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**Sumanth Pathak Vs. Tvs Suzuki Ltd., Dharmapuri, Tamil Nadu, Rep. by Its President Mr. C.P. Raman and**

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**SooperKanoon Citation : [sooperkanoon.com/821031](http://sooperkanoon.com/821031)**

**Court : Chennai**

**Decided On : Mar-27-2002**

**Reported in : (2002)2MLJ482**

**Judge : M. Chockalingam, J.**

**Acts : Code of Civil Procedure (CPC) - Sections 115**

**Appeal No. : C.R.P. No. 1484 of 2001 and CMP No. 7924 of 2001**

**Appellant : Sumanth Pathak**

**Respondent : Tvs Suzuki Ltd., Dharmapuri, Tamil Nadu, Rep. by Its President Mr. C.P. Raman and ;lml Limited, Kanp**

**Advocate for Def. : G. Subramanian, Senior Counsel for ;M.S. Krishnan, Adv. and ;Sarvabhauman Associates**

**Advocate for Pet/Ap. : T.R. Rajagopalan, Senior Counsel for ;T. Poornam, Adv.**

**Disposition : Civil revision petition dismissed**

**Judgement :**

**ORDER**

## **M. Chockalingam, J.**

1. What is challenged herein is the order of the learned Subordinate Judge, Hosur, dismissing an application filed by the petitioner herein to stay further proceedings in O.S.No.172 of 2000 till the disposal of the suit in O.S.No.824/2000 on the file of the City Civil Court, Kanpur.

2. As could be seen from the available materials, it was a suit filed by the first respondent herein against the petitioner and the second respondent for declaration, permanent injunction and damages. The petitioner herein filed a suit in O.S.No.824 of 2000 on the file of the City Civil Court, Kanpur against the respondents herein for declaration and permanent injunction. During the pendency of the suit in O.S.No.172 of 2000, the petitioner/first defendant filed the instant application for stay of the proceedings till the disposal of the suit filed by him in O.S.No.824/2000. On contest, the lower court dismissed the application, which has culminated in this revision.

3. The learned Senior Counsel Mr. T.R. Rajagopalan appearing for the petitioner would submit that the earlier suit in O.S.No.824/2000 was filed by the petitioner as early as on 10.7.2000; that the lower court failed to exercise its jurisdiction, since the matters in issue in both the suits viz. O.S.Nos.172/2000 and 824/2000 are between the same parties; that it is pertinent to note that the main issue arises out of the resignation and taking up of employment of the petitioner; that the matter which is directly and substantially in issue is pending in the previous suit O.S.824/2000; that the issue viz. whether the revision petitioner is entitled to take up a job after resigning the services would be the substantial issue in both the suits and hence O.S.No.172/2000 has to be stayed pending disposal of the previous suit OS 824/2000; that the lower court misconstrued the meaning of the term 'trial'; that the City Civil Court at Kanpur is a court having jurisdiction to try the issues which have arisen between the parties; that it is pertinent to note that the competent civil court at Kanpur had granted an interim order restraining the first respondent from causing hurdles to the services of the petitioner; that the first respondent had preferred OS No.172/2000 in spite of having knowledge of the suit at Kanpur and without having taken any steps to enter appearance and defend

that suit; that any order passed by the learned Subordinate Judge, Hosur, in any interim application either in O.S.No.172/2000 or in O.S.No.172/2000 contrary to the order of the Court at Kanpur would result in grave prejudice and irreparable loss to the petitioner, and it would also result in conflicting orders; that it is pertinent to note that there is no clause in the alleged service agreement to the effect that the Courts at Hosur shall have exclusive jurisdiction over any dispute that arise between the parties; that the continuation of the subsequent suit at Hosur would lead to conflict of findings; that the stay of proceedings under S. 10 of C.P.C. is a mandatory provision; that the first respondent would not be inconvenienced in defending the suit at Kanpur; that the stay of subsequent suit arose out of a greater need to avoid multiplicity of proceedings and conflict of findings; that even assuming without admitting that S. 10 would be inapplicable to the facts and circumstances of this case, the learned Judge would have been justified in exercising the powers to stay the suit under S. 151 of C.P.C. as has been held in a number of cases to avoid abuse of process of court, and hence the order of the lower court is liable to be set aside.

