

ISHA DISTRIBUTION HOUSE PVT. LTD.

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v.

ADITYA BIRLA NUVO LTD. & ANR.

(Civil Appeal Nos. 2554-2555 of 2019)

MARCH 07, 2019

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**[ABHAY MANOHAR SAPRE AND
DINESH MAHEHSWARI, JJ.]**

Letters Patent Act, 1865:

Clause 12 – Suit for declaration, damages and grant of injunction filed by appellant in the Calcutta High Court on its original side along with an application seeking leave to file the civil suit as required under Clause 12 of the Letters Patent Act, 1865 – Single Judge of the High Court granted leave to appellant as prayed for – Respondent, on entering appearance, filed an application praying for revocation of leave granted to the appellant on the ground that no part of cause of action arose within the territorial jurisdiction of Calcutta High Court – Single Judge revoked the leave – Division Bench affirmed the order of Single Judge – On appeal, held: Since in the instant case, the respondents did not file any written statement and instead raised the plea of territorial jurisdiction by filing application for revocation of leave, High Court should have granted liberty to the respondents (defendants) to file the written statement in the suit and to raise therein a plea of territorial jurisdiction of the Court, instead of entertaining the said application – An issue of such nature, cannot be tried by filing an application for revocation of leave – Application filed by the respondents for revocation of grant of leave is dismissed and the respondent is granted liberty to file their written statement in answer to the plaint and raise therein the plea in question along with all other pleas relating to the facts and law as the case may be – Impugned order is set aside and matter remanded to Single Judge of High Court to decide the issue afresh – Code of Civil Procedure, 1908 – Or.XIV.

Allowing the appeal and remitting the matter to Single Judge of the High Court, the Court

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- A **HELD: 1. A plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondents(defendants) should be allowed to raise such plea in the written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits. [Para 20] [961-H; 962-A]**
- B **2. The application filed by the respondents (defendants) for revocation of grant of leave is dismissed and the respondent is granted liberty to file their written statement in answer to the plaint and raise therein the plea in question along with all other pleas relating to the facts and law as the case may be. On such written statement being filed, the Single Judge will frame appropriate issues arising in the suit and proceed to answer them in accordance with law keeping in view the procedure laid down in Order 14 of the Code of Civil Procedure. [Paras 22, 23] [962-C, D]**

Indian Mineral & Chemicals Co. & Ors. v. Deutsche Bank (2004) 12 SCC 376 - relied on

Secretary of State v. Golabrai Paliram AIR 1932 Calcutta 146 – approved

Case Law Reference

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|------------------------------|------------------|----------------|
| AIR 1932 Calcutta 146 | approved | Para 14 |
| (2004) 12 SCC 376 | relied on | Para 16 |
- F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2554-2555 of 2019.

From the Judgment and Order dated 13.02.2017 and 02.05.2017 of the High Court at Calcutta in APOT No. 274 of 2016 and RVWO No. 16 of 2017 in APOT No. 274 of 2016 respectively.

- G K. V. Vishwanathan, Sr. Adv., Mainak Bose, Amitabh Ray, S. Sukumaran, Bhupesh Kumar, Ms. Meera Mathur, Advs. for the Appellant.

- H Dhruv Mehta, Sr. Adv., Sanjeev Kumar, Varun Sharma, Abhishek E. Kisku, Abhishek Goyal, Anshul Sehgal, Gaurav, Faisal Sherwani, Rajesh Singh Chauhan, Sanjeev Singh, Ms. Anandita, Advs. for the Respondent.

The Judgment of the Court was delivered by A

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. These appeals are filed against the final judgment and order dated 13.02.2017 in APOT No.274 of 2016 and dated 02.05.2017 in RVWO No.16 of 2017 passed by the High Court at Calcutta whereby the High Court dismissed the appeal and review petition filed by the B appellant herein.

3. These appeals involve a short point as would be clear from the facts stated *infra*.

4. The appellant is the plaintiff whereas the respondents are the C defendants in a civil suit out of which these appeals arise.

5. The appellant filed a civil suit (Civil Suit No.88/2016) against the respondents for a declaration, damages and for grant of injunction etc. in the High Court at Calcutta on its original side.

6. The suit was filed *inter alia* for a declaration that the termination D of two agreements dated 11.07.2007 and 21.05.2008 made by respondent No.1 was wrongful and, therefore, both the agreements be declared as being bad in law. The other reliefs claimed in the suit were consequential in nature to the main relief.

7. The appellant (plaintiff) also filed an application and sought E leave to file the civil suit as required under Clause 12 of the Letters Patent Act, 1865. The Single Judge by order dated 18.03.2016 granted leave to the appellant as prayed for.

8. The respondents, on entering their appearance in the suit, filed F an application and prayed therein for revocation of the leave granted to the appellant (plaintiff) for filing a civil suit by order dated 18.03.2016.

