to defence installations at Jahalpur and other consumers in and around Jabalpur.

3. The agreement as above between the parties was undisputably entered into, which is captioned as 'Service Contract'. It was stipulated as per Clause 2.1 of the said agreement that it shall remain in force during the period from 1st May, 1986 to 30th April, 1991. Under Clause 6.1 of the said agreement it was further specifically stipulated that the contract shall stand automatically terminated at the expiry of the aforesaid period of agreement or at any time earlier by mutual agreement between the parties.

4. The plaintiff-appellant averred that as per the above agreement, he worked as agent and performed liaisoning duties for the defendant-Company and was paid commission from time to time by the latter. Even after the termination of the period of agreement as above, the plaintiff continued to work for the defendant-Company. The defendant, however, revised the rates of remuneration to the disadvantage of the plaintiff-appellant. The plaintiff-appellant protested against the downward reduction of his remuneration. This gave rise to dispute between the parties regarding the payment to the plaintiff-appellant by the defendant-respondent. The present suit was therefore, filed by the plaintiff-appellant for rendition of accounts

and for payment of the sum due to him.

5. Notice was issued by the trial Court to the defendants for settlement of issues. However, they did not file written statement and instead an application dated 30-10-98 marked as I.A. No. 1, praying for dismissal of suit was filed by the respondents-defendants. It was averred in the application that the plaintiff-appellant had based the suit on the agreement dated 29-4-86. It was further averred that the said agreement was entered into by the parties at Madras (Chennai) and Clause 8.1 thereof specifically provides that all the obligations under the contract shall be deemed to be located at Madras and the Court at Madras would have exclusive jurisdiction to decide the dispute between the parties. It was also further alleged that no part of cause of action arose at Jabalpur and moreover, in view of the above term of agreement between the parties, the Court at Jabalpur has no jurisdiction to try the suit and that the Court at Madras (Chennai) had exclusive jurisdiction to decide the dispute.

6. It appears from the impugned order that the learned trial Court treated the application as above, as under Order 7 Rule 11 of C.P.C.. It may be noticed that the application marked as I.A. No. 1, filed on behalf of respondent-defendants was not under Order 7 Rule 11 of C.P.C.. Prayer therein was not for rejection of the plaint, and infact as noticed earlier the prayer therein was for the return of the plaint. The question of territorial jurisdiction was therefore raised by the defendants-respondents. Such an objection should therefore, have been considered in the light of provision of Sections 15 to 21 of the Code of Civil Procedure.

7. Therefore, it is obvious that the learned trial Court mis-directed itself in treating the application (I.A. No. 1) as under Order 7 Rule 11 of C.P.C.. It may further be noticed that the averments in the said application are not covered by any of the clauses of Rule 11 of Order 7 C.P.C., on the basis of which plaint could possibly be rejected.

8. From the impugned order it also appears that the objection regarding territorial jurisdiction was accepted on the assumption that the claim in the suit related to the aforementioned agreement between the parties or in pursuance of the work done

thereunder. However, as noticed earlier, the said agreement was in force only from 1st May, 1986 to 30th April, 1991. Since the suit relates to the subsequent period from 1-5-91, the said agreement was not in force. Therefore, it would appear that the prayer of the appellant-plaintiff and the relief claimed by him was not covered by the above agreement. It may also be noticed that the plaintiff-appellant has urged that since the defendants proposed to vary the terms of the original agreement and wanted to pay him lesser amount, he was obliged to file the suit. Therefore, it could not be said that the parties continued to be governed by the terms as stipulated in the written agreement.

9. The learned trial Court in the impugned order has relied upon the decision of this Court in *Kirloskar Brothers Ltd., Indore v. Engineering Machiners Mart, Narsinghpur* (AIR 1982 M.P. 7), wherein it has been observed that the dealings between the parties continued even after the terms of agreement was over. It was further observed that the plaintiff was laconically silent about the continued dealings between the parties. Accordingly, it was held therein that the relationship of the parties continued to be governed by the terms of dealership agreement.

10. However, in the instant case the situation appears to be different. Moreover, as noticed above the objection regarding territorial jurisdiction of the Court is not within the scope of Order 7 Rule 11 of C.P.C.. Moreover, the objection of defendants-respondents as above involved mixed questions of law and fact, and could not have been decided at the preliminary stage, without even the written statement of defendants having been filed. The defendants were entitled to raise objections as above regarding territorial jurisdiction by their pleadings in that regard. However, their application (I.A. No. 1) could not have been allowed at the inception in the above circumstances as has been done by the trial Court. The impugned order appears to be grossly erroneous and deserves to be set aside.

11. Accordingly, the appeal is allowed. The impugned order is set aside. The trial Court is directed to proceed with the suit. It is clarified that in case the defendants raise objections in their pleadings regarding the territorial jurisdiction of the Court, the same may be considered on merits and decided in accordance with law, by the trial Court. Parties are left to bear their own costs of this appeal.

