



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.86 OF 2025

APPELLANTS

Ori. Def. No.1

1. Sadbhav Engineering Limited, a company duly incorporated under the Companies Act, 1956, through its Director, Mr. Nitin R. Patel, having registered office at Sadbhav House, Opp. Law Garden, Police Chowki, Ellisbridge, Ahmadabad - 380006

Ori. Def. No.2

2. Mr. Vishnubhai S/o-Mafatlal Patel (Dead)

Ori. Def. No.3

3. Mr. Pravinkumar Mathuradas Ganatra Aged about 47 years, Occupation-Business,

Ori. Def. No.4

4. Mr. Chetan Nandubhai Patel Aged about 62 years, Occupation-Business,

Ori. Def. No.5

5. Mr. Amarsingh Jivaji Vaghela Aged about 78 years, Occupation-Business,

Ori. Def. No.6

6. Mr. Nitin Rameshchandra Patel, Aged about 56 years, Occupation-Business,

Ori. Def. No.7

7. Mr. Amrish Jagmohan Parikh, Aged about 90 years, Occupation-Business,

Ori. Def. No.8

8. Mr. Shashin Vishnubhai Patel, Aged about 43 years, Occupation-Business,

Ori. Def. No.9

9. Mr. Vikram Rasikbhai Patel, Aged about 56 years, Occupation – Business,

Ori. Def. No.10

10. Mr. Shailesh Naranbhai Patel, Aged about 57 years, Occupation – Business,

Ori. Def. No.11

11. Mr. Sandip Vinodkumar Patel, aged 48 years, Occ. Business,

Appellants No.2 to 11 R/o- 'Sadbhav House', Opposite Law Garden, Police Chowki, Ellisbridge, Ahmadabad, Gujrat

..VERSUS..

RESPONDENT :

Ori. Plaintiff

M/s Sarda Energy and Minerals Limited a company duly incorporated under the Companies Act, 1956, through its constituted Attorney Senior Manager, Mr. S.Y. Naik, an adult, Occupation-Service, having its registered office at 73-A, Central Avenue, Nagpur. (Earlier the company was known as M/s Raipur Alloys and Steel Limited)

Mr. A. P. Dubey Advocate for Appellants.

Mr P. P. Kothari, Advocate for the Respondent.

CORAM : **ROHIT W. JOSHI, J.**

DATE : **16.01.2026**

ORAL JUDGMENT :

- 1) Heard finally with consent of learned Advocates for the respective parties.
- 2) The present appellants are the original defendants against whom concurrent decrees for recovery of money have been passed. The parties will hereinafter referred as 'plaintiff'

‘defendants’.

3) It is not in dispute that the plaintiff is a private Ltd. Company, having its registered office at Nagpur. During the course of its business the plaintiff had supplied certain goods with the defendants. The defendant No.1 is a registered private limited company having its head office at Ahmadabad.

4) The learned Advocate for the appellants/defendants contends that the invoices issued by the plaintiff itself mentioned that the transaction between the parties were subject to the jurisdiction of the Competent Court at Ahmadabad. He further contends that the material was purchased by the defendants in terms of the said invoices issued by the plaintiff. He contends that although parties, by conduct or contract, cannot confer jurisdiction upon a Court which it does not possess, certainly by a contract, jurisdiction can be restricted to one of the two Courts which have the jurisdiction to try and entertain the suit. He further contends that the parties had clearly agreed to litigate before the Court of competent jurisdiction at

Ahmadabad and consequently, jurisdiction of all other Courts stood excluded. The learned Advocate further contends that despite this situation, the plaintiff had filed a suit for recovery of money at Nagpur on the ground that the Nagpur Court had territorial jurisdiction since payments were received at Nagpur and, therefore, the cause of action, according to the plaintiff also arose at Nagpur. Learned Advocate further contends that objection to territorial jurisdiction of the Court at Nagpur was specifically raised in the written statement and the contention was sought to be made good during the course of evidence.

5) Although I am *prima facie* in agreement with the contention of the learned Advocate for the appellants/defendants that the Court at Nagpur may not have the territorial jurisdiction in view of jurisdiction clause in the invoices of the plaintiff stating that the Courts at Ahmadabad will have the jurisdiction, in my considered opinion, having regard to mandate of Section 21(1) of the Code of Civil Procedure, 1908, the appeal cannot be allowed solely on the ground that the learned Trial Court lacked the territorial

jurisdiction.

6) The learned Advocate for the appellants/defendants, however, draws attention of this Court to the judgment of the Hon'ble Supreme Court in the case of *Hasham Abbas Sayyad Vs. Usman Abbas Sayyad*, reported in *AIR 2007 (SC) 1077* and another decision by the Calcutta High Court in the case of *G M, ONGC, Sibsagar, Assam VS. Raj Engg Corporation*, reported in *AIR 1987 Cal 165*. He further contends that the decree passed by the learned Trial Court is clearly without jurisdiction and therefore a substantial question of law clearly arises with respect to territorial jurisdiction of the Court at Nagpur.

