

HIGH COURT FOR THE STATE OF TELANGANA
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CIVIL REVISION PETITION NO.942 OF 2019

Between:

M/s Ecologique Petro Chemicals Pvt. Ltd. ... Petitioner

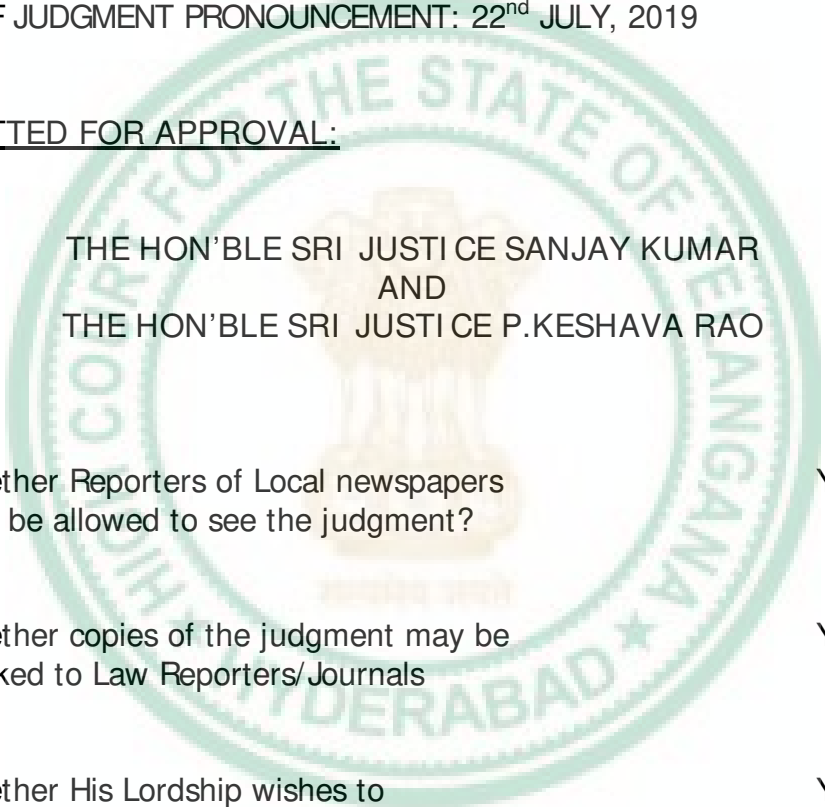
and

M/s Research Center for Fuel Generation
and others ... Respondents

DATE OF JUDGMENT PRONOUNCEMENT: 22nd JULY, 2019

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO

- 
1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
 2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

P.KESHAVA RAO, J

* THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHAVA RAO
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< Gist:

> Head Note:

! Counsel for petitioner : Sri M.Annapurnayya

^ Counsel for respondents : Sri Shyam S.Agarwal

? CASES REFERRED:

1. AIR 1964 SC 497
2. AIR 1979 MADHYA PRADESH 153
3. AIR 1984 KERALA 191
4. (2006) 5 SCC 638
5. (2017) 8 SCC 830
6. (2016) SCC OnLine DELHI 3716

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE P.KESHA RAO

CIVIL REVISION PETITION NO.942 OF 2019

ORDER

‘What is the practice and procedure to be adopted by the trial Court while dealing with a plea to frame and decide a preliminary issue?’

2. This question needs to be answered in this civil revision petition filed under Article 227 of the Constitution. In turn, the scope and import of certain provisions of Order 14 CPC also fall for consideration.

3. C.O.S.No.12 of 2018 was filed by the petitioner-plaintiff company for recovery of a sum of Rs.2,44,02,487.61 Ps. with future interest at 24% per annum along with costs. The case of the petitioner-plaintiff company was that it had placed a purchase order on 05.10.2011 upon the respondents-defendants for supply of plant and machinery for extracting pyrolysis oil on a turn-key basis. According to the petitioner-plaintiff company, the understanding between the parties was that payment would be subject to the supplied product meeting the description and conditions assured by the respondents-defendants and in the event it failed to do so, the respondents-defendants were to refund the price amount along with expenses and losses. Alleging so, this suit was filed in April, 2016 and was numbered as O.S.No.472 of 2016 on the file of the learned XV Additional District Judge, Ranga Reddy District at Miyapur. It was then transferred and re-numbered as C.O.S.No.12 of 2018 on the file of the learned XIII Additional District and Sessions Judge-cum-Commercial Court, Ranga Reddy District at L.B.Nagar (*for brevity*, ‘the Commercial Court’).

