

HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON' BLE SRI JUSTICE P.KESHA RAO

COM.C.A.No. 44 of 2018

JUDGMENT: *(per V. Ramasubramanian, J)*

1) This Commercial Court Appeal is filed under Section 13 of Commercial Courts, Commercial Division and Commercial Appellate Division of High Court's Act, 2015 read with Order XLIII Rule 1 (a) of C.P.C., questioning the correctness of an order passed by the Commercial Court-City Civil Court, Hyderabad, returning a plaint on the ground of lack of jurisdiction, even before it was numbered.

2) Heard Mr. Shyam S Agarwal, learned counsel for the appellants. Mr. D. Narendra Naik, learned counsel took notice for the respondents.

3) Since the appeal arises under the Commercial Courts Act, 2015 and also since the subject matter of the appeal relates to the return of an un-numbered plaint, on the ground of lack of jurisdiction, the appeal itself was taken up for disposal with the consent of both the counsel.

4) The appellants filed a suit in COSSR No. 1772 of 2018 on the file of the Commercial Court, Hyderabad, for recovery of a sum of Rs. 1,07,90,000/-, together with interest and also for recovery of a sum of Rs. 3,00,000/- per month towards future damages for use and occupation. The plaint was returned by the Court below on the short ground that the prayer in the suit related to recovery of

damages for use and occupation of an immovable property located in Sangareddy District and that therefore the Court in Hyderabad had no jurisdiction to entertain the same. The Court below rejected the contention that Section 20 C.P.C. would govern the proceedings.

5) The contention of Mr.Narendra Naik, learned counsel for the respondents is that the suit is one for recovery of damages, for use and occupation of an immovable property admittedly located within the jurisdiction of a Court in another district and that therefore the suit would be covered by clauses (d) and (e) of Section 16 C.P.C. and that therefore the Commercial Court was right in returning the plaint.

6) We carefully considered the above submissions.

7) A look at the plaint filed by the appellants before the Commercial Court would disclose that under a lease agreement dated 15.05.2000, the property located in a land to an extent of 2160 square yards in Medak at Sangareddy District, was let out to the respondents. The lease agreement stipulated that the period of lease would be from 01.04.2000 to 31.03.2015.

8) It is further contended in the plaint filed by the appellants that few months before expiry of the period of lease, the appellants intimated the respondents about the expiry requesting them to hand over vacant possession. But it appears that the respondents wanted renewal of the lease. Renewal was not granted and the appellants appear to have invoked the writ

jurisdiction of this Court in W.P.No.2709 of 2018, for throwing the respondents out, on the ground that the respondents are amenable to the writ jurisdiction of this Court. The said writ petition is stated to be pending. Since the prayer in the writ petition was for recovery of possession, the appellants filed the suit out of which the present appeal arises, seeking damages for use and occupation.

9) Therefore, the question that arises for consideration in this appeal is as to whether a suit for recovery of damages for use and occupation would fall either under clause (d) or under clause (e) of Section 16 C.P.C. or not.

10) Under clause (d) of Section 16 C.P.C., a suit for determination of any other right or interest in immovable property, should be instituted in the Court within the local limits of whose jurisdiction the property is situate. Under clause (e) of Section 16 C.P.C., a suit for compensation for wrong to immovable property should also be instituted in the Court within the local limits of whose jurisdiction, the property is situated.

11) However Section 16 C.P.C. has a proviso. The proviso makes it clear that where the relief sought in a suit is for compensation for wrong to, immovable property held by or on behalf of the defendant and the relief was sought can be entirely obtained through the personal obedience of the defendant, it may be instituted either in the Court within the local limits of whose jurisdiction the property is situate or in the Court with in the local

limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain.

12) Unfortunately the Court below while returning the plaint did not even look into Section 16 C.P.C., leave alone the proviso to Section 16 C.P.C.

13) It may be seen from the lease agreement that the lease agreement was executed on behalf of the respondents, by the Senior Divisional Manager, who has his office at Hyderabad. Therefore the respondents are persons who have a place of business within the jurisdiction of the Commercial Court. Hence, even if the contention of the learned counsel for the respondents that the case would fall under clauses (d) and (e) of Section 16 C.P.C. is admitted for the sake of argument, there is no escape from the proviso to Section 16 C.P.C.

14) In any case a suit for recovery of damages for use and occupation, from a person, who stays in the property beyond the expiry of the period of lease, cannot be equated to a suit for determination of any right or interest in immovable property covered by clause (d) or equated to a suit for compensation for wrong to immovable property covered by clause (e) of Section 16 C.P.C. Though the terminology used in cases of this nature is “damages for use and occupation” what is sought to be recovered is only the potential rent that the property would fetch if the tenant had vacated. Therefore if the said suits are equated to suits for compensation for wrong to immovable property, even a suit for

recovery of rent cannot be instituted, at the place where the defendant actually and voluntarily resides or carries on business.

15) The case on hand is a simple case where the tenant failed to vacate and hand over vacant possession of an immovable property, after the expiry of the period of lease. Therefore, the suit will not come under clause (d) or clause (e) of Section 16 C.P.C. Hence, the trial Court was wrong in returning the plaint on the ground that it had no territorial jurisdiction to entertain the suit.

16) In view of the above, the appeal is allowed and the impugned docket order of the Commercial Court is *set aside*. The appellants may re-present the plaint, upon which the suit may be numbered provided that the papers are in order and the Commercial Court may proceed thereafter in accordance with law.

As a sequel, miscellaneous petitions, if any, pending in the Writ Petition stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

P. KESHAHA RAO, J

January 24, 2019
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COMCA No. 44 of 2018

Date: 24.01.2019