



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST.) NO. 14843 OF 2019
IN
CIVIL MISC. APPLICATION NO. 309 OF 2018
IN
COMMON ORDER IN EXHIBIT 26 AND EXHIBIT 6
AND
ORDER IN EXHIBIT-1
IN
COMMERCIAL SUIT NO. 4 OF 2017
ALONGWITH
CIVIL APPLICATION NO. 1223 OF 2019
(FOR CONDONATION OF DELAY)
ALONGWITH
CIVIL APPLICATION (ST.) NO. 14846 OF 2019
(FOR STAY)

Shreem Electric Limited

...Appellant

V/s.

Transformers and Rectifiers

India Ltd. And Ors.

...Respondents

Mr. Sameer Pandit, Ms. Sarrah Khambati, Mr. Mihir Govande i/by.
Wadia Ghandy and Co., for the Appellant.

Mr. Yuvraj Narvankar, for Respondent No.1.

Mr. Zoheb Khatri i/by. India Law LLP for SBI-Respondent No.2.

CORAM : SANDEEP V. MARNE, J.

DATED : 12 DECEMBER 2023.

JUDGMENT :

1. It must be observed at the very outset that the District Court has passed a rather an unusual order, which is subject matter of challenge in the present appeal. While deciding applications filed by the Defendant seeking rejection of Plaint under Order 7 Rule 11 of the Code of Civil Procedure (**Code**) and by Plaintiff seeking temporary injunction, the District Court has proceeded to return the plaint, invoking the provisions of Order 7 Rule 10. It has not recorded any reasons for returning the plaint but has returned the Plaint 'in view of' order rejecting application for rejection of plaint.

2. To examine the correctness of the order, it would be necessary to first condone the delay in filing the appeal. For the reasons stated in Civil Application No. 1223 of 2019, which is opposed by the learned counsel for the respondent, the delay in filing the appeal stands condoned.

3. **Admit.** With consent of the learned counsel appearing for parties, the same is called out for hearing.

4. The challenge in the present Appeal is to the common Order dated 25 July 2018 passed by the District Judge-1 Kolhapur passed below Exhibit-1 returning Plaint under Order 7

Rule 10 of the Code for being presented before appropriate Court. Also challenged is the order dated 28 February 2019 rejecting the application seeking review of the Order dated 25 July 2018.

5. The Plaintiff has instituted Commercial Suit No. 4 of 2017 before the District Court, Kolhapur, seeking specific performance of purchase orders on the part of the Defendant by way of restoration of services, guarantees, warranties, supply of necessary spare parts, removal of defects and keeping of power transformers in working condition during guarantee and warranty period. Plaintiff has also sought monetary compensation along with interest.

6. In the suit, Plaintiff also filed application for temporary injunction under the provisions of Order 39 Rules 1 and 2 of the Code. The Defendant appeared in the suit and filed application at Exhibit- 26 seeking rejection of Plaintiff under the provisions of Order-7, Rule 11 of the Code on the ground of absence of cause of action and lack of territorial jurisdiction. The application was opposed by the plaintiff by filing affidavit in reply.

7. The District Court heard Defendant's application at Exhibit-26 under Order 7 Rule 11 seeking rejection of plaintiff and Plaintiff's application at Exhibit-6 together and proceeded to pass common order dated 25 July 2018, rejecting both the applications. However, while holding that the plaintiff cannot be rejected under the provisions of Order 7 Rule 11, the District Court has made certain observations in para-14 of its order as to why the plaintiff needs to be returned for being filed in the Court at Ahmedabad.

After rejecting Defendant's application at Exhibit-26 for rejection of the plaint under Order 7 Rule 11, the District Court proceeded to pass a separate order on application at Exhibit-1 directing that in view of Order passed below Exhibit-26 and Exhibit-6, the plaint be returned to the Plaintiff as per Order 7, Rule 10 for being presented before the appropriate Court.

