

CHITIVALASA JUTE MILLS v. JAYPEE REWA CEMENT

85

on the similar fact situation of this case as well, though the dates are different.

- a **21.** The appeal is allowed. The order of the High Court is set aside and the writ petition filed in the High Court shall stand dismissed.

(2004) 3 Supreme Court Cases 85

(BEFORE R.C. LAHOTI AND ASHOK BHAN, JJ.)

- b CHITIVALASA JUTE MILLS . . . Petitioner;

Versus

- JAYPEE REWA CEMENT . . . Respondent.

Transfer Petition (C) No. 16 of 2002[†], decided on February 4, 2004

- c **A. Civil Procedure Code, 1908 — S. 25 — Transfer of suit — Two suits in two courts at different places — Parties substantially the same in both the suits — Cause of action alleged in two plaints referring to the same period and same transaction — Same set of evidence needed for determining issues of facts and law which were common — Possibility of conflicting decrees — Transfer of the later suit directed to the court where the suit earlier in time was filed — There the two suits directed to be consolidated for trial and decision**

d **B. Civil Procedure Code, 1908 — Ss. 25 and 10 — Transfer of suit — Petition filed after rejection of plea for stay of suit under S. 10 — Held, even if plea of stay of suit under S. 10 was erroneously rejected and High Court in revision failed to correct the error, held, Supreme Court has power to allow the petition for transfer where ends of justice so require**

- e **C. Civil Procedure Code, 1908 — S. 151 — Consolidation of two suits — Held, can be directed in exercise of inherent powers under S. 151 for meeting ends of justice**

- f The respondent Company, which works at Rewa (M.P.), entered into an agreement with Willard India Ltd. for supply of jute bags from its jute mills, the petitioner, situated at Chitivalasa, Visakhapatnam (A.P.). Dispute arose between the parties relating to the period between 7-1-1992 and 31-12-1993 and is referable to several dispatches of jute bags from Chitivalasa to Rewa. In 1997, Willard India filed a suit against the respondent in the Court of Ist Additional Subordinate Judge at Visakhapatnam praying for money decree for the price of the goods supplied and not paid and for interest thereon. In Jan. 1998, the respondent filed a suit against “Chitivalasa Jute Mills (a division of Willard India Limited), Chitivalasa, District Visakhapatnam”, in the Court of District Judge, Rewa praying for a money decree with interest and costs. According to the respondent, deducting the value of the jute bags which were rejected and taking into account the price of the cement supplied, there was an excess payment. The petitioner, on being served with summons in the suit at Rewa, filed its written statement and also took a plea under Section 10 CPC that the suit filed at Rewa being subsequent in point of time, and raising the issues which are directly and substantially in issue in the previously instituted suit between the same parties at

h

[†] Under Article 139(A)(2) of the Constitution of India

Visakhapatnam, was liable to be stayed. However, the prayer for stay of suit was rejected by the District Judge, Rewa forming an opinion that the suit at Rewa was filed against Chitivalasa Jute Mills by Jaypee Rewa, the respondent, while the suit at Visakhapatnam was by Willard India against Jaypee Rewa and thus there being no identity of parties, the applicability of Section 10 CPC was not attracted. Willard India filed a civil revision in the High Court of Madhya Pradesh putting in issue the rejection of plea under Section 10 CPC but the filing of the revision was delayed and the High Court refused to condone the delay consequent whereupon the civil revision came to be dismissed. The petitioner then filed the present petition under Section 25 CPC for transfer of the suit at Rewa to a competent court at Visakhapatnam.

Allowing the transfer petition, the Supreme Court

Held :

On the facts averred in the two complaints filed by the two parties before two different courts it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions i.e. the supply of jute bags between the period 7-1-1992 and 31-12-1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record findings inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out. (Para 9)

Willard India rightly raised a plea under Section 10 CPC and it ought to have been allowed. However, the court at Rewa erroneously proceeded on an assumption that there was no identity of parties. The error could have been corrected in revision by the High Court but unfortunately the revision was barred by time and the High Court was not inclined to condone the delay in preferring the revision. Merely because the plea under Section 10 CPC has been rejected, the Supreme Court is not denuded of the exercise of its power to transfer the suit if the ends of justice call for the exercise of such power. (Para 10)

The two suits ought not to be tried separately. Once the suit at Rewa has reached the court at Visakhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The trial court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the court flowing from Section 151 CPC. Unless specifically prohibited, the civil court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the

