

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.65 OF 2013
IN
SUIT NO.19 OF 2013

Maganlal Savani & Anr.

...Plaintiffs

Versus

Gurudutt Films Combine & Ors.

...Defendants

Mr. A. Davar, *i/b. Himanshu Kode*, for the Plaintiffs.
Ms. Kavita Shah, for Defendants Nos. 3 & 4.

CORAM: G.S. PATEL, J.
DATED: 28th March 2016

P.C.

1. Ms. Shah, who appears for Defendants Nos. 3 and 4 states that those Defendants do not press the preliminary issue earlier raised by them under Section 9A of the Code of Civil Procedure, 1908. That may not be sufficient, for I believe it is reasonably well settled in law that a jurisdictional issue once raised cannot be ‘dropped’ by a defendant in this fashion. This is now settled by the decision in *Mukund Ltd v Mumbai International Airport & Ors.*¹ In paragraph 15, the Division Bench said:

¹ 2011 (5) Bom CR 456 : 2011 (2) Mh LJ 936

"15. ... But, in our view, it is not open to a Defendant, having raised an objection to the jurisdiction of the Court at the hearing of an application for interim relief, to obviate an adjudication by the Court upon that issue as a preliminary issue by merely postulating that the objection is not pressed for the purpose of the Notice of Motion. The objection to jurisdiction under Section 9A is required to be determined not only for the purpose of the motion for the interim relief, but the objection as to jurisdiction goes to the root of the jurisdiction of the Court to entertain the suit itself. Once raised, the objection has to be decided by the Court as a preliminary issue ... "

(Emphasis supplied)

2. Therefore, once a defendant has pleaded a jurisdictional bar, it is not open to him to avoid an adjudication of that issue by saying that he is not pressing his application. The reason is obvious. When the Defendant raises a preliminary issue of jurisdiction, he brings to the attention of the Court that it cannot, for want of jurisdiction, hear the suit itself; if that jurisdictional bar exists, any order on that suit (or on any application in it) is a nullity. This is not a submission that any Defendant can waive or bypass. Either a Court has jurisdiction or it does not. In paragraphs 42 and 43 of *Foreshore Co-operative Housing Society Limited v Praveen D. Desai*,² the Supreme Court said:

² 2015 (3) Bom CR 711 : 2015 (3) Mh LJ 315

42. In American Jurisprudence, Volume 32A, paragraph 581, it is said that

Jurisdiction is the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any case; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.

Further, in paragraph 588, it is said that lack of jurisdiction cannot be waived, consented to, or overcome by agreement of the parties.

43. It is well settled that essentially the jurisdiction is an authority to decide a given case one way or the other. Further, even though no party has raised objection with regard to jurisdiction of the court, the court has power to determine its own jurisdiction. In other words, in a case where the Court has no jurisdiction, it cannot confer upon it by consent or waiver of the parties.

(Emphasis supplied)

3. Mr. Daver for the Plaintiffs then points out that the only reason for raising the issue was because the copyright in question covered certain territories outside the jurisdiction of this Court, though the agreements in question were all entered into within this

Court's jurisdiction. Ms. Shah agrees that this is correct. On a plain reading of it, therefore, Mr. Daver is correct in saying that there is no question of the jurisdiction of this Court being ousted. Thus, the preliminary issue must be answered in the affirmative, i.e., that this Court does indeed have the necessary jurisdiction.

4. Ms. Shah also states on behalf of Defendants Nos. 3 and 4 that she has instructions to continue the statement made previously on 22nd January 2013. That order reads as follows:

"1. The learned Advocate appearing for Defendant Nos.3 and 4 on instructions, states that Defendant Nos.3 and 4 shall not exhibit and /or exploit and /or broadcast and/or distribute and/or allow exploitation and/or exhibition and / or distribution of the films "Aafat, Aarop, Iamaan, Memsaab, Qaid, Ye Gulistan Hamara and Khanjar", by any means in all size/s over any format or otherwise howsoever, throughout the contracted territories including over television and/or satellite television and /or cable television and/or high seas and air and /or by DVD and/or by video and otherwise howsoever. The statement is accepted.

2. There shall be an injunction against Defendant Nos.1 and 2 in terms of prayer clause (b), except for the film "Chand aur Bijli".

5. The order of 22nd January 2013 is, therefore, confirmed as the final order on Notice of Motion No.65 of 2013.

6. I find that Defendants Nos.1 and 2 have not been properly served. Defendants Nos.1 and 2 were also before this Court in an another case last week, viz., Notice of Motion (L) No.470 of 2016 in Suit (L) No.91 of 2016. At that time it was found that the present Defendant No.2 has passed away and his sole proprietorship concern is no longer functioning. The 2nd Defendant's widow and daughter were present in Court. Mr. Davar for the Plaintiffs agrees that his attorneys will obtain the details of Defendants Nos.1 and 2's current address and take the necessary steps to serve them.

7. Since the present Notice of Motion is disposed of on the basis of statements made by Defendants Nos.3 and 4, liberty to the Plaintiffs to make a suitable application, if necessary, as regards Defendants Nos. 1 and 2, after service.

(G. S. PATEL, J.)