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Court : Himachal Pradesh

Decided On : Aug-17-1976

Reported in : AIR1977HP38

Judge : C.R. Thakur, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 10, 115 and 151

Appeal No. : Civil Revn. No. 3 of 1975

Appellant : Gurdial Singh

Respondent : Auckland House School

Advocate for Def. : A.S. Mehta, Adv.

Advocate for Pet/Ap. : Kapil Dev Sood, Adv.

Disposition : Petition allowed

Judgement :

ORDER

C.R. Thakur, J.

1. This petition purports in have been filed under the provision of Section 115, Civil Procedure Code (hereinafter called the Code) against the order of Sub-Judge II, Simla dated 4-12-1974 whereby the application of Shri Gurdial Singh under Section 151, Civil Procedure Code has been rejected. The petitioner had filed the suit in January' 1970, in the Court of the Senior Sub-Judge, Simla against Auckland House School, Simla through its Principal for a money decree of Rs. 3,300/- on the allegations that the plaintiff who is a building contractor had taken the contract for the repairs and construction of several buildings of the defendant and had also received payments on the completion of the works and had also received advance payments. That in the month of December, 1965, the plaintiff was called by the Principal of the defendant school to give estimate for the sanitary work in Belvedere cottage and sanitary work in Belvedere main building. He gave the estimates as under:--

1. Sanitary work in Belve- Rs. 6,300/-dere Cottage
2. Sanitary work in Belve- Rs. 3,000/- dere Main Building

The estimates were accepted by the Principal and the plaintiff took the work in hand. He was given a sum of Rs. 5,000/-as advance on 27-1-1966 for the completion of the work, a further sum of Rupees 5,000/- on 14-2-1966 and in all Rupees 10,000/- were advanced towards the estimated work of Rs. 9,300/-. The work which was originally entrusted had been increased because of some changes and alterations in the original estimated work, He completed the work in the first week of March, 1966, excepting the sewerage line. A

dispute arose between the plaintiff and one Shamboo Ram to whom the plaintiff had entrusted the work on labour rates as he was a registered plumber and was also doing work for the plaintiff. He refused to give the completion report to the Municipal Committee for the connection. The plaintiff requested the Principal to apply to the Municipal authorities for change of the Municipal sanction to some other licensed plumber but the same was also refused. However, the plaintiff got the sewerage line connected on 20-2-1967. The work was checked by mutual agreement between the parties on 4-9-1969 through the Commissioners S/Shri Mohan Singh, S.L. Raheja and H.D. Sardana appointed by the High Court in Suit No. 13 of 1968 between the parties pending in the High Court. In August, 1966, the Principal of the defendant School gave electrical work and sanitary work to the plaintiff to be done in the additional storey of Belvedere Cottage, through verbal orders. For this the defendant agreed to give the market rates and advanced Rs. 3,000/- by a cheque on 20-8-1966. This work was also completed. The defendant pointed out some minor defects which too were removed, The connection of the electricity in the additional storey of the Belvedere Cottage was given on 23-3-1967. Besides this on verbal orders of the Principal of the defendant school, the plaintiff also provided and erected poles for carrying electric mains to the Belvedere Cottage. Despite repeated demands the defendant had not allowed the plaintiff to get the work measured. The work was also got measured and report submitted by the Commissioner appointed by the High Court. In so far as the remaining sanitary work was concerned, the plaintiff had brought the material but the defendant did not cooperate in getting the same carried out with the result that the plaintiff had to remove the material. He also suffered a loss on that account. The defendant also took the material for the use of their building repairs that is, sand, bricks, cement, corrugated sheets, bajree etc. The price thereof had not been paid so far and the Principal of the defendant school had admitted this fact. That the value of the work done for the several items detailed under para. 8 amounted to Rupees 15,924.00. Out of this the advance was of Rs. 13,000/- and the balance due was Rs. 2,942.00 and an amount of Rs. 700/- by way of interest @ Rs. 12% per annum the total amounted to Rs. 3,642.00 and out of this amount Rs. 338.80 P. was deducted from the plaintiff on account of his daughter's fee who was reading in the school, and that way the plaintiff claimed a sum of Rs. 3,303.20 P. from the defendant.

2. In para. 9 of the plaint it had been pleaded that besides the works stated above the plaintiff also carried out other building works for the defendant School in the year 1965-66 which work was measured and was worth Rupees 53,855.54 P. and out of which Rs. 31,000/- had been paid on different dates and for the recovery of the balance of Rupees 22,855.54 P. and interest thereon a separate suit after adjusting the school dues of his daughter had been filed by the plaintiff in the High Court, Himachal Bench at Simla.

3. The aforesaid suit as mentioned in para-9 of the plaint had been decided by the Himachal High Court on 7-9-1971 and a decree for Rs. 5,975.20p. along with the future interest and proportionate cost was passed in favour of the plaintiff. Against the dismissal of the part of the claim the plaintiff filed R. F. A. No. 4 of 1972 before the Division Bench of the Hight Court. In the decree passed by the single Judge, it had been observed that the petitioner (plaintiff) should have adjusted Rs. 13,000/- towards the suit No. 13 of 1968 against which finding the plaintiff had filed the appeal before the Division Bench. Whereas the petitioner had given adjustments of this amount of Rs. 13,000/- in the suit out of which this revision petition has arisen.

