

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.82 OF 2014 WITH
CIVIL APPLICATION NO.9683 OF 2014

M/s Ambarwadikar & Co.,
a Registered Firm, through its Partner
Shri Vitthalrao Rangnathrao Ambarwadikar,
Age 69 years, Occu. Business,
R/o 2121, Samarth Nagar, Aurangabad. ... APPELLANT
(Original Plaintiff)

VERSUS

1. The State of Maharashtra,
through Collector, Latur,
District Latur.
2. The Executive Engineer,
Lower Terna Canal Division No.1,
Nilanga
(since the Department has been
abolished and has been merged into
the Office of Executive Engineer,
Lower Terna Project Division, No.2,
Latur, the copy be served on the
said Address)

(For Respondent Nos.1 and 2
Copies to be served on Govt. Pleader,
High Court of Judicature of Bombay,
Bench at Aurangabad)

3. The Godawari Marathwada Irrigation
Development Corporation,
through Executive Director,
Sinchan Bhawan, Near Akashwani,
Aurangabad. ... RESPONDENTS
(Original Defendants)

.....

Shri A.K. Gawali, Advocate for appellant

Mrs. S.D. Shelke, A.G.P. for respondent No.1
Shri S.G. Bhalerao, Advocate for respondent No.2

....

WITH

APPEAL FROM ORDER NO.86 OF 2014 WITH
CIVIL APPLICATION NO.9855 OF 2014

M/s Ambarwadikar & Co.,
a Registered Firm, through its Partner
Shri Vitthalrao Rangnathrao Ambarwadikar,
Age 69 years, Occu. Business,
R/o 2121, Samarth Nagar, Aurangabad. ... APPELLANT
(Original Plaintiff)

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Shri A.K. Gawali, Advocate for appellant
Mrs. S.D. Shelke, A.G.P. for respondent No.1
Shri S.G. Bhalerao, Advocate for respondent No.2
....

CORAM: A.I.S. CHEEMA, J.

DATED: 22nd January, 2015.

Date of reserving judgment : 13/1/2015

Date of pronouncing judgment : 22/1/2015

JUDGMENT :

1. These appeals were admitted and taken up for final hearing on 13th January 2015. Both the appeals are between same parties.

2. Appellant (original plaintiff) in Appeal from Order No.82/2014 is challenging the order dated 7.8.2014, passed by Civil Judge, Senior Division, Latur, below Exhibit 35 in Special Civil Suit No.18/2012, thereby holding that Latur Court does not have territorial jurisdiction to entertain the Special Civil Suit No.18/2012 filed by the appellant and directing that the plaint should be returned to be filed in proper and competent Court at Nilanga, District Latur.

3. In Appeal from Order No.86/2014, same appellant-

plaintiff has filed Appeal from Order, challenging the order dated 20.8.2014, passed by Civil Judge, Senior Division, Latur below Exhibit 29 in Special Civil Suit No.23/2012, thereby holding that Latur Court does not have territorial jurisdiction to entertain the suit and directing that the plaint should be returned for being filed to the proper and competent Court at Nilanga, District Latur.

4. Special Civil Suit No.18/2012 relates to contract which was awarded to the plaintiff for Balance Earth Work C.C. Lining and Structures in K.M. 18 to 22 by virtue of agreement No.B-1/6 of 1988-89. He was also awarded such work with reference to K.M. 23 to 28 under agreement N.B-1/7 of 1988-89. These works related to Lower Terna Left Bank Canal

Special Civil Suit No.23/2012 related to contract of Balance Earth Work C.C. Lining and Structures in K.M. 22 to 25 as per Agreement No.B-1/3 of 1988-89 of Lower Terna Right Bank Canal.

5. According to the appellant, respondents filed Special Civil Suit No.32/2001 for recovery of Rs.73,74,054/- against appellant regarding loss incurred for getting unexecuted work done with reference to works which are subject matter of Special

Civil Suit No.18/2012. That suit is pending before Civil Judge, Senior Division, Latur as the contract was entered at Latur. As per the appellant, after rejection of its claim before Principal Secretary, Irrigation Department, the Special Civil Suit No.18/2012 came to be filed. Similarly, Special Civil Suit No.23/2012 came to be filed regarding the works of Lower Terna Right Bank Canal.

