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Court : Kolkata

Decided On : Mar-16-1999

Reported in : AIR1999Cal107

Judge : Amitava Lala, J.

Acts : Code of Civil Procedure (CPC) , 1908 - Order 7, Rule 1

Appeal No. : G.A. No. 30 of 1999 and C.S. No. 263 of 1998

Appellant : Rdb Two Thousand Plus Ltd.

Respondent : Sarvideo

Advocate for Def. : Moloy Ghosh, Adv.

Advocate for Pet/Ap. : Girish Gupta, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Amitava Lala, J.

1. This is an application for dismissal of the suit and in the alternative rejection of the Plaint.

2. The application is made mainly on two grounds, First is that revocation of leave under Clause 12 of the Letters Patent since no cause of action arising within the jurisdiction of this Hon'ble Court. Second is that plaint does not disclose any cause of action.

3. In support of the application Mr. Girish Gupta, learned Counsel contended that he is eager to raise the second point first.

4. He stated that the plaintiff made untrue and incorrect statements to form a part of the cause of action within the jurisdiction. It was further alleged that the plaintiff has made an untrue statement by saying that agreement dated 16th September, 1996 was entered in between the parties and confirmed at the registered office of the plaintiff within the jurisdiction.

5. Prima facie, I am of the view that petition is made in a very criptic manner to understand the basis of the submission. However, it would be proper on the part of this Court to proceed on the basis of the plaint instead of proceeding on the basis of the petition.

6. It appears from the plaint that the respondent/plaintiff averted that cause of action as pleaded in paragraphs 4, 5, 7, 8, 9 and 10 are within the jurisdiction of this Hon'ble Court and cause of action as pleaded in paragraphs 11, 12, 14 and I6 are outside the jurisdiction of this Court.

7. From the part within the jurisdiction I find that agreement was purported to have been executed within the jurisdiction of this Hon'ble Court. Agreement was modified within the jurisdiction of this Hon'ble Court. The execution by way of taking delivery of the television serials held on different dates and payment was made within the jurisdiction of this Hon'ble Court. Therefore, at the threshold, without any factual analysis. Court cannot come to a conclusion that the jurisdiction is not rightly invoked. Possibly for the same the petitioner/defendant made this point as secondary to the main issue of non-disclosure of the cause of action.

8. Mr. Gupta on the part of the petitioner contended that they are challenging the statement as well as part of the annexures being the agreements wherein it has recorded as agreed and confirmed by the proprietor of the defendant within the jurisdiction of this Hon'ble Court. He submitted that the same is not correct factual position according to him. I hold, in this respect, that whether the copy of the document annexed to the plaint and averment made to that extent in the plaint is factually correct or not is the subject-matter of the suit Court to decide at the time of hearing being a mixed question of law and fact. Therefore, that unascertained mixed question of law and fact cannot be determined at this stage since the issue is not an issue of law simplicitor. Therefore, there is no scope of further argumerit in this respect as I am not inclined to pass an order in favour of the petitioner on this point at the stage.

9. But, of course, the petitioner/defendant is entitled to agitate their moot point of non-disclosure of cause of action and if I am satisfied to that extent obviously I shall not allow the suit to be proceeded without disclosure of such cause of action. Therefore, this question requires scrutiny being first and foremost point for rejection of the plaint under Order 7, Rule 11 of the Code of Civil Procedure.

10. The suit is arising out of a commercial transaction by which the defendant was entrusted by the plaintiff for the purpose of telecasting and marketing T. V. Serial being 'Adventure of Tin Tin'.

11. In terms of the agreement the defend-anthad made payments of Rs. 50,000/- and 67,000/- by Pay Orders both dated 16-9-96 issued by a Bank. Subsequently, the agreement was modified and in pursuance of the modified agreement the defendant took delivery of 6 Episodes of the said serial between the period from 19th September. 1996 to 29th October, 1996 and paid to the plaintiffs a sum of Rs. 3,41,000/- admittedly.

12. From the 7th week onwards the defendant failed to take delivery of further Episodes and failed to make any payment in respect thereto. Requests were made on behalf of the plaintiff to the defendant to take delivery. In respect of such requests the defendant failed or neglected to take the delivery of the Episodes and make payment thereto.