4. During the pendency of the suit before the trial Court, the plaintiff filed an application purporting to be one under Section 151 of the Code for the stay of the proceedings in the suit till the disposal of the R. F. A. 4 of 1974 titled Sardar Gurdial Singh v. The Auckland High School, Simla pending before the High Court. This application was opposed by the defendant. The Sub-Judge, (Miss Kiran Bansal) dismissed this application by her impugned order on December 4, 1974.

5. The learned counsel for the respondent has submitted that this revision petition is not maintainable inasmuch as the order was passed in an application under Section 151 of the Code unless the petitioner had raised a question that it was a case of wrong exercise of jurisdiction. Since the case does not involve any wrong exercise of jurisdiction so Section 115 of the Code will not be applicable. Further that by this application under Section 151 of the Code filed by the petitioner, before the trial Court its very object was to get the suit filed in the subordinate Court stayed till the decision of R. F. A. No. 4 of 1972, but the petitioner

chose to file the application under Section 151 of the Code despite the fact that there was a special provision as contained in Section 10 of the Code for the stay of the suit: Lengthy arguments have been advanced and several authorities have been quoted to show that there was no ground of wrongful exercise of the jurisdiction raised by the petitioner and as such the petition was not maintainable.

6. The learned counsel for the petitioner has also submitted that strictly speaking Section 10 of the Code may not be applicable but the pleadings in both the suit are almost the same and as such it is Section 151 of the Code which would be applicable in the present case.

7. The object of Section 10 is to prevent Courts of concurrent jurisdiction from trying two parallel suits in respect of same matter in issue. According to this section a Court in which subsequent suit is filed in respect of the same matter in issue is prohibited from proceeding with the trial of that suit. Therefore, it is true that Section 10 will not apply to the present case because the cause of action as also the matter in both the suits is different because the claims as put in the suit are for two different occasions although the contract may be similar. The dues are in respect of two separate contracts given by the defendant to the plaintiff for the repairs and construction of the buildings as also to carry out the electrical works and sewerage connection. The parties in both the cases though are the same, but the causes of action are different therefore, in these circumstances Section 10 in term will not be applicable. Therefore, the only provision which would be attracted to the present case would be Section 151 of the Code. In this case the plaintiff has given credit of Rs. 13,000/- which he had received as an advance on three different periods from the defendant towards the costs of construction and repair works given to the plaintiff by the defendant. In the Suit No. 13 of 1968 and which has now been decided and appealed against and is registered as R. F. A. No. 4 of 1972 and is pending, the learned single Judge of this High Court while disposing of the suit observed that the plaintiff should have adjusted Rs. 13,000/- advanced by the defendant towards the amount in Suit No. 13 of 1968. But on the contrary the plaintiff has given the adjustment of this amount in the other suit out of which this revision has arisen and which suit was filed in the year 1970 before the Senior Subordinate Judge. Therefore, substantially it is the question of adjustment of this money which cannot be adjusted in both the suits. The appeal is still pending against the decree in which the single Judge had decreed the suit only for a sum of Rs. 5,000/- and odd and had dismissed the suit for the balance and had also ordered the deduction of Rs. 13,000/- from the claim of the plaintiff against the defendant. But on the contrary the plaintiff has given a deduction of Rs. 13,000/- in the amount of the second claim made by him through his Suit No. 20 of 1970. Therefore, in these circumstances, even if Section 10 of the Code is not applicable then in these peculiar circumstances the suit can be stayed under the inherent power of the Court. This jurisdiction to stay an otherwise competent suit is to be exercised only for the ends of justice or to prevent the abuse of the process of the Court.' It is well settled that in a case not covered by Section 10 of the Code stay can be ordered under Section 151 if the Court considers that it is necessary in the interest of justice and in order to avoid unnecessary harassment to any of the parties. Therefore, in these circumstances an application under Section 151, in my opinion was not barred where the suit could not be stayed under the provision of Section 10 of the Code in a case like the present one.

8. The second submission was that a revision is not competent and it has been specifically mentioned that there was no wrong exercise of jurisdiction. But in my opinion when no appeal lies from an order passed by a Court in the exercise of its inherent jurisdiction under Section 151 the remedy to an aggrieved party is to move the High Court direct under the provisions of Section 115 of the Code. The learned Sub-Judge, when it had been pointed out to her that the High Court has held in Suit No. 13 of 1968 that this amount which had been adjusted by the plaintiff in the suit pending before the subordinate Court was ordered to be adjusted in the suit before the High Court, in these circumstances, in order to do substantial and equitable justice between the parties, should have stayed the suit. The defendant could not be given adjustment in both the suits of the same amount which had been advanced to the plaintiff only once. Therefore, the learned Sub-Judge has failed to exercise the jurisdiction legally vested in that Court. Therefore, on this score the petition succeeds and the order is set aside with the result that the suit in the trial Court shall remain pending till the

decision of the R. F. A. No. 4 of 1972.

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