8. Plaintiff carries on business of manufacturing and supply of Turn Key Projects for establishing power stations for government/semi government companies, State Electricity boards, railways etc. It has its office and factory at Jaisingpur, District-Kolhapur. That Defendant carries on the business of developing power distribution and manufacturing furnace and special Transformers. Plaintiff had placed various purchase orders with the Defendant for supply of transformers Disputes have arisen between the Plaintiff and Defendant over Defendant's alleged refusal to perform obligations arising out of purchase orders by servicing and maintaining the transformers during guarantee and warranty period. Plaintiff apparently wanted to invoke the bank guarantee furnished by the Defendant for non performance of the obligations under the Purchase Order. Defendant therefore lodged Commercial Suit No. 95 of 2017 in the Civil Court at Ahmedabad seeking a declaration that invocation of bank guarantee by the Plaintiff was invalid unlawful and bad in law and seeking perpetual injunction against the plaintiff. In the suit, Plaintiff filed application at Exhibit-6 for temporary *injunction*. Defendant appeared in the suit and filed application at Exhibit-26 seeking rejection of plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure. The application was opposed by the

Plaintiff by filing reply. The District Judge proceeded to hear both, Plaintiff's application at Exhibit-6 and Defendant's application at Exhibit-26 and passed common order dated 25 July 2018. It has rejected Plaintiff's application at Exhibit-6 for temporary *injunction*. Similarly, it has also rejected Defendant's application at Exhibit-26 seeking rejection of plaint under the provisions of Order 7 Rule 11 of the Code. The plaintiff filed Misc. Application No. 309 of 2018 seeking review of the order dated 25 July 2018. The District Court has proceeded to reject the application for review by order dated 28 February 2019. This is how both the Orders dated 25 July 2018 passed below Exhibit-1 and Order dated 25 February 2019 rejecting review application are subject matter of challenge in the present appeal.

9. Mr. Pandit, the learned counsel appearing for the Appellant would submit that the order passed by the learned District Judge is *ex-facie* erroneous, as the learned Judge could not have returned the plaint under the provisions of Order 7 Rule 10 of the Code while deciding the application for rejection of the plaint under Order 7 Rule 11. That observations made while rejecting Defendant's application for rejection of plaint could not be used for passing a separate unreasoned order on plaint at Exhibit-1 by ordering return of the same under Order 7 Rule 10 of the Code. That the impugned order passed on plaint at Exhibit-1 is unreasoned and cryptic. He would submit that even the order dated 25 July 2018 nowhere records that the District Court does not have jurisdiction to entertain the suit. That in absence of any specific finding about lack of jurisdiction of the District Court, Kolhapur to try and entertain the suit, the plaint could not have

been returned. He would submit that the procedure adopted by the learned District Judge is unknown to law and despite inviting the attention of the learned Judge to the error apparent on the face of the record, the learned judge has refused to correct the same by rejecting the review application. Mr. Pandit would take me through the averments in the plaint as well as the terms and conditions of the purchase order to demonstrate that the District Court, Kolhapur has necessary jurisdiction to try and entertain Plaintiff's suit. He would submit that parties agreed under the purchase order that the cause of action in relation to any dispute under the contract shall be deemed to have arisen within the jurisdiction of appropriate Court having jurisdiction over Jaisingpur. That therefore the Court at Ahmedabad does not have jurisdiction to entertain the Defendant's suit relating to disputes arising out of the purchase orders. In support of this contention, Mr. Pandit would rely upon judgment of the Apex court in ***A.B.C. Laminart Pvt. Ltd and Anr. V /s. A.P. Agencies, Sales*** (1989) 2 SCC 163.

10. *Per-contra*, Mr. Narvankar, the learned counsel appearing for Respondent No.1 would oppose the Appeal and support the order passed by the District Court. He would submit that the District Court has adopted correct course of action by directing the Plaintiff to lodge the plaint in the Court at Ahmedabad which is already seized of a separate suit filed by the Defendant arising out of same contract. That the order of the District Court would ensure that the same Court decides the disputes between the parties arising out of the same contract. That therefore no palpable error can be traced in the approach of

the District Court which is fair and proper in the facts and circumstances of the present case. He would further submit that the District Court at Kolhapur does not have jurisdiction to try and entertain plaintiff's suit. That instead of rejecting the plaint altogether, the District Court has returned the plaint for being presented before the Court at Ahmedabad. That in such circumstances, it cannot be stated that any patent error is committed by the learned District Judge in returning the plaint. He would pray for dismissal of the appeal.

11. Rival contentions of the parties now fall for my consideration.

12. As observed in the opening paragraphs of the judgment, the course of action adopted by the learned District Judge appears to be unusual and alien to law. The Defendant filed application seeking rejection of the plaint under Order 7 Rule 11 of the Code. The learned District Judge proceeded to hear and decide Defendant's application along with Plaintiff's application for temporary injunction. This is the first error on the part of the District Judge. It is incomprehensible as to how an application for temporary injunction can be decided together with an application seeking rejection of plaint under Order 7 Rule 11. It is not a case where the District Judge has rejected the plaint and has therefore found it unnecessary to decide Plaintiff's application for temporary injunction filed under the provisions of Order 39 Rules 1 and 2. The District Court has rejected Defendant's application for rejection of plaint and in the same order has devoted one paragraph for arriving at the conclusion that the plaintiff is not

entitled to grant of any temporary injunction. This course of action adopted by the District Court appears to be strange and unknown to law. Be that as it may, since rejection of prayer for temporary injunction is not really pressed in the present appeal this Court need not delve any deeper into the correctness of the approach of the District Court in deciding and rejecting Plaintiff's application for temporary injunction together with Defendant's application for rejection of plaint.