According to the appellant, under Section 24 of the Code of Civil Procedure, 1908 (C.P.C. in brief), the MARJE No.60/2012 was filed by the appellant – original plaintiff for transfer and joint trial of Special Civil Suit No.32/2001, Special Civil Suit No.23/2012 and Special Civil Suit No.18/2012 as at that time they were pending before different Civil Judges, Senior Division at Latur. It was claimed that, Special Civil Suit No.23/2012 related to agreement of Lower Terna Right Bank Canal, Special Civil Suit No.18/2012 related to agreement of Lower Terna Left Bank Canal and that Special Civil Suit No.32/2001 was in respect of work done in view of the above mentioned tenders. Claim was made that, issues in both the suits were in respect of same nature of dispute and evidence required to be adduced would be similar in all the three suits and witnesses would also be the same and so, all the three suits

should be clubbed and heard jointly. Principal District Judge, Latur, vide orders dated 23.6.2012, withdrew Special Civil Suit No.32/2001 from Extra Jt. Civil Judge, Senior Division, Latur and Special Civil Suit No.18/2012 from 3rd Jt. Civil Judge, Senior Division, Latur and transferred them to the Court of Principal Civil Judge, Senior Division, Latur, where Special Civil Suit No.23/2012 was pending "for the simultaneous hearing and disposal of the three suits". It is pointed out by the appellant that, the appellant had filed Writ Petition No.935/2013 before the High Court and High Court had, vide orders dated 6.3.2013, directed that, in Special Civil Suit No.32/2001 and Special Civil Suit No.18/2012, parties shall lead common evidence and trial Court may consolidate the issues of both the suits.

6. Grievance of appellant is that, in spite of these orders of the Principal District Judge and the High Court, respondents filed the application raising question of jurisdiction and the Civil Judge, Senior Division has passed orders directing return of plaint under Order VII Rule 10 of CPC to present the same at the Court at Nilanga.

7. I have heard counsel for both sides in both the appeals. Learned counsel for the appellant submits that, in both

the suits, defendant No.1 was the State of Maharashtra through Collector, Latur. Even the written statement of defendant No.2 had been filed through Executive Engineer, Lower Terna Project Division No.2, Latur by reasons of the fact that the office of Executive Engineer, Lower Terna Canal Division No.1, Nilanga had been abolished and thus, the defendant was residing at Latur. Still, ignoring Section 20 of CPC, the impugned orders were passed in both the suits. It is argued that, the contracts were entered at Latur and various correspondence exchanged were also between Executive Engineer, at Latur and the plaintiff. Thus, part of cause of action arose at Latur. After the Principal District Judge passed orders for simultaneous trying of the three suits by one Court and after the High Court directing common evidence in Special Civil Suit No.18/2012 and Special Civil Suit No.32/2001, the impugned orders passed were not at all maintainable. This was pointed out to the trial Court but still the impugned orders have been passed.

8. Against this, learned counsel for the respondent justified the impugned orders passed by the Civil Judge, Senior Division, Latur. According to him, even if there were orders under Section 24 of the CPC and there was order for common hearing of evidence in Special Civil Suit No.18/2012 and Special

Civil Suit No.32/2001, there was nothing which debarred the Civil Judge, Senior Division from considering if or not there was territorial jurisdiction with his Court for Special Civil Suit No.18/2012 and Special Civil Suit No.23/2012. According to the learned counsel, the defendants raised dispute on this count and the trial Court has rightly held that it did not have the territorial jurisdiction looking to the complaints.

9. I have heard counsel for both sides and gone through the material placed before this Court. In the Special Civil Suits, Special Civil Suit No.18/2012 and Special Civil Suit No.23/2012, defendant No.1 is State of Maharashtra, through Collector, Latur. Regarding the work in dispute in Special Civil Suit No.18/2012, admittedly the suit of the defendants, Special Civil Suit No.32/2001 is pending before the Civil Judge, Senior Division, Latur, wherein the defendants claimed (in para 33) that the agreements were executed in the office of Executive Engineer, Latur. Special Civil Suit No.18/2012 referred to the correspondence between the parties and the dispute carried up to Secretary of Government, Irrigation Department as well as the fact that Special Civil Suit No.32/2001 filed as a counter to the claims of plaintiff was pending at Latur. Suit mentioned that the office of the defendant Executive Engineer was located within

territorial jurisdiction of the Court and the Court had jurisdiction. Similar averments are there in Special Civil Suit No.23/2012 also that the office of the defendant Executive Engineer was located in territorial jurisdiction of the Court. Even in that suit defendant No.1 is the Collector, Latur.

10. Still, however, the trial Court observed that the work was carried at Mouje Makni and not under the guidance of Executive Engineer, Latur and that the work was carried out in Nilanga and as the work was carried out in that jurisdiction, he did not have the jurisdiction to try the suit.