4. While so, the respondents-defendants filed I.A.No.89 of 2018 in the said suit under Order 14 Rule 2 CPC r/w Section 151 CPC to decide the preliminary issue of jurisdiction before proceeding with the suit. They

prayed for dismissal of the suit for want of jurisdiction. This I.A. was filed on 23.12.2016. Pertinent to note, the respondents-defendants did not file their written statement(s) in the suit before filing the subject I.A.

5. In the affidavit filed in support of the I.A., the second respondent-second defendant, speaking on behalf of the respondents-defendants, stated as follows: Pursuant to the interest expressed by the petitioner-plaintiff company, the respondents-defendants sent quotation dated 17.03.2011 for supply of the subject machinery to the petitioner-plaintiff company. Clause 12 thereof made it clear that the contract would be subject to the jurisdiction of Courts in the city of Navi Mumbai. The said document was an admitted one and had been mentioned at Sl.No.27 of the list of the documents filed by the petitioner-plaintiff company itself. The quotation dated 17.03.2011 was accepted by the petitioner-plaintiff company by making part-payment of Rs.5,00,000/- on 12.10.2011. However, with a view to institute a false suit, the petitioner-plaintiff company fabricated the purchase order dated 05.10.2011. The petitioner-plaintiff company was silent as to the date and mode of dispatch of the purchase order and no details were provided as to how it was sent to the respondents-defendants. Further, no acknowledgment from the respondents-defendants was produced in relation thereto. The subsequent documents and e-mails filed by the petitioner-plaintiff company correlated to the quotation dated 17.03.2011 and not the false and fabricated purchase order dated 05.10.2011. No formal agreement was ever entered into between the parties and they continued to be governed by the terms of the quotation dated 17.03.2011. As their contractual relationship arose out of the quotation dated 17.03.2011, wherein they agreed to confer exclusive jurisdiction on the Courts at Navi Mumbai, the respondents-

defendants asserted that the preliminary issue of jurisdiction had to be decided before proceeding with the suit.

6. The Managing Director of the petitioner-plaintiff company filed a counter-affidavit opposing this plea. Therein he stated that the I.A. was filed as a delaying tactic as the time for filing written statement(s) had lapsed. Reference was made to the plaint averments to substantiate issuance of the purchase order dated 05.10.2011 as well as its contents. He further asserted that the Commercial Court had jurisdiction to entertain and try the suit as most of the cause of action arose in the registered office of the petitioner-plaintiff company.

7. Having considered the rival contentions of the parties in relation to the subject I.A., the Commercial Court passed the impugned order dated 27.08.2018, holding that it was just and appropriate to permit both parties to lead evidence on the preliminary issue as to whether it had jurisdiction to try the suit. The I.A. was disposed of accordingly.

8. By order dated 15.04.2019 passed in this revision petition, this Court granted interim stay of all further proceedings in C.O.S.No.12 of 2018 on the file of the Commercial Court. On 07.06.2019, the interim stay was directed to be continued until further orders.

9. Heard Sri M.Annapurnayya, learned counsel for the petitioner-plaintiff company, and Sri Shyam S. Agarwal, learned counsel for the respondents-defendants.

10. At the outset, it would be apposite to examine the statutory scheme pertaining to the subject. Order 14 CPC is titled 'SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON'. Rule 1 of Order 14 CPC deals with framing of issues. As per sub-rule (1) thereof, issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. 'Material Propositions'

are defined by sub-rule (2) thereof to mean those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Sub-rule (3) provides that each material proposition, affirmed by one party and denied by the other, shall form the subject of a distinct issue. Sub-rule (4) states that issues are of two kinds: (a) issues of fact, and (b) issues of law. Sub-rule (5) provides that at the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after examination under Rule 2 of Order 10 CPC and after hearing the parties or their pleaders, ascertain upon what material propositions of fact or of law the parties are at variance and shall proceed to frame and record the issues on which the right decision of the case appears to depend. Sub-rule (6) provides that nothing in Order 14 Rule 1 CPC would require the trial Court to frame and record issues when the defendant makes no defence at the first hearing of the suit.

11. Order 14 Rule 2 CPC mandates that the Court must pronounce judgment on all the issues. Sub-rule (1) of Order 14 Rule 2 CPC postulates that notwithstanding the fact that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2) of Order 14 Rule 2 CPC, pronounce judgment on all issues. Sub-rule (2) of Order 14 Rule 2 CPC states that where issues both of law and of fact arise in the suit, and the trial Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force. It further provides that, for this purpose, the trial Court, if it thinks fit, may postpone settlement of other issues until that issue has been determined and may deal with the suit in accordance with the decision on that issue.