13. In view of the breaches on the part of the defendant, the plaintiff terminated the agreement as modified and reserved it's right to claim loss and damages caused due to such breach and forfeited a sum of Rs. 98,000/- lying on account of the defendant out of the deposit, in protanto satisfaction towards the loss and damages.

14. The defendant has admitted its liability to make payment and to take the balance Episodes of serial upon payment of lump sum of Rs. 10,00,000/-.

15. The plaintiff issued various letters thereafter and the same were unreplied by the defendant. The plaintiff with due diligence have not been able to telecast the said 20 Episodes of the T. V. Serial and the rights of the plaintiff expired on 31st March, 1997.As a result, whereof the plaintiff claimed loss and damages for a sum of Rs. 12,42,000/-upon giving credit of Rs. 98,000/- being price of the value of the remaining serials and interest.

16. From the agreement it appears that there is a provision for termination of the agreement and make claim for loss and damages in case of failure on the part of the defendant in respect of the television serials.

17. Mr. Girish Gupta, on behalf of the defendant has drawn my attention to the illustration from the book of Mulla 11th Edition page 525 (at 526) under Section 39 of the Contract Act in respect of acceptance of breach. He submitted that acceptance of breach also releases the guilty party from the obligation to perform. He can henceforth sue for damages and not for specific performance.

18. I failed to understand the stand taken by Mr. Gupta on behalf of the defendant in this respect because this suit is not for specific performance but for damages. If the part of the damages is inevitable outcome of the contract in case of failure on the part of the party in breach of such performance damages should be the obvious outcome. Accordingly such claim is made herein. The only difference in the particulars of the suit is that the damages are not unascertained damages but ascertained damages as per the value of each Episode of the serial remaining undelivered.

19. Mr. Moloy Ghosh, learned Counsel appearing on behalf of the respondent/plaintiff has factually opposed the contentions of Mr. Gupta in support of the application which need not be reiterated because of the earlier observation of this Court.

20. Two reported judgments are subject-matter of consideration herein. In : AIR1974 Cal231 , (Union of India v. Kamal Kumar Goswami) at paragraph 49 a Court under which money was deposited by a contracting party, has jurisdiction to entertain the suit for compensation under Section 70 of the Contract Act. Obviously it supports the point of jurisdiction in favour of the plaintiff/ respondent but such point is already over.

21. From paragraph 12 of : AIR1986 Cal120 , (British Airways v. Art Works Export Limited) it appears that no cause of action for the suit is not the same as the plaint does not disclose any cause of action, which is ground for the rejection of the plaint. The correctness or otherwise of the allegations constituting a cause of action which is beyond the purview of Clause (a) of Order 7, Rule 11. It appears from the argument advanced by the petitioner/defendant that it might have been a case of no cause of action than the non-disclosure of cause of action being ground for rejection of the plaint.

22. The cause of action in the suit is as simple as below. The plaintiff engaged the defendant for the purpose of marketing the T. V. Serial on payment of fixed sum per Episode which after a considerable period has been unpaid. Naturally the plaintiff has lost its right to execute the same. Therefore, where the failure on the part of the plaintiff is irresistibly proved it cannot be said that plaint does not disclose any cause of action as to the claim of damages. I am agreeable with the petitioner that right of specific performance cannot be enforced under the situation but I cannot overlook that the defendant wanted to carry out the work upon payment of lumpsum of Rs. 10,00,000/-. Even when failure gives a right of cause of action of the plaintiff to claim damages even as per the contract and the plaintiff wanted to enforce such right, it cannot be said plaint does not disclose any cause of action. The damages are ascertained damages as per the value of the Episode and interest.

23. Under these circumstances, I cannot see any infamity in the plaint.

24. Accordingly I hold in favour of the respondent and dismiss this application, cost of the application is reserved for the purpose of final adjudication by the Suit Court.

25. Written statement will be filed by 12th April, 1999. Discovery and inspection will be completed by 23rd April, 1999. Affidavit of documents, all other formalities including preparation of Judge's brief of documents will be completed by 30th April, 1999. The suit will appear in the appropriate list of hearing on 3rd May, 1999. This direction is made peremptorily failing which the suit will be placed under the heading 'Undefended Suit.'

26. Let xeroxed certified copy of the judgment be given to the parties expeditiously.

27. Department and all parties are to act on a signed copy minute of the operative part of the order on usual undertaking.

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