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Court : Delhi

Decided On : Jan-04-1983

Reported in : 1983(4)DRJ221; 1983RLR100

Judge : Sultan Singh, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 10

Appeal No. : CR No. 1226 of 1981

Appellant : Laxmi Fruit Co.

Respondent : Gainda Ram and Co.

Disposition : Petition allowed

Judgement :

Sultan Singh, J.

1. The petitioner in this revision challenges the order dt. 2.9.81 of the Sub Judge, Delhi refusing to stay under Section 10 of the Code of civil procedure (for short, the Code) the suit filed by the respondent-plaintiff. Briefly the facts are that the respondent M/s. Ganda Ram & Co. Delhi on 29-10-80 filed a suit for recovery of Rs. 8301.15 against the petitioner Laxmi Fruit Co., Mandi Dabwali alleging that the petitioner agreed to purchase fruits and vegetables from time to time and agreed to pay commission on net sale proceeds. The respondent alleges that he

dispatched goods of Rs. 4,09,499.22 and regularly sent Beejaks to the petitioner, that the said sum consists of purchase price of the goods i.e. fruits and vegetables, expenses incurred and commission, that the respondent received Rs. 4,02,324.07 thus leaving a balance of Rs. 7,175.15 which the petitioner failed to pay inspire of repeated demands. The respondent claims interest Rs. 1126/- @ 15% p.a.In this way a total sum of Rs. 8,301.15 is claimed against the petitioner. The respondent further alleges that the statement of account in respect of all the transactions was sent which was confirmed by petitioner and vide letter dt 26.9.79 petitioner asked the respondent to recover amounts from others on behalf of the petitioner, that a sum of Rs. 7,163.66 alleged to be due from Sidi Wale Delhi could not be recovered and thereforee; the amount in suit is due from the petitioner.

2. In his w/s dt. 17.7.81 petitioner alleges that the suit could not proceed as the petitioner had earlier on 19.8.80 filed a suit for rendition of accounts in the Court of Sub Judge, Dabwali against the respondent that the matters in dispute in the suit at Delhi were directly and substantially in issue in the earlier suit between the parties pending at Dabwali. On merits the petitioner submits that the account of the various purchases by the respondent was never rendered, that no accounts were ever confirmed by the petitioner, that the respondent was liable to submit the original bills for the purchases made, that the respondent has debited exaggerated amounts allegedly paid on behalf of the petitioner. The petitioner also filed an application under Section 10 of the Code for stay of the proceedings in the suit at Delhi.

3. The trial Court refused stay on the ground that the two suits were based on different causes of action as the suit instituted by the petitioner at Dabwali was for rendition of accounts while the suit instituted subsequently by the respondent for recovery at Delhi was on the basis of a settled account.

4. The learned counsel for the petitioner submits that the suit at Dabwali was filed on 19-8-80 for rendition of accounts while the suit for recovery was filed at Delhi by the respondent on 29-10-80. He submits that matter in issue in the suit at Delhi is : whether the accounts between the parties were settled as alleged by the respondent He further submits that the respondent in the w/s dt. 3-4-81 in reply to

the suit at Dabwali has alleged that the accounts between the parties were settled on the basis of the alleged writing dt. 26-9-79 by the petitioner, that the suit at Dabwali was liable to be stayed as the suit relating to the same subject matter between the parties was pending at Delhi. The petitioner alleges that the accounts of agency were never rendered by the respondent while the respondent alleges that the accounts were settled between the parties. Thus if the respondent succeeds in proving that the accounts were settled the petitioner's suit at Dabwali may fail and consequently the respondent may be entitled to a decree for money against the petitioner in the suit at Delhi. In case it is held that the accounts were not rendered, the respondent may be directed to render accounts in the suit at Dabwali and the respondent will have to prove the various allegations contained in the suit at Delhi. Thus the substantial issue in the suit at Delhi is : whether the accounts between the parties stood settled This question is also directly and substantially in issue between the parties in the suit at Dabwali. The respondent in the w/s in the suit at Dabwali also pleads that the matters in issue in the two suits are substantially the same. The suit at Delhi is for recovery of Rs. 8,301.15 The sub-Judge at Dabwali has got 1st Class powers and thus he has jurisdiction to grant the relief claimed by the respondent in the suit at Delhi. Section 10 of the Code is reads......

5. This section provides that where a suit is instituted in a Court, such Court shall not proceed with the trial of the suit if the questions controversy are directly and substantially in issue in the previously instituted suit between the same parties. The provisions of Section 10 are mandatory. Further this section provides that the previously instituted suit must be pending in a Court having jurisdiction to grant relief claimed in the subsequent suit. The Sub. Judge, 1st Class, Dabwali has jurisdiction to grant relief claimed in the suit filed by the respondent subsequently at Delhi. The requirements of Section 10 of the Code are (i) jurisdiction of the Court where the previous suit is pending to grant relief claimed in the subsequent suit and (ii) whether the matters in issue in the subsequent suit are also directly and substantially in issue in the previously instituted suit. As already stated the main controversy between the parties is : whether the accounts of agency stood rendered and settled between the parties This is the question for decision in the suit at Delhi and the same question is pending decision before the sub-Judge at

Dabwali. I am, thereforee, of the view that the present suit can not proceed during the pendency of the suit at Dabwali.

6. The trial Court has observed that the cause of action in the two suit is different. The suit at Dabwali is based on unsettled accounts while the suit at Delhi is based on the alleged settled accounts. Under Section 10 of the Code it is not the identity of the cause of action but the matters in issue involved in the subsequent suit and the previous suit. Cause of action in the two suits may be different and the matters in issue in the two suits may be substantially the same. It is immaterial whether the suit is for rendition of account or on the basis of alleged settled account. In S. Paul & Co. v. Hitech Precisson Glass Ltd 1972 RLR 247, it has been observed that for stay of suit under Section 10 of the Code it is not necessary that the two cases should be identical and it is enough if the matters in issue in both are substantially same. In that case one suit was for recovery of money as price of goods supplied while the other suit was for rendition of accounts between an agent and distributor of the goods. The subsequent suit was stayed.

7. Learned counsel for the respondent refers to Sankla Industries v. Hiralal Pukhraj wherein one suit was on the basis of a settled account while the other suit was for rendition of accounts and stay was refused. In that case it was held that the Court trying the previously instituted suit was not competent to grant relief claimed in the subsequently instituted suit and thereforee, the stay was refused. The facts of that case are different and the conditions of Section 10 of the Code Were not fulfillled.

8. I am, thereforee, of the opinion that the trial Court was not correctin refusing to stay the suit on the ground that the cause of action in the twosuits were different. As already discussed the matter in issue in the two suitsis substantially the same. The Court trying the previously instituted suit iscompetent to grant relief claimed in the suit subsequently instituted at Delhi.Provisions of Section 10 of Code are mandatory and as the conditions ofSection 10 of the Code are satisfied in the instant case, there is no alternativebut to stay the suit at Delhi.