11. Before the impugned orders were passed, there already existed orders passed in Misc. Application No.60/2012, passed by Principal District Judge, Latur under Section 24 of CPC, to the following effect.

“ The application is allowed.

The Special Civil Suit No.32/2001 pending before the Extra Jt. Civil Judge, S.D., Latur and the Spl. Civil Suit No.18/2012, pending before the 3rd Jt. Civil Judge, S.D., Latur, are hereby withdrawn from the respective Courts and shall stand transferred to the Court of Principal Civil Judge, S.D., Latur, before which the Special Civil Suit No.23/2012 is pending, for the simultaneous hearing and disposal of three suits.

The Special Civil Suit No.32/2001 is more than 10

years old, therefore, the parties to the suit bearing No.18/2012 and Special Civil Suit No.23/2012 are directed to cooperate the Court.

The Principal Civil Judge, S.D., Latur is hereby directed to dispose of the suits, expeditiously.

12. In Writ Petition No.935/2013 between the same parties, request was made by appellant – original plaintiff to consolidate Special Civil Suit No.18/2012 and Special Civil Suit No.32/2001. It was averred before the High Court that the parties were common and contract was same and common evidence was required to be led in these two suits. Reference was made to the orders dated 23.6.2012, passed as above, by the Principal District Judge with reference to Special Civil Suit No.18/2012, Special Civil Suit No.23/2012 and Special Civil Suit No.32/2001. This Court passed following orders :

“The parties shall lead common evidence in Spl. Civil Suit Nos.32 of 2001 and 18 of 2012

The trial Court may, for convenience, consolidate the issues of both the Suits.

The plaintiff of Spl. Civil Suit No.32 of 2001 has already led his Examination-in-Chief.

In view of the order directing the parties to adduce common evidence, the plaintiff of Spl. Civil Suit No.32 of 2001 is allowed to file additional Examination-in-Chief.

The Court shall take into account the fact that

one of the Suits if of the year 2001 and shall endeavour to decide all the three (3) Suits as expeditiously as possible and preferably within six (6) months from today.

The parties shall co-operate in expeditious disposal of the Suits.”

13. When a suit is transferred under section 24 to a competent Court of pecuniary jurisdiction, even if the Court is not having territorial jurisdiction to try the suit, the transferee Court can dispose the suit and the disposal cannot be regarded as without jurisdiction. If the High Court or District Court transfers the suit from one court to another Court subordinate to it, which Court is competent to try or dispose the suit or other proceedings, the transferee Court cannot return the plaint on the ground that it does not have territorial jurisdiction. Section 24(1) (a) and (b) of the CPC reads as under :

“24. General power of transfer and withdrawal :-

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage ---

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding

pending in any Court subordinate to it; and

- (i) try or dispose of the same; or
- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
- (iii) re-transfer the same for trial or disposal to the Court from which it was withdrawn.”

14. The requirement under above sub-section (ii) is that Court to which the suit is transferred must be Court “competent to try” or “dispose” the same. The orders passed under section 24 cannot be rendered infructuous by the transferee Court saying that it has got no territorial jurisdiction. In the present matter, by the two impugned orders passed by the Civil Judge, Senior Division, he has frustrated not only the directions passed by the Principal District Judge under section 24 for simultaneous hearing and disposal of the three suits but he has also violated the orders passed by this Court in Writ Petition No.935/2013 which required him to record common evidence in Special Civil Suit No.32/2001 and Special Civil Suit No.18/2012 and “to decide all the three (3) suits as expeditiously as possible” If the Civil Judge, Senior Division has, in the face of High Court order, returned the plaint, the order passed by High Court would get defeated of recording common evidence in the two suits and expeditious disposal of the three suits.

15. I find that, the impugned orders in both the appeals are not at all maintainable and the orders are illegal.

16. For the above reasons, I pass the following orders :-

- (1) Appeal from Order No.82/2014 is allowed with costs. The impugned order below Exhibit 35 in Special Civil Suit No.18/2012, passed by Civil Judge, Senior Division, Latur, on 7.8.2014 is quashed and set aside.
- (2) Appeal from order No.86/2014 is allowed with costs. The impugned order passed below Exhibit 29 on 20.8.2014 in Special Civil Suit No.23/2012 is quashed and set aside.

17. In view of disposal of the Appeals from Orders, Civil Application Nos.9683/2014 and 9855/2014 in respective Appeals stand disposed of.

(A.I.S. CHEEMA, J.)