

## **Chitivalasa Jute Mills vs Jaypee Rewa Cement on 4 February, 2004**

**Equivalent citations: AIR2004SC1687, 2004(1)AWC796(SC), (SCSUPPL)2004(3)CHN56, JT2004(2)SC535, (2004)137PLR290, 2004(2)SCALE213, (2004)3SCC85, 2004(2)UJ789(SC), AIR 2004 SUPREME COURT 1687, 2004 (3) SCC 85, 2004 AIR SCW 1095, 2004 (1) ALL CJ 780, 2004 ALL CJ 1 780, (2004) 54 ALL LR 706, 2004 (3) SRJ 321, (2004) 15 ALLINDCAS 87 (SC), 2004 (15) ALLINDCAS 87, 2004 (2) SLT 157, 2004 (2) SCALE 213, 2004 SCFBRC 178, 2004 (3) LRI 123, 2004 (2) ACE 201, (2004) 2 JT 535 (SC), 2004 (2) UJ (SC) 789, 2004 UJ(SC) 2 789, (2004) 1 LANDLR 556, (2004) 2 ICC 733, (2004) 2 JCR 262 (JHA), (2004) 2 RECCIVR 108, (2004) 2 SCALE 213, (2004) 1 WLC(SC)CVL 411, (2004) 2 JLJR 140, (2004) 3 CAL HN 56, (2004) 2 CIVLJ 383, (2004) 2 CIVILCOURTC 459, (2005) 2 RENCJ 185, (2004) 97 REVDEC 43, (2004) 1 ALL WC 796, (2004) 2 PUN LR 290, (2004) 1 SUPREME 824, (2004) 1 CURCC 228, (2004) 102 FACLR 361, (2004) 4 BOM CR 924**

**Bench: R.C. Lahoti, Ashok Bhan**

### **ORDER**

1. Willard India Limited is a duly incorporated company having its registered office at Aurangabad, District Bulandshahar in U.P. and its works at Chitivalasa, District Visakhapatnam, A.P. Its jute Division's 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.

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.

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 07.01.1992 and 31.12.1993 and is referable to several dispatches of jute bags from Chitivalasa to Rewa.

4. Sometime in the year 1997 Willard India filed a suit against Jaypee Rewa In the Court of First Additional Subordinate Judge at Visakhapatnam, registered as O.S. 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.

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 payment 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 of the 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 of the 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 of the 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 of the CPC having been rejected and the order of rejection having achieved a 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 dear 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 07.01.1992 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 finding 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 of the 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 of the 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 First 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 of the 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 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.

14. The District Judge, Rewa shall soon on communication of this order transmit the record of Original Suit No. 3B/98 -Jaypee Rewa Cement (A Division of Jai Prakash Industries Limited) v. Chitivalasa Jute Mills (A Division of Willard India Limited), to the Court of First 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.