7) *Per contra*, learned Advocate for respondent/plaintiff contends that in order to upset a decree on the ground of territorial jurisdiction, three conditions must be satisfied and that all three conditions must coexist, namely the objection should be taken before the Court of first instance at the earliest possible opportunity and, in any case, before settlement of issues and most importantly, there must be a consequent failure of justice due to lack of territorial

jurisdiction. The learned Advocate contends that unless all the these ingredients are established, a decree cannot be set aside merely on the ground that the same is passed by a Court not having territorial jurisdiction. He has placed reliance on judgments of the Hon'ble Supreme Court in the case of *Koopila Uneens Daughter Pathumma Vs. Koopilan Uneens Son Kuntalan Kutty*, reported in *1981 AIR (SC) 1683*, in the case of *RSDV Finance Co Pvt Ltd Vs. Shree Vallabh Glass Works Ltd*, reported in *1993 AIR (SC) 2094* and decisions of this Court in the case of *Ashok S/o Laxman Kale Vs. Sau Ujwala Ashok Kale*, reported in *2007 (2) MhLJ 526*, in the case of *Suresh Kumar s/o Rochiram Jagyasi Vs. Maharashtra State Electricity Distribution Company Ltd.*, reported in *2014 (4) MhLJ 947* and another decision by the Madras High Court in the case of *Hindustan Corporation (Hyd) Pvt. Ltd. Vs. SSB Industries Ltd.*, reported in *2013 (1) CTC 279*.

8) As regards the judgment of the Calcutta High Court, it categorically holds that if Appellate Courts refuse to show indulgence with decrees by Court lacking territorial

jurisdiction, the same may give rise to a tendency on the part of the plaintiffs to institute suits before Courts, which do not have the jurisdiction. It is also observed that once the trial is completed and suit is decided, it often becomes difficult for the defendant to point out the resultant prejudice. The judgment holds that the mandate of law must be followed and a decree passed by a Court without territorial jurisdiction should not be upheld.

9) As regards the decision of the Hon'ble Supreme Court in the case of ***Hasham Abbas Sayyad (supra)***, it will be appropriate to refer to paragraph 24 of the said judgment which is reproduced herein-below for ready reference:-

“[24] We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Sec. 21 of the Code of Civil Procedure; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.”

10) Perusal of the judgment will indicate that the Hon'ble Supreme Court has made a distinction between subject matter jurisdiction and territorial jurisdiction. Subject matter jurisdiction goes to root of a Court to decide case. As against this, pecuniary jurisdiction and territorial jurisdiction are procedural aspects of jurisdiction. It is well settled that a decree without subject matter jurisdiction suffers from inherent lack of jurisdiction and is a nullity in the eyes of law. As against this, a decree passed by a Court not having territorial or pecuniary jurisdiction only suffers from technical aspects. The Hon'ble Supreme Court has clearly held that, in case of lack of territorial or pecuniary jurisdiction, the Appellate Court may not interfere with the decree unless prejudice is established. The judgment of the Hon'ble Supreme Court, therefore, does not support the case of the defendant. It rather supports the contention of the plaintiff.

11) The judgments relied upon by the plaintiff are directly on the point in the case of *RSDV Finance Co. Pvt. Ltd. (supra)*, the Hon'ble Supreme Court has clearly laid down that even if an objection to territorial jurisdiction of a

Court is raised at the earliest possible opportunity, a decree cannot be set aside merely on the ground of lack of territorial jurisdiction unless there is a consequent failure of justice. Similar is the view taken in the case of *Koopila Uneens Daughter Pathumma Vs. Koopilan Uneens Son Kuntalan Kutty (supra)*. The judgments by this Court in the case of *Suresh Kumar (supra)* and *Ashok Laxman Kale (supra)* take a similar view. In the case of *Suresh Kumar (supra)*, this Court has held that there can be a failure of justice if any substantive of procedural right otherwise available to a party was taken away merely because of the fact that the suit was tried by a Court not having jurisdiction and that if such is not the case, Section 21(1) of the CPC will be attracted.

12) In the backdrop of aforesaid legal position, I am unable to follow the view taken by the Calcutta High Court and I am respectfully bound by the view taken by the Hon'ble Supreme Court as also by this Court. In this legal backdrop, when the memorandum of appeal in regular civil appeal is perused, it is seen that although a ground with respect to lack of territorial jurisdiction is raised, the contention of the

appellants/defendants was not that it has resulted in any consequent failure of justice. Perusal of the judgment will also indicate that this contention regarding prejudice or failure of justice was also not raised. In that view of the matter, in the considered opinion of this Court, although it appears that Court at Nagpur did not have the territorial jurisdiction, it has not resulted in any consequent failure of justice. It is apparent from perusal of the judgment by the learned Trial Court that the suit was fully contested by the defendant all throughout and at all stages. The plaintiff and its witnesses were cross-examined and the defendant has also led its evidence before the learned Trial Court. The record thus indicates that there is no failure of justice in view of filing of the suit before the Civil Court at Nagpur.

13) In the light of aforesaid, in the considered opinion of this Court, no substantial question of law arises for consideration in the present Second Appeal, Second Appeal is therefore **dismissed** with no order as to costs.

14) At this stage, the learned Advocate for the appellants/defendants makes a request to stay the execution proceedings initiated by the respondent/plaintiff for a period of three months in order to enable the appellants/defendants to approach the Hon'ble Supreme Court.

15) The learned Advocate for the respondent/plaintiff strongly opposes the request.

16) Apart from the aspect of territorial jurisdiction, no other point was canvassed during the course of hearing of the present appeal. In the light of judgments of the Hon'ble Supreme Court and this Court, the legal position is well settled.

17) In that view of the matter, I am not inclined to accede to the request made by the learned Advocate for the appellant. Motion for extension of interim order is therefore rejected.

18) In view of dismissal of the appeal, application for withdrawal of amount, being Civil Application No.3253 of 2024, filed by the respondent/plaintiff deserves to be

allowed. Respondent/plaintiff is permitted to withdraw the amount deposited by the appellants/defendants with this Court alongwith accrued interest, if any.

(ROHIT W. JOSHI, J.)

Tanmay...