CHITIVALASA JUTE MILLS v. JAYPEE REWA CEMENT

87

two suits at two different trials. The evidence having been recorded, common arguments need to be addressed followed by one common judgment. However, as the suits are two, the court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits. This is how the trial court at Visakhapatnam shall proceed consequent upon this order of transfer of suit from Rewa to the court at Visakhapatnam. (Para 12)

Suggested Case Finder Search Text (*inter alia*) :

cpc 25 (transfer near suit)

b

R-M/ATZ/29609/C

Advocates who appeared in this case :

P.S. Narasimha, Sridhar Potaraju and Ananga Bhattacharya, Advocates, for P.S.N. & Co., Advocates, for the Petitioner;

G.L. Sanghi and Chetan Sharma, Senior Advocates (Ashwani Bhardwaj, Abhishek Atrey, Shishir Singha and S.P. Sharma, Advocates, with them) for the Respondent.

c

ORDER

1. Willard India Limited is a duly incorporated company having its registered office at Aurangabad, District Bulandshahr in U.P. and its works at Chitivalasa, District Visakhapatnam, A.P. Its Jute Division is known as Chitivalasa Jute Mills and is situated at Chitivalasa, Visakhapatnam, A.P. Hereinafter, Willard India Limited will be referred to as “Willard India”, for short.

d

2. Jaypee Rewa Cement, a division of Jai Prakash Industries Limited, a duly incorporated company has its registered office at Lucknow, U.P. and works at Rewa in M.P. Hereinafter, the same shall be referred to as “Jaypee Rewa”, for short.

e

3. Jaypee Rewa manufactures cement. For the purpose of packing its products, it needs jute bags. Willard India in its Jute Division is manufacturer of jute bags. The parties entered into an agreement through correspondence, the exact details whereof are not relevant; the fact remains that Willard India have been supplying jute bags from Chitivalasa to Jaypee Rewa at Rewa for use as packing material for the latter. The dispute between the parties relates to the period between 7-1-1992 and 31-12-1993 and is referable to several dispatches of jute bags from Chitivalasa to Rewa.

f

4. Sometime in the year 1997 Willard India filed a suit against Jaypee Rewa in the Court of Ist Additional Subordinate Judge at Visakhapatnam, registered as OS No. 68 of 1997 praying for a decree of Rs 48,00,630 with interest and costs. According to Willard India, as alleged in the plaint, the claim is for the price of the goods supplied and not paid, and for interest thereon for the period of non-payment.

g

5. In January 1998, Jaypee Rewa filed a suit against “Chitivalasa Jute Mills (a division of Willard India Limited), Chitivalasa, District Visakhapatnam”, in the Court of District Judge, Rewa praying for a decree of Rs 45,25,514 with interest and costs. According to Jaypee Rewa, the jute bags were supplied by the defendant from time to time against which

h

payments were also made from time to time. However, some of the jute bags were found either defective or not of ISI standards and were, therefore, rejected. Jaypee Rewa had also supplied cement to a sister concern of the defendant. Deducting the value of the jute bags which were rejected and taking into account the price of the cement supplied, there was an excess payment of Rs 44,08,625. Also taking into account the interest, the suit amount was due and payable by the defendant to the plaintiff, Jaypee Rewa. Hence the suit.

6. Though the exact dates of institution of the two suits are not known, there is no dispute that the suit filed by Willard India at Visakhapatnam is prior in point of time than the suit filed by Jaypee Rewa at Rewa in Madhya Pradesh.

7. Chitivalasa Jute Mills on being served with summons in the suit at Rewa filed its written statement and also took a plea under Section 10 CPC that the suit filed at Rewa being subsequent in point of time, and raising the issues which are directly and substantially in issue in the previously instituted suit between the same parties at Visakhapatnam, was liable to be stayed. However, the prayer for stay of suit was rejected by the District Judge, Rewa forming an opinion that the suit at Rewa was filed against Chitivalasa Jute Mills by Jaypee Rewa while the suit at Visakhapatnam was by Willard India against Jaypee Rewa and thus there being no identity of parties, the applicability of Section 10 CPC was not attracted. Willard India filed a civil revision in the High Court of Madhya Pradesh putting in issue the rejection of plea under Section 10 CPC but the filing of the revision was delayed and the High Court refused to condone the delay consequent whereupon the civil revision came to be dismissed.