4. Countering to the above contentions of the petitioner's side, the learned Senior Counsel Mr. G. Subramanian, appearing for the first respondent with vigour and vehemence would argue that the petitioner has not stated the entire facts leading to the institution of the suit in O.S. No. 172/2000 on the file of Sub Court, Hosur; that in view of the breach committed by the petitioner of his undertaking and considering the huge amounts spent by the first respondent for improving the petitioner's knowledge, the first respondent instituted O.S. No. 172/2000 on the file of the Sub Court, Hosur against the petitioner and the second respondent herein; that from a reading of both the complaints, it is amply evident that the matter in issue in O.S.172/2000 on the file of Sub Court, Hosur is not directly or substantially the matter in issue in O.S. No. 824/2000 on the file of the Civil Judge, Kanpur; that the later suit filed by the first respondent on the file of the Sub Court, Hosur is far more comprehensive than the earlier suit filed by the petitioner; that in O.S. No. 172/2000, the second respondent has not even filed the written statement; that unless the written statement is filed, it is not possible for the court to come to a conclusion as to whether the matter in issue in both the suits are identical; that the application filed by the petitioner is premature inasmuch as the suits have not

been taken up for trial, and on this ground also the application is liable to be dismissed; that the lower court has rightly dismissed the application in I.A.No.508/2000 filed by the petitioner, and no exception could be taken for the same; that the Civil Judge, Kanpur does not have jurisdiction to try the suit since no part of cause of action arose at Kanpur; that the only cause of action on which the suit is laid at Kanpur is the receipt of the notice dated 16.6.2000 by the petitioner at Kanpur; that it is well settled principle of law that the receipt of communication at one place will not confer jurisdiction on the court in which such place is situate; that the first respondent had also moved the Hon'ble Apex Court for transfer of the suit at Kanpur to be heard and tried along with the suit at Hosur; that the petitioner is attempting to protract the proceedings in O.S.172/2000 with a view to prevent the first respondent from obtaining any interim order; that it is pertinent to note that the petitioner had filed Transfer O.P.27/2001 on the file of the Principal District Court for transfer of the suit O.S.172/2000 from the file of the Subordinate Judge, Hosur to any other competent court; that an application under S. 10 cannot act as a bar for the court hearing interlocutory applications; that the petitioner could submit his arguments in I.A.No.333 of 2000, and only after hearing both sides, the learned Subordinate Judge would pass orders; that the petitioner is trying to circumvent this process by seeking a stay from this Court; that the petitioner has not made out a case for stay; that it is pertinent to note that the suit filed by the petitioner at Kanpur is one without jurisdiction and totally non-est in the eye of law; that the issues in the suit instituted by the first respondent at Hosur is not directly or substantially the same as the issues involved in the suit filed by the petitioner at Kanpur; that even assuming without admitting that the issues in both the suits are the same, the application under Sec. 10 is premature, and Sec. 10 contemplates only the stay of the trial and not interlocutory application; that the lower court was perfectly correct in rejecting the request of the petitioner; and hence this revision is liable to be dismissed.

5. After careful consideration of the rival submissions and the scrutiny of the available materials, the court is of the considered view that the order of the lower court has to be sustained, in view of the absence of any infirmity or illegality in the order impugned.

6. The revision petitioner who is the first defendant in O.S. No. 172 of 2000 filed by the first respondent herein, filed the instant application under S. 10 read with S. 151 of Code of Civil Procedure for stay of all further proceedings in the said suit till the disposal of the suit in O.S. No. 821 of 2001 filed by him and pending on the file of the City Civil Court, Kanpur. Admittedly, the revision petitioner, who was appointed as the Assistant General Manager (R & D) in the first respondent Company on 1.12.1993, was posted at Hosur. He was promoted as the General Manager (R & D) from 1.1.1997 and was handling the Research and Development Wing. According to the first respondent company, the petitioner is bound by the conditions of service, stipulated in the order of appointment, which clearly prohibits the revision petitioner from joining a competitor of the first respondent company for a period of three years from the date of his leaving his service of the first respondent. But despite the same, the petitioner, who was relieved from the first respondent company on 25.4.2000, has joined the second respondent company on 13.5.2000 within a month from the date of leaving the service of the first respondent. It is also not in dispute that the first respondent issued notice to the petitioner and his employer, which was replied by the petitioner. Following the exchange of notice, the revision petitioner has filed O.S.824 of 2000 on the file of the Civil Judge, Kanpur, seeking the following reliefs:

'1) The decree of declaration that the Plaintiff has no contract whatsoever with the Defendant No.2 in restraint of trade i.e. which prohibits the Plaintiff from taking up employment with another entity including defendant No.1.

2) A decree for declaration that the present employment of the plaintiff is not in violative of any restraint on trade of plaintiff.

3) A decree for declaration that guidelines for employment of the defendant No.2 sought to be invoked and enforced within the jurisdiction of this Hon'ble Court against his present employment are void and bad in law and in any event not binding on the plaintiff and any third entity.

4) A decree for permanent injunction restraining defendant No.2 from requiring or taking any steps for compelling the plaintiff to terminate the employment with defendant No.1.

5) A decree for permanent injunction restraining defendant No.1 from taking any steps for terminating plaintiff's employment with defendant No.1 pursuant to the requisition of the defendant No.2 contained in the notice dated 16.6.2000.'

Pending the same, the first respondent has filed O.S. No. 172 of 2000 on the file of the Sub Court, Hosur for the following reliefs:

'1) Declare the 2nd defendant's order employing the 1st defendant in violative of plaintiff's guidelines of Senior Manager and the rules is null and void.

2) Grant permanent injunction restraining the 2nd defendant from continuing the 1st defendant on their rolls of employment.

3) Direct the defendants to pay suit amount of Rs.9,09,065/- to the plaintiff.

4) Direct the defendants to pay interest @ 18% p.a. by way of damages from the date of suit till date of realisation.'

7. Now in order to arrest the suit filed by the first respondent in O.S. No. 172 of 2000 pending on the file of the Sub Court, Hosur, the instant application was filed by the revision petitioner/first defendant. It is true that the suit filed by the revision petitioner/first defendant in O.S. No. 824/2000 on the file of the Civil Judge, Kanpur is earlier in point of time. But a reading of the reliefs sought for in both the suits would make it abundantly clear that the suit filed by the first respondent in O.S. No. 172 of 2000 pending on the file of the Sub Court, Hosur is comprehensive. It is pertinent to note that the revision petitioner/first defendant has not even filed the written statement in the said suit, and the issues have not yet been framed.

8. It cannot be stated that the court below has no jurisdiction to entertain the application for stay under S. 10 of Code of Civil Procedure prior to the filing of the written statement. In a given case, if the court can decide as to what the dispute between the parties is, it can well entertain an application for stay, even before the filing of the written statement. In the instant case, the court below may be in a better position to know as to whether the matter in issue in both the suits is directly and substantially the same or not only after filing of the written statement. A

reading of both the complaints would make it quite clear that O.S. No. 172/2000 was a more comprehensive one than the suit filed by the revision petitioner in the City Civil Court at Kanpur. Thus, it could be well stated that this application for stay is pre mature.

