

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA
SECOND APPEAL NO.111 OF 2019
WITH
CIVIL APPLICATION NO.251 OF 2019

DECCAN QUEEN TRANSPORT COMPANY,
THR. ITS AUT. ATTORNEY,
GAJANAN USKE.

...Appellant

Versus

SANDU PHARMACEUTICALS LTD.
AND ANR.

...Respondents

Mr. Joseph Vaz and Mr. Terence Vaz, Advocates for the appellant.

Mr. Amey Kakodkar, Advocate for respondent No.2.

CORAM: M. S. SONAK, J

DATE : 8th June 2022

P.C.:

1. Heard Mr. J. Vaz, learned counsel for the appellant, and Mr. Amey Kakodkar, learned counsel for respondent No.2.

2. This appeal is directed against the decrees dated 06.08.2016 and 30.04.2018 made by the trial Court and the First Appellate Court decreeing the suit and requiring the appellant (defendant) to pay the plaintiffs an amount of ₹4,38,765/- with interest at the rate of 12% per annum on account of damages sustained by the plaintiffs.

3. Plaintiff No.1 is a pharmaceutical concern and plaintiff No.2 is the insurance company. They instituted Regular Civil Suit No.119/2010/D because the consignment of plaintiff No.1 valued at ₹7,63,076.96 was lost in an accident suffered by the appellant's carrier (truck).

4. The two Courts have concurrently held that the appellant was responsible for the loss of consignment and accordingly made the decrees.

5. Mr. J. Vaz, learned counsel for the appellant, however, submits that in the consignment note it was clearly stated that the Court in Mumbai would have jurisdiction in the matter. He submits that the consignment note constitutes a contract between the parties and based upon the same, the Court in Goa lacked jurisdiction to entertain the suit. He submits that this point was specifically raised before the First Appellate Court but was incorrectly rejected by the First Appellate Court by observing that the parties have no right to determine the jurisdiction through a contract between themselves.

6. Mr. Vaz without prejudice to the aforesaid submits that the award of interest at the rate of 12% per annum is also quite excessive considering that the accident took place sometime in the year 2009 and the suit was instituted in the year 2010. He submits that the interest could have been about 6% per annum at the highest.

7. Mr. Kakodkar, learned counsel for the insurance company defends the impugned decrees based on the reasoning reflected therein. He submits that the issue of territorial jurisdiction was never raised before the trial Court and considering the provisions of Section 21 of the Civil Procedure Code, the Appeal Court was justified in not entertaining such a plea. He submits that the award of interest is proper and in any case, such award raises no substantial question of law.

8. Having considered the rival contentions and perusal of the material on record, I am satisfied that this appeal involves no substantial question of law.

9. There are concurrent findings of fact recorded by the two Courts and no case of any perversity has been made out.

10. On the aspect of territorial jurisdiction, the records bear out that such an objection was not even raised before the trial Court. Such objection was raised for the first time before the Appeal Court.

11. Section 21 of the Civil Procedure Code provides 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 and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. Considering the clear provisions of

Section 21 of the Civil Procedure Code, the Appellate Court was not bound to take into consideration the objection based on the territorial jurisdiction.

12. Therefore, even assuming that the reasoning of the First Appellate Court to reject the appellant's contention may not be very appropriate, irrespective of such reasoning, the Appellate Court was not even required to consider the objections about territorial jurisdiction in view of clear provisions of Section 21 of the Civil Procedure Code.

13. The issue of interest does not raise any substantial question of law. Besides, considering the parties of this case cannot be said that the discretion has been exercised arbitrarily or perversely so as to raise a substantial question of law.

14. For all the aforesaid reasons, this appeal is liable to be dismissed and is hereby dismissed. There shall be no order for costs.

15. In view of the disposal of the appeal, the Civil Application No.251 of 2019 does not survive and the same is also disposed of.

M. S. SONAK, J