8. Chitivalasa Jute Mills have filed this petition under Section 25 of the Code of Civil Procedure to transfer the suit at Rewa to a competent court at Visakhapatnam. Jaypee Rewa have opposed the prayer for transfer of the suit. While according to Willard India it would better serve the convenience of the parties as also the ends of justice if the two suits are heard and decided together by one court which would also avoid the possibility of two conflicting decrees coming into existence. According to Jaypee Rewa the prayer under Section 10 CPC having been rejected and the order of rejection having achieved finality this transfer petition by Willard India is nothing but an indirect attempt at reaching the same end. Having heard the learned counsel for the parties we are satisfied that the transfer petition deserves to be allowed.

9. On the facts averred in the two complaints filed by the two parties before two different courts, it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions i.e. the supply of jute bags between the period 7-1-1992 and 31-12-1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the

decreed sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record findings inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.

10. Willard India rightly raised a plea under Section 10 CPC and it ought to have been allowed. However, the court at Rewa erroneously proceeded on an assumption that there was no identity of parties. The error could have been corrected in revision by the High Court but unfortunately, the revision was barred by time and the High Court was not inclined to condone the delay in preferring the revision. Merely because the plea under Section 10 CPC has been rejected, this Court is not denuded of the exercise of its power to transfer the suit if the ends of justice call for the exercise of such power.

11. The transfer petition is allowed. The suit at Rewa is directed to be transferred for hearing and decision in accordance with law to Visakhapatnam before the same court which is seized of the hearing in the suit filed by Willard India i.e. the Court of Ist Additional Subordinate Judge at Visakhapatnam.

12. The two suits ought not to be tried separately. Once the suit at Rewa has reached the court at Visakhapatnam, the two suits shall be consolidated for the purpose of trial and decision. The trial court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the court flowing from Section 151 CPC. Unless specifically prohibited, the civil court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need to be addressed followed by one common judgment. However, as the suits are two, the court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits. This is how the trial court at Visakhapatnam shall proceed consequent upon this order of transfer of suit from Rewa to the court at Visakhapatnam.

13. It was pointed out at the hearing that part-evidence has been recorded by the Rewa court. There is some controversy whether the defendant in Rewa court has adduced all its evidence or the evidence has been closed and the right of adducing further evidence needs to be restored. However, in view of the transfer, that aspect of the case loses all its significance.

90

SUPREME COURT CASES

(2004) 3 SCC

14. The District Judge, Rewa shall soon on communication of this order transmit the record of Original Suit No. 3-B of 1998 — *Jaypee Rewa Cement (A Division of Jai Prakash Industries Ltd.) v. Chitivalasa Jute Mills (A Division of Willard India Ltd.)*, to the Court of Ist Additional Subordinate Judge at Visakhapatnam. The District Judge, Visakhapatnam shall see that the two suits are placed before one court and on one date of hearing, whereafter the two suits shall be heard and decided consistently with the observations made hereinabove. No order as to the costs.

(2004) 3 Supreme Court Cases 90

(BEFORE S.N. VARIAVA AND H.K. SEMA, JJ.)

MIDAS HYGIENE INDUSTRIES (P) LTD.

AND ANOTHER

.. Appellants;

Versus

SUDHIR BHATIA AND OTHERS

.. Respondents.

Civil Appeal No. 107 of 2002, decided on January 22, 2004

A. Civil Procedure Code, 1908 — Or. 39 Rr. 1 & 2 — Interim injunction — Grant of — Where there is an infringement of trade mark or copyright, held an injunction normally must follow — Mere delay in bringing the action is not sufficient to defeat grant of injunction in such cases — Further held, the grant of injunction also becomes necessary if it prima facie appears that the adoption of the mark itself was dishonest — Copyright Act, 1957, S. 55 — Trade Marks Act, 1999 — S. 135

B. Intellectual Property — Trade marks — Passing off — Respondent offering no explanation as to why it had changed the offending carton to look almost identical to that of the appellant at a subsequent stage, held, indicates a prima facie dishonest intention to pass off his goods as those of the appellant — Interim injunction ought to be granted and continued — Order of the Single Judge restored — Trade Marks Act, 1999 — S. 135

S-M/Z/29704/C

ORDER

1. This appeal is against the judgment of the High Court dated 20-9-2001.

2. Briefly stated, the facts are as follows:

The appellants filed a suit for passing off and for infringement of copyright. In the suit an application for interim injunction under the provision of Order 39 Rules 1 and 2 of the Code of Civil Procedure was filed. A learned Single Judge of the High Court in order dated 31-7-2001 noted the following facts:

“(i) The defendant admittedly worked with the plaintiff prior to launching its business.

(ii) The plaintiff’s prior and prominent user of the phrase Laxman Rekha as a part of the description of crazy lines as shown by the