

Before Alka Sarin, J.

M/S ARJUN MALL RETAIL HOLDING PVT. LTD. & ORS.—

Petitioner

versus

M/S GURDAS AGRO PRIVATE LTD.—*Respondents*

CR-7977-2019

February 06, 2019

Civil Procedure Code, 1908, Section 20 and Order 37, Rule 1 (as amended and incorporated in High Court Rules and Orders)—Amending Act of 1976, Section 97(I)—High Court Rules and Orders, Rule 81, Chapter 21 of Volume I—Summary suit files at Bathinda—application for dismissal filed on ground of lack of jurisdiction—rejected—reliance placed on Rule 81 Chapter 21, Vol I of High Court Rules and Orders—said application provision held inconsistent with those of Order 37 as amended by Act of 1976—which deems all such inconsistent provision as repealed.

Held that, In view of Section 97(1) of the Amending Act of 1976 and the law laid down in the cases of Ganpat Giri and Pankajakshi *supra*, it leaves no manner of doubt that any amendment brought either by the State Legislature or by the High Court to the CPC, 1908 prior to coming into force of Amending Act of 1976 which was not consistent with the provisions of the Amending Act of 1976 would stand repealed.

(Para 16)

D.K. Sharma, Advocate
for the *petitioner*.

ALKA SARIN, J. (Oral)

(1) The present revision petition has been filed against the order dated 16.10.2019 whereby the application for dismissal of the summary suit filed under Order XXXVII of the Code of Civil Procedure, 1908 had been rejected.

(2) The only contention of learned counsel for the defendant-petitioners is that the Court at Bathinda did not have jurisdiction to try the present suit. He contended that since the defendant-petitioners were residing at Phagwara and the cheque was issued from Ludhiana, therefore, the Courts at Bathinda did not have jurisdiction.

(3) It is, however, the admitted case of the defendant-petitioners that the cheque was dishonoured at Bathinda. The defendant-petitioners sought leave to defend, which was granted vide order dated 29.08.2019. Thereafter, the case was fixed for filing of the written statement. However, instead of filing written statement, an application for dismissal of the suit on the ground of jurisdiction was filed. The application does not mention the provision of law under which it was filed.

(4) Having submitted to the jurisdiction of the Court at Bathinda by seeking leave to defend the defendant-petitioners, instead of filing their written statement, filed application (Annexure P-3) for dismissal of the suit on the ground of jurisdiction. The argument raised by the counsel for the defendant-petitioners is that since the cheque was issued at Ludhiana and the defendant-petitioners reside at Phagwara, hence, the Courts at Bhatinda were coram non-judice.

(5) The argument raised by the counsel for the defendant-petitioners deserves to be rejected for the reasons stated herein below.

(6) Section 20 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC, 1908'), reads as under:-

“Section 20 of Code of Civil Procedure 1908

Other suits to be instituted where defendants reside or cause of action arises - Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

(7) A perusal of Section 20(c) of the CPC, 1908 shows that it clearly lays down that the suit can be instituted where a cause of action, wholly or in part, arises. In the present case, its an admitted fact that the cheque was deposited and dishonored at Bathinda. That being so, a cause of action, though maybe partly, would be deemed to have arisen in Bathinda and, therefore, the suit at Bathinda would be maintainable. It is apt to note that this ground was neither raised in the application for dismissal of the suit nor argued before the trial Court and was infact raised for the first time before this Court.

(8) In the application for dismissal of the suit filed by the defendant-petitioners the only ground raised was that as per Rule 81 in Chapter 21 of Volume I of the High Court Rules and Orders, only the District Courts in Amritsar would have jurisdiction to try the summary suit. This ground has not been raised or argued before this Court though it has been so pleaded in the Civil Revision petition. However, since the question of law raised in the application for dismissal of the suit and the present revision petition would have a far-reaching effect, I deem it necessary to deal with the same.

(9) Order XXXVII of the CPC, 1908, as originally framed, reads as under:-

“ORDER XXXVII

Summary Procedure on Negotiable Instruments

Application of Order

1. (S. 538.) This order shall apply only to –

(a) the High Courts of Judicature at Fort William, Madras and Bombay;

(b) the Chief Court of Lower Burma;

(c) the Court of the Judicial Commissioner of Sind; and

(d) any other Court to which Sections 532 to 537 of the Code of

Civil Procedure, 1882, have been already applied.”

(10) This Court vide notifications No.225-G dated 5th July, 1923 and No.456-Gaz/XI-y-15 dated 29th July, 1932 (issued while exercising powers under Section 122 of the CPC, 1908) amended Order XXXVII Rule 1 of the CPC, 1908. The said amendment was incorporated in as Rule 81 in Volume I, Chapter 21 of the High Court Rules and Orders.

Order XXXVII Rule 1, after the said amendment, introduced by this Court, reads as under:-

“1. Application of Order. This order shall apply only to

(a) the High Courts of Judicature at Fort William, Madras, and Bombay;

(b) ***

(c) any other Court to which sections 532 to 537 of the Code of Civil Procedure, 1882, have been already applied; and

(d) the Courts of the District Judge and Subordinate Judges of the First Class of the Delhi Province and the Courts of the District Judges and Subordinate Judges of the First Class in the Civil districts of Lahore and Amritsar in the Province of Punjab.” (High Court Notification No.225-G, dated 5th July, 1923 and No.456-Gaz/XI-y-15 dated 29th July, 1932)

(11) In 1976, by way of Code of Civil Procedure (Amendment) Act, 1976 (hereinafter referred to as the “Amending Act of 1976”), the heading of Order XXXVII and also its Rules were amended. The amendment brought to the heading and Rule 1 of Order XXXVII reads as under:-

“84. Amendment of Order XXXVII - In the First Schedule, in Order XXXVII –

(i) in the heading, the words “ON NEGOTIABLE INSTRUMENTS” shall be omitted;

(ii) for rule 1, the following rule shall be substituted, namely:-

“1. Courts and classes of suits to which the Order is to apply – (1)

This Order shall apply to the following Courts, namely:-

(a) High Courts, City Civil Courts and Courts of Small Causes; and

(b) other Courts;

Provided that in respect of the Courts referred to in clause (b), the High Court, may, by notification in the Official Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from

time to time as the circumstances of this case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper”.

(12) Section 97 of the Amending Act of 1976 related to repeal and savings and sub-section (1) thereof reads as under:-

“97. Repeal and Savings – (1) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

(13) A perusal of Section 97(1) of the Amending Act of 1976, reproduced above, makes it clear that any amendment made or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of the Amending Act of 1976, except insofar as such amendment or provision is consistent with the provisions of the principal Act (i.e. the CPC, 1908), would stand repealed. Thus, any amendment to the CPC, 1908 brought about by a State Legislature or a High Court, prior to the Amending Act of 1976, which is inconsistent with the provisions of the amended CPC, 1908 would stand repealed.

(14) This issