

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 1ST DAY OF JUNE 2022 / 11TH JYAISHTA, 1944

OP(C) NO. 404 OF 2020

AGAINST THE ORDER IN I.A.No.2/2020 IN OS 202/2013 OF

ADDITIONAL SUB COURT, KOTTAYAM

PETITIONER/2nd DEFENDANT:

S.DHANALAKSHMI (PARTNER),
AGED 35 YEARS,
W/O.K.VELAZHAGAN, IRC-INDUSTRIAL RUBBER COMPANY,
NO.A-1, SIDCO INDUSTRIAL ESTATE,ARIYAMANGALAM,
TIRUCHIRAPPALLI - 620 010, TAMILNADU.

BY ADVS.
PHILIP ANTONY CHACKO
K. REMIYA RAMACHANDRAN
ANJALY N.S.

RESPONDENTS/PLAINTIFF/1ST DEFENDANT:

- 1 SAHAL V.J.,
S/O.JALAL,AGED 26,VALIYAVEETIL HOUSE, ARUVITHURA
P.O., ERATTUPETTA - 2, PROPRIETOR PROFESSIONAL
RUBBERS, ERATTUPETTA, KOTTAYAM (DT.).
- 2 IRC INDUSTRIAL RUBBER COMPANY,
MANAGING PARTNER NO.A-1, SIDCO INDUSTRIAL ESTATE,
ARIYAMANGALAM, TIRUCHIRAPPALLI - 620 010,TAMILNADU.

BY ADV SRI.M.NARENDRA KUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2022,
THE COURT ON 01.06.2022 DELIVERED THE FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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O.P(C).No.404 of 2020

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Dated this the 1st day of June, 2022

J U D G M E N T

The 2nd defendant in O.S.No.202/2013 pending before the Additional Sub Court, Kottayam, has preferred this Original Petition under Article 227 of the Constitution of India, challenging the order in I.A.No.2/2020 in the above Suit (Ext.P3), whereby the learned Sub Judge posted the petition filed by the defendants to hear the issue of territorial jurisdiction of the Sub Court.

2. The respondents herein are the plaintiff and the 1st defendant respectively.

3. Heard the learned counsel for the petitioner as well as the 1st respondent in detail. Perused the materials placed along with the Original Petition, counter affidavit and reply affidavit.

4. The learned counsel for the petitioner argued that the petitioner herein filed I.A.No.2/2020 contending that the Sub Court, Kottayam, has no jurisdiction to entertain the Suit since no cause of action for the Suit arose within the jurisdiction of Kottayam district. It is submitted further that even though the issue of territorial jurisdiction shall be tried and decided as a preliminary issue, the Sub Court posted the said petition along with the Suit for considering the said question. According to the learned counsel for the petitioner, the said procedure adopted by the trial court is erroneous and, therefore, the same requires interference with direction to the trial court to consider and pass orders on merits in the petition treating the same as a preliminary issue.

5. In this connection, the learned counsel placed a decision reported in [AIR 1993 Kerala 210], *Femina Handloom of India, Cannanore v. M/s.M.R.Verma & Sons*. In the said decision it was held as under:

“Where the defendant alleged that the court has no jurisdiction to try

the case and an issue is framed regarding jurisdiction, for the convenience of the parties same should have been tried as preliminary issue and if the court finds that it has no jurisdiction the plaintiff can very well proceed the litigation in the proper court. The finding regarding jurisdiction at the final stage would only cause undue hardship to parties.”

6. Similarly, the learned counsel for the petitioner placed another decision reported in [2017 (4) KLT 468], ***Prasad v. Travancore Devaswom Board***, to contend that where issues of law and facts are framed in a Suit, those relating to law, if it relates to jurisdiction and bar to suit, be tried first. In this case, strangely, no issue was framed with regard to law and the court below proceeded to try the issues of facts but to dismiss the Suit on a question relating to jurisdiction, though no such issue had been framed at all.

7. Per contra, the learned counsel for the 1st respondent submitted that the question of territorial jurisdiction raised by the petitioner herein is without *bona fides*. He submitted further that the defendants herein filed written statement in this case of 2013 as early as on 03.09.2013 and no plea as regards to the territorial jurisdiction seen raised therein. He also submitted that in the

written statement, there is wilful admission by the defendants to the effect that part of the transaction led to the Suit arose on different dates within the jurisdiction of Kottayam. The relevant paragraph in the counter affidavit is as under:

“4. The petitioner filed written statement in the suit in which it is admitted that the petitioner purchased the rubber from the first respondent from the factory at Kottayam and the godown at Erattupetta. The relevant portion of the written statement in paragraph 4 of the written statement is extracted hereunder:

“4. It is admitted that the defendants used to purchase rubber from the plaintiff on different dates from different factories at Kottayam and from the godown at Erattupetta. The defendants used to take delivery of the rubber dispatched in their favour and immediately they used it for manufacturing solid tyres.....”

In these circumstances territorial jurisdiction is not an issue which arises for consideration in the suit.”

He also submitted that in view of the wilful admission, applying Section 20 of the Code of Civil Procedure, part of the transaction took place within the jurisdiction of Sub Court, Kottayam and therefore, the plaintiff rightly instituted the Suit before the Sub Court, Kottayam, and the question of territorial jurisdiction does not arise at all.

8. The learned counsel highlighted a decision of the Apex Court reported in [(1989) 2 SCC 163], *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies* and paragraphs 13 to 15 of the judgment are highlighted to contend that since part of the transaction involved in the Suit is within the jurisdiction of Kottayam district, the Sub Court, has ample jurisdiction to deal with the matter and, therefore, the question of territorial jurisdiction raised at the instance of the defendants could not succeed, prima facie.

9. Coming to the core issue, I have no hesitation to hold that where the defendant alleged that the court has no jurisdiction to try the case and an issue is framed regarding jurisdiction, for the convenience of the parties same should have been tried as preliminary issue and if the court finds that it has no jurisdiction the plaintiff can very well proceed the litigation in the proper court. The finding regarding jurisdiction at the final stage would only cause undue hardship to the parties and also that when issue of law and facts are framed in a Suit, those relating to the jurisdiction to

be tried at the first hand.

10. Here, the Suit was instituted in the year 2013. When the written statement was filed as on 03.09.2013, the defendants categorically and wilfully admitted that part of the transaction was within the jurisdiction of the Sub Court, Kottayam. However, the learned counsel for the petitioner submitted that in the reply affidavit filed by the petitioner, in para.4, the circumstances led to the above contention in the written statement has been explained and later it was revealed that the plaintiff does not have any factories or godowns in other place in Kottayam district except in Erattupetta. I do not think that the above explanation in the reply affidavit is a reason for retracting the wilful admission made in the written statement, filed as early in the year 2013. It is relevant to note that the present application was filed at a much belated stage in the year 2020.

11. Going by the impugned order, the procedure adopted by the learned Munsiff to decide the question of territorial jurisdiction

during the final stage of trial cannot be justified and therefore, the said order is liable to be set aside.

12. Since Ext.P3 is set aside, normally the matter has to be remitted back to the trial court for deciding the question of jurisdiction afresh, as a preliminary issue of law. However, it appears that the Suit is of the year 2013 (5 plus old case) and has been pending before the trial court and an earlier disposal of the same is the need of the hour. It is in this context, I am inclined to address the issue of jurisdiction in the interest of justice, by exercising discretion of this Court.

13. Section 20 of the Code of Civil Procedure provides as under:

“20: Other Suits to be instituted where defendants reside or cause of action arises:-- Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

Section 20(c) of the C.P.C is emphatically clear on the point that a Suit can be instituted in a place where the cause of action wholly or part arises. In the plaint, the plaintiff specifically contended in para.4 and 10 that part of the transaction took place within the jurisdiction of Kottayam village wherefrom the goods were consigned. The said fact was admitted by the defendants in the written statement as well. The said wilful admission cannot be retracted. In such a case, it is emphatically clear that the Sub Court, Kottayam is having territorial jurisdiction in so far as the present Suit is concerned and, therefore, the question of jurisdiction raised by the petitioner cannot be sustained. The question of jurisdiction found against the petitioner. Finding so, I direct the

learned Sub Judge to expedite the disposal of the case on merits, within a period of 3 months from the date of receipt of a copy of this judgment.

This Original Petition stands disposed of as indicated herein above.

Sd/-

(A. BADHARUDEEN, JUDGE)

rtv/

APPENDIX OF OP(C) 404/2020

PETITIONER'S EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE PLAINT, O.S.NO.202 OF 2013 BEFORE THE ADDL. SUB COURT, KOTTAYAM DATED 15/3/2013 FILED BY THE RESPONDENT.
- EXHIBIT P2 THE TRUE COPY OF THE PETITION, I.A.NO.2/2020 IN O.S.NO.202/2013 DATED 8/1/2020 FILED BY THE PETITIONER.
- EXHIBIT P3 THE TRUE COPY OF THE ORDER IN I.A.NO.2/2020 IN O.S.NO.202/2013 DATED 16/1/2020 BY THE ADDL. SUB COURT, KOTTAYAM.

RESPONDENTS' EXHIBITS

EXT.R1(a): TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN O.S.NO.202/2012 IN THE SUB COURT, KOTTAYAM DATED 3.9.2013.