

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6591 of 2017

O R D E R:

1) Assailing the order dated 16.10.2017, passed in I.A.No.1452 of 2017 in O.S.No.106 of 2012 on the file of the III Additional District Judge, East Godavari, wherein an application filed by the petitioners/defendants 1 to 5 and 7 under Sections 21 and 151 of C.P.C., to decide the issue whether the trial court has territorial jurisdiction to try the suit at the first instance is dismissed, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The averments in the petition filed by the petitioner/D-2, show that the trial court has no jurisdiction to entertain the suit since no part of cause of action arose and as such the court may be pleased to decide the issue whether the trial court has territorial jurisdiction to try the suit at the first instance. It is further submitted that when the objection is raised as to the territorial jurisdiction, the same has to be decided at the first instance. It is stated that even as per the allegations in the plaint, no part of cause of action for filing the suit as mandated in Section 20 of the C.P.C., will arise.

3) The first respondent/plaintiff filed counter contending that through RTGS he paid a sum of Rs.30,40,000/- on 04.05.2012 and another amount of Rs.13,85,000/- on 05.05.2012 to the account of D-1 for purchase of 1500 grams of pure gold as D-1 was having licence to sell pure gold. Pursuant to which, D-1 supplied 500 grams of pure gold on 08.05.2012 but failed to supply 1000 grams of gold, for which the present suit came to be filed. The first respondent/plaintiff is repeatedly contacting Ramanadham Ram Prasad who is one of the partners of the 1st defendant firm for supply of balance pure gold, but he postponing the same on one pretext or the other. While things stood thus, the said Ramanadham Ram Prasad committed suicide on 15.06.2012. When the first respondent/plaintiff came to know about the same, he immediately approached the 2nd defendant, who is also the partner of the 1st defendant firm, who assured to settle the amount. Even after waiting for a considerable period, the 2nd defendant did not settle the amount. Then the 1st respondent/plaintiff got issued a legal notice to first petitioner/D-1, its partners and the mother of the deceased. The petitioner/D-2 sent a bill to the plaintiff in courier service stating that the balance 1000 grams gold was delivered to the plaintiff. It is stated that only to avoid the liability, the petitioner/D-2 created and fabricated the bill and sent the same to the plaintiff. In reply to the petition filed by the second petitioner/D-2, the plaintiff would submit that he filed

the suit in July, 2012 for which a written statement was filed in January 2013, but no objection was raised with regard to the territorial jurisdiction. The issues were settled long back and when the case is posted for cross-examination of P.W.1, the present petition is filed only to drag-on the matter.

4) After analyzing the material on record, the trial Court dismissed the petition. Challenging the same the present revision is filed.

5) Learned counsel for the petitioner would submit that the contract was concluded as per document No.4, relied upon by the plaintiff and in the said document, it was mentioned that in case of any dispute the jurisdiction would be the Court at Vijayawada only. Hence, pleaded that filing of suit at Kakinada, is nothing but an abuse of process of law.

6) Learned counsel for the respondent/plaintiff would submit that the suit is filed only for recovery of money. Apart from that, it was pleaded that the amount was transferred through RTGS at Kakinada, as such, the trial Court would get jurisdiction to try the suit.

7) Sub-section (1) of Section 21 of the Code of Civil Procedure provides that no objection as to the place of suing shall be allowed

by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity. This provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional court subject to the conditions that such objection was taken in the Court of first instance at the earliest possible opportunity. In all cases where issues are settled, then at or before such settlement of issues; and that there has been a consequent failure of justice.

8) In **R.S.D.V. Finance Co. Pvt.Ltd. v. Shree Vallabh Glass Works¹**, in para 7 and 8, the Apex Court held that all three conditions of Section 21(1) of Code of Civil Procedure should be satisfied. Those conditions are; (1) that such objection should be taken in the Court of first instance at the earliest possible opportunity; (2) in all cases where issues are settled then at or before such settlement of issues; and (3) there has been a consequent failure of justice. In the case before Their Lordships, though the first two conditions were satisfied, the third condition of failure of justice was not satisfied and therefore, Their Lordships refused to interfere.

¹ (1993) 2 SCC 130

9) In the present case, the issue regarding the lack of territorial jurisdiction of the Kakinada Court was raised for the first time when the matter was at the stage of cross-examination of PW.1. It is clear that the issues were framed, but no objection was raised regarding territorial jurisdiction nor such an issue was raised in the written statement.

10) Admittedly, the suit was filed for recovery of money. It is to be noted that the suit was filed in the month of July, 2012, the written statement was filed in the month of January, 2013 and the plea with regard to territorial jurisdiction was not taken by the petitioner in the written statement. Issues were framed long back. Thereafter, the plaintiff filed his evidence in-chief in the month of July, 2016 and later without cross-examining him, a year later, the present petition came to be filed by the petitioner. Further, the learned counsel for the petitioner did not place on record the prejudice that would be caused to him in case the case is tried at Kakinada. Having regard to the judgment of the Apex Court referred to above, since such an objection was never raised at the earliest point of time and as the trial in the case was already commenced and in view of the discretion exercised by the trial court, there are no grounds to interfere with the order passed by the trial court.

11) Accordingly, the revision is dismissed leaving it open to the petitioner to raise such an objection at the time of trial in the main suit and can be considered by the trial court. There shall be no order as to costs.

12) As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

Dt:22.12.2017
GM