12. It is clear from the provisions of Order 14 Rule 2 CPC that sub-rule (2) is in the nature of an exception to sub-rule (1) thereof. The normal rule is that even if a case may be disposed of on a preliminary issue, the trial Court must ordinarily pronounce the judgment on all issues. However, the exception to the above norm, as per sub-rule (2) of Order 14 Rule 2 CPC, is that when an issue of law arises, either as to the jurisdiction of the Court or as to the suit being barred by any law for the time being in force, the trial Court may first take up that issue and postpone settlement of the other issues until it decides the same and deal with the suit in accordance with its decision on such issue.

13. In the case on hand, the subject I.A. was filed by the respondents-defendants under Order 14 Rule 2(2) CPC claiming that the Commercial Court had no territorial jurisdiction to try the suit.

14. Sri M.Annapurnayya, learned counsel, would contend that in the absence of written statement(s) of the respondents-defendants, the Commercial Court ought not to have even taken up a preliminary issue at their mere asking. He would contend that it is not open to a defendant to raise a preliminary issue without filing a written statement. Learned counsel would further contend that in any event, the case on hand did not throw up an issue of law independent of issues of fact for determining the point of jurisdiction. He would place reliance on case law:

15. In MAJOR S.S.KHANNA V/ s. BRIG.F.J.DILLON¹, the Supreme Court observed that the jurisdiction to try issues of law under Order 14 Rule 2 CPC may be exercised only where, in the opinion of the Court, the whole suit may be disposed of on issues of law alone, but the CPC confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Per the Supreme Court, normally all issues in a suit

¹ AIR 1964 SC 497

should be tried by the Court and not doing so, especially when the decision on issues even of law would depend upon the decision on issues of fact, would result in a lop-sided trial of the suit.

16. In *M/ s. RAMDAYAL UMRAOMAL V/ s. M/ s. PANNALAL JAGANNATHJI*², a Full Bench of the Madhya Pradesh High Court observed that Order 14 Rule 2 CPC makes it clear that an issue as to jurisdiction could be an issue of law or an issue of fact or a mixed issue of law and fact and the obligation to try the issue of jurisdiction as a preliminary one would arise only when it is an issue of law. It was pointed out that an issue of jurisdiction depending on a question of fact or a mixed question of law and fact would have to be decided on merits along with other issues. The Full Bench concluded that discretion to try a preliminary issue of law relating to jurisdiction or bar of suit should be exercised only when it is clear that the decision would decide the suit finally, once and for all, without recording any evidence.

17. In *THIRUVAMBADI RUBBER CO. LTD. V/ s. N.K.DAMODARAN NAI R*³, a learned Judge of the Kerala High Court observed that Order 14 Rule 2(2) CPC conferred jurisdiction to try only an issue of law as a preliminary issue, provided that such issue either related to the jurisdiction of the Court or a bar to the suit, created by any law for the time being in force. The learned Judge noted that there may be inherent lack of jurisdiction, territorial jurisdiction, pecuniary jurisdiction or a suit may be barred by *res judicata* or limitation and all cases involving lack of jurisdiction would depend either on a pure question of law or a mixed question of law and fact. The learned Judge concluded that upon a careful and fair construction of Order 14 Rule 2 CPC, it was clear that only an issue

² AIR 1979 MADHYA PRADESH 153

³ AIR 1984 KERALA 191

raising a pure question of law, falling either under clause (a) or (b) of sub-rule (2) of Rule 2 of Order 14 CPC, where recording of evidence is not necessary, can be tried as a preliminary issue as such an issue of law would go to the root of the suit and would be capable of being decided without any evidence.

18. In RAMESH B. DESAI V/s. BIPIN VADILAL MEHTA⁴, the Supreme Court observed that though there was a slight amendment in the language of Order 14 Rule 2 CPC in 1976, the principle enunciated in MAJOR S.S.KHANNA¹ still holds good and there could be no departure from the principle that the CPC does not confer jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on an issue of law depended upon a decision of fact, it could not be tried as a preliminary issue.

19. It may be noted that the aforestated case law merely affirms the legal position emerging from the clear language of the statutory provision itself, as pointed out *supra*. It is only if a suit is capable of being disposed of, fully or in part, on a pure issue of law touching upon either the jurisdiction of the Court or the suit itself being barred by any law that the trial Court would be entitled to take recourse to its power under Order 14 Rule 2(2) CPC and decide such an issue as a preliminary issue.

20. Applying this legal standard to the case on hand, we find that the Commercial Court grievously erred in choosing to exercise its power under the subject provision. No material is placed before us to show that the Commercial Court framed any issues in terms of Order 14 Rule 1(5) CPC or postponed settlement thereof. Even in the order under revision, the preliminary issue which is now sought to be put to trial was not framed. After setting out the rival contentions of the parties, the Commercial Court

⁴ (2006) 5 SCC 638

straightaway summed up that there was a dispute with regard to the agreement between the parties, i.e., as to whether they acted upon the purchase order dated 05.10.2011 or the quotation dated 17.03.2011 and opined that unless this dispute was decided, the right conclusion could not be arrived at with regard to jurisdiction.

21. The very fact that the Commercial Court required evidence to be let in clearly shows that the so-called preliminary issue turned upon a decision on fact, *viz.*, whether the parties' contractual relationship was governed by the quotation dated 17.03.2011 or the purchase order dated 05.10.2011. It was the contention of the respondents-defendants that the purchase order dated 05.10.2011 was fabricated. Evidence necessarily had to be led to establish this fact. Their further contention that exclusive jurisdiction was conferred upon the Courts at Navi Mumbai also had to be proved as binding on the parties.

22. Essentially, the issue of fact that had to be decided to settle this controversy was whether the purchase order dated 05.10.2011 was a genuine one or not. Being an issue of fact, it could not have been taken up as a preliminary issue at all in terms of Order 14 Rule 2(2) CPC as only an issue of law touching upon the jurisdiction of the trial Court or a bar to the suit could be taken up thereunder as a preliminary issue.

23. This being the legal position, Sri Shyam S. Agarwal, learned counsel, would place reliance upon *S.N.D.P. SAKHAYOGAM V/ s. KERALA ATMAVIDYA SANGHAM*⁵ to support the order under revision. This decision arose out of a suit filed for a declaration that a sale deed was void. The trial Court permitted prosecution of the suit as a representative suit under Order 1 Rule 8 CPC but ultimately dismissed it. In second appeal, the High Court decreed the suit. The Supreme Court opined that one question

⁵ (2017) 8 SCC 830

which went to the root of the case affecting the very jurisdiction of the Court to try the suit was not taken note of inasmuch as the Court was expected to decide as to whether the plaintiff, who was a juristic person being a society, was entitled to invoke the provisions of Order 1 Rule 8 CPC for filing a suit in a representative capacity. As there was neither discussion nor a finding on this issue by the Courts below, the Supreme Court remanded the case to the trial Court. We are at a loss to understand as to how this decision aids the case of the respondents-defendants. The issue presently is whether a mixed question of law and fact touching upon jurisdiction can be taken up as a preliminary issue under Order 14 Rule 2 CPC. The decision did not deal with this aspect.

24. Similarly, TELEFONAKTIEBOLAGET L.M.ERICSSON V/ s. LAVA INTERNATIONAL LIMITED⁶, relied upon by Sri Shyam S.Agarwal, learned counsel, is wholly irrelevant to this case as it turned upon filing of a written statement with delay.

25. That being said, we are unable to agree with the contention of Sri M.Annapurnayya, learned counsel, that the trial Court cannot take up and decide a preliminary issue unless the defendant in the suit chooses to file a written statement. The statutory scheme of Order 14 CPC does not lend itself to such an interpretation. Order 14 Rule 1(5) CPC makes it clear that framing of issues does not invariably require filing of a written statement. The trial Court has to ascertain the material propositions of fact or law the parties are at variance upon reading the plaint and the written statements, if any, and after examination of the parties under Order 10 Rule 2 CPC and hearing the parties or their counsel. The trial Court has to then frame and record the issues. The use of the words 'if any' after the words 'written statements' in Order 14 Rule 1(5) CPC demonstrates that even if the

⁶ (2016) SCC OnLine DELHI 3716

defendant in a suit chooses not to file his written statement, a duty is cast upon the trial Court to frame issues after ascertaining the material propositions of fact or law that the parties are at variance, if the case is one that does not fall within the ambit of Order 14 Rule 1(6) CPC.

26. We therefore find no merit in the contention of Sri M.Annapurnayya, learned counsel, that filing of written statement(s) by the respondents-defendants is a condition precedent for any issue being taken up as a preliminary issue under Order 14 Rule 2(2) CPC. However, the Commercial Court completely lost sight of the requirements of Order 14 Rule 2(2) CPC while dealing with the subject I.A. and directed the parties to let in evidence on an issue of fact, treating the same as a preliminary issue touching upon its jurisdiction. The order under revision is therefore patently unsustainable, being contrary to law.

27. The civil revision petition is accordingly allowed setting aside the order dated 27.08.2018 passed by the learned XIII Additional District and Sessions Judge-cum-Commercial Court, Ranga Reddy District at L.B.Nagar, in I.A.No.89 of 2018 in C.O.S.No.12 of 2018.

28. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

P.KESHAVA RAO, J

22nd JULY, 2019

**Note: L.R. copy to be marked
(B/o) PGS**