13. As observed above, Defendant's application for rejection of Plaint under Order 7 Rule 11 has been rejected by a reasoned Order dated 25 July 2018. No separate application was filed by the Defendant seeking return of plaint under Order 7 Rule 10. It must be observed here that there is no absolute proposition of law that the Court cannot order return of plaint under Order 7 Rule 11 of the Code in absence of any application by the Defendant. In an appropriate case where a Court comes to a conclusion that it does not have jurisdiction to try and entertain the suit, it can order return of plaint.

14. However, in the present case that District Court was essentially dealing with Defendant's prayer for rejection of plaint under Order 7 Rule 11. It has arrived at a conclusion that there is cause of action for filing the suit and has proceeded to reject the Defendant's application. While rejecting Defendant's application, the Court has made following observations in para 14 of the order Which reads thus :

14. On the basis of aforesaid discussion, it is clear that the present suit cannot be tried in this Court parallel to the suit filed by the defendant in Ahmedabad court. Though it is claimed by the defendant that the suit should be rejected in toto, instead of that plaint can be returned to Ahmedabad court to finally adjudicate upon so that both the parties will get equal opportunities to substantiate their claims and event the court can adjudicate it without there being controversial and different views of two different courts on the same subject matter.

15. Except the observations in para-14 to the effect that the suit cannot be tried parallelly before the District Court at Kolhapur in view of pendency of Defendant's suit at Ahmedabad, the District Court has not recorded any specific finding that it lacked jurisdiction to try or entertain Plaintiff's suit and has proceeded to return the plaint for being prosecuted before the Court at Ahmedabad. This is yet another glaring error committed by the District Court.

16. After rejecting Defendant's application for return of plaint, the District Judge has proceeded to pass a separate order on the same day i.e. 25 July 2018 on application at Exhibit-1 as under :-

In view of order passed below Ex.26 and Ex.6, plaint be returned to plaintiff as per order 7 rule 10 of CPC to present it before appropriate court.

17. Thus no reasons are recorded for passing order below Exhibit-1 for return of plaint. Rather the reasoning of separate order passed on the applications at Exhibit-26 and Exhibit-6 are sought to be imported to justify the order passed for return of the plaint. This appears to be an unusual procedure adopted by the District Court.

18. Even if one travels through the reasons recorded in order dated 25 July 2018 passed below Exhibit-26 and Exhibit-6, there are no proper reasons to justify return of the plaint. The District Court has merely noticed pendency of suit in the Court at Ahmedabad.

19. In my view, the District Court has completely misdirected itself in ordering return of the plaint without recording a specific finding that it did not have jurisdiction to try or entertain the suit. The order passed by the District Court directing return of the plaint is thus clearly unsustainable. Despite its attention being invited to the glaring error in the order returning the plaint, the District Court has refused to correct the error by rejecting Plaintiff's application for review.

20. Therefore the orders dated 25 July 2018 ordering return of the plaint as well as order dated 28 February 2019 rejecting review application are indefensible and are liable to be set aside. However, it is clarified that this Court has not gone into the issue of jurisdiction of District Court to try or entertain plaintiff's suit. The judgment cited by Mr. Pandit deals with the issue of jurisdiction, which is not being decided in the present appeal. Therefore, it is not necessary to discuss the ratio of that judgment. All contention of parties in this regard are kept open. The party shall also have an opportunity to exercise their remedies to seek transfer of the suits pending before the District Court, Kolhapur or before the Court at Ahmedabad.

21. The Appeal accordingly succeeds. The order dated 25 July 2018 passed by the District Judge, Kolhapur ordering return of the plaint, as well as Order dated 28 February 2019 rejecting review application are set aside. Commercial Suit No. 4 of 2017 shall stand restored on the file of District Judge, Kolhapur.

22. The Appeal is accordingly allowed. There shall be no orders to cost.

22. With disposal of the Appeal, Civil Applications taken out for condonation of delay and stay also stand disposed of.

SANDEEP V. MARNE, J.