9. The respondents-defendants, in substance, sought revocation G of leave on the ground that since no part of cause of action arose within the territorial jurisdiction of the Calcutta High Court but it arose at Bangalore and hence the civil suit could not have been filed in Calcutta High Court for want of territorial jurisdiction. It was, therefore, prayed that the leave granted to the appellant to file and prosecute the civil suit in the Calcutta High Court(original side) is liable to be revoked.

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- A 10. The appellant (plaintiff) also filed their reply and contested the said application. By order dated 28.07.2016, the Single Judge allowed the application of the respondents(defendants) and revoked the leave. The appellant felt aggrieved and filed an appeal before the Division Bench of the High Court. By impugned order, the Division Bench dismissed the appeal and affirmed the order of the Single Judge, which has given rise to filing of this appeal by way of special leave by the appellant(plaintiff) in this Court.
- B 11. So, the short question, which arises for consideration in this appeal, is whether the High Court (Single Judge and Division Bench) was justified in allowing the respondents' (defendants') application and thereby was justified in revoking the leave granted to the appellant (plaintiff) by order dated 18.03.2016.
- C 12. Heard Mr. K.V. Vishwanathan, learned senior counsel for the appellant and Mr. Dhruv Mehta, learned senior counsel and Mr. Rajesh Singh Chauhan, learned counsel for the respondents.
- D 13. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions filed by the parties, we are inclined to allow these appeals and while setting aside the impugned order and the order of the Single Judge dated 28.07.2016, remand the case to the Single Judge for deciding the issue in question afresh in accordance with law as directed hereinbelow.
- E 14. The question arose as far back as in the year 1932 before the Calcutta High Court in the case of Secretary of State vs. Golabrai Paliram (AIR 1932 Calcutta 146) as to how the Court should approach the application for revocation of leave when it filed in a civil suit.
- F 15. Justice Rankin, learned the then Chief Justice, laid down the following principle of law in the case while answering this question in the following words at page 147:
- G **“I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under clause 12 of the Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course.”**
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16. This question came up for consideration before this Court in **Indian Mineral & Chemicals Co. & Ors. vs. Deutsche Bank** [(2004) 12 SCC 376]. The learned Judge Ruma Paul J. speaking for the Bench in Para 15 approved the law laid down in **Secretary of State** (supra) as laying down the correct principle of law and observed as under:

“15. The observations of Rankin, C.J. in Secy. of State v. Golabrai Paliram correctly represents the law as to how the Court should approach an application for revocation of leave: (AIR p. 147)

“I do really protest against questions of difficulty and importance being dealt with by an application to revoke the leave under clause 12 of the Letters Patent and to take the plaint off the file. Normally it is well settled that the proper way to plead to the jurisdiction of the court is to take the plea in the written statement and as a substantive part of the defence. Except in the clearest cases that should be the course.”

17. In other words, the law laid down in **Secretary of State** (supra) by the Calcutta High Court is now the law laid down by this Court in view of its affirmation by this Court in **Indian Mineral & Chemicals Co.** (supra).

18. Coming now to the facts of this case, since in this case the respondents did not file any written statement and instead raised the plea of territorial jurisdiction by filing the application for revocation of leave, in our view, the High Court should not have entertained the said application and instead should have granted liberty to the respondents(defendants) to file the written statement in the suit and to raise therein a plea of territorial jurisdiction of the Court.

19. An issue of such nature, in our view, cannot be tried by filing an application for revocation of leave. Indeed, this is what Rankin, the then CJ., held for the Bench in **Secretary of State** (supra) and which received approval of this Court in **Indian Mineral & Chemicals Co.**(supra).

20. In our opinion, a plea of territorial jurisdiction is essentially a mixed question of law and fact. It is for this reason, the respondents(defendants) should be allowed to raise such plea in the

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- A written statement to enable the Court to try it on its merits in accordance with law in the light of the requirements of Order 14 of the Code of Civil Procedure, 1908 and other relevant provisions governing the issue on merits.

21. Learned counsel for the respondents cited several decisions B in support of his submissions. Having gone through them, we are of the opinion that these decisions are distinguishable in the light of the law laid down by this Court in **Indian Mineral & Chemicals Co.** (supra).

22. In the light of the foregoing discussion, we allow the appeals, set aside the impugned orders as also the order of the Single Judge C dated 28.07.2016 and while dismissing the application filed by the respondents (defendants) for revocation of grant of leave, grant liberty to them to file their written statement in answer to the plaint and raise therein the plea in question along with all other pleas relating to the facts and law as the case may be.

- D 23. On such written statement being filed, the Single Judge will frame appropriate issues arising in the suit and proceed to answer them in accordance with law keeping in view the procedure laid down in Order 14 of the Code of Civil Procedure.

- E 24. We, however, make it clear that we have not expressed any opinion on the merits of the controversy having formed an opinion to remand the case to the Single Judge for deciding the issue afresh as directed above.

- F 25. The Single Judge of the High Court will accordingly decide the issue strictly in accordance with law on its merits without being influenced by any observations made by him, the Division Bench in the impugned order and this Court.

Devika Gujral

Appeal allowed and matter remitted to High Court.