9. What is sought to be stayed under S. 10 of Code of Civil Procedure is the trial of the subsequent suit. The word 'trial' employed in S. 10 of C.P.C., came up for interpretation before the Apex Court in a case reported in : [1998]3SCR187 (INDIAN BANK VS. MAHARASHTRA STATE COOPERATIVE MARKETING FEDERATION LTD.), wherein the Division Bench of the Apex Court has held thus:

'8. Therefore, the word 'trial' in Section 10 will have to be interpreted and construed keeping in mind the object and nature of that provision and the prohibition to '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.' The object of the prohibition contained in Section 10 is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits and also to avoid inconsistent findings on the matters in issue. The provision is in the nature of a rule of procedure and does not affect the jurisdiction of the Court to entertain and deal with the later suit nor does it create any substantive right in the matters. It has been construed by the Court as not a bar of the passing of interlocutory orders such as an order for consolidation of the later suit with the earlier suit, or appointment of a Receiver or an injunction or attachment before judgment. The course of action which the Court has to follow according to Section 10 is not to proceed with the 'trial' of the suit but that does not mean that it cannot deal with the subsequent suit any more or for any other purpose. In view of the object and nature of the provision and the fairly settled legal position with respect to passing of interlocutory orders it has to be stated that the word 'trial' in Section 10 is not used in its widest sense.'

From the very reading of the judgment of the Supreme Court, it would be clear that the word 'trial' in Section 10 is not used in a wider sense, and the court cannot proceed with the trial of the subsequent suit. But there is no bar for passing of interlocutory orders like interim order of injunction or attachment before judgment.

10. Laying emphasis on the words 'pending the same or any other court in India having jurisdiction' employed in Section 10 of C.P.C., the learned Senior Counsel for the first respondent would urge that the civil court at Kanpur does not have jurisdiction to try the suit, since no part of the cause of action arose at Kanpur. In answer to the said contention, the learned Senior Counsel for the revision petitioner would submit that the question of jurisdiction with reference to the subject matter depends upon the allegations in the plaint, and not upon the allegations in the written statement; that the plaintiff has invoked the jurisdiction of the City Civil Court at Kanpur; and that the said Court has always the jurisdiction to decide for itself whether it has got jurisdiction to try the suit before it, or not. Needless to say that the concerned court viz. City Civil Court, Kanpur has the jurisdiction to decide for itself whether it has jurisdiction to try the suit before it. Admittedly, the revision petitioner/first defendant was employed under the first respondent company at Hosur till he was relieved. Thus, in respect of his employment, the whole or any part of the cause of action would have arisen only at Hosur. To a query as to what was the cause of action or the part of cause of action, which necessitated the revision petitioner/first defendant to file a suit at Kanpur, no acceptable or convincing answer was forthcoming from the revision petitioner's side. As rightly pointed out by the learned Senior Counsel for the first respondent, merely because the revision petitioner/first defendant temporarily resides or is presently employed with the second respondent company at Kanpur or is served with a notice of the first respondent at Kanpur, the same would neither give rise to the cause of action nor confer jurisdiction on the City Civil Court at Kanpur. Thus, it would be highly doubtful whether the City Civil Court at Kanpur has got jurisdiction to entertain the suit, since the first respondent is able to show that the whole of the cause of action has arisen within the territorial jurisdiction of Hosur.

11. The last contention of the revision petitioner's side that even assuming that Sec. 10 of C.P.C. would not be applicable to the facts and circumstances of the case, the suit has got to be stayed in exercise of the powers under S. 151 of Code of Civil Procedure cannot be countenanced. It is true that in cases not covered by the provisions of Sec. 10 of C.P.C., in terms the court may stay the suit invoking its inherent powers under Sec. 151 of C.P.C., but that should be only under very

exceptional circumstances. The court is of the view that the revision petitioner is unable to show the existence of very exceptional circumstances, warranting to invoke the inherent powers under Sec. 151 of Code of Civil Procedure. For all the reasons, stated above, the court is of the view that the court below was perfectly correct in rejecting the request of the petitioner. There is no illegality or infirmity found in the order of the court below. The order of the lower court has got to be sustained.

12. In the result, this civil revision petition fails, and the same is dismissed, leaving the parties to bear their own costs. Consequently, connected CMP is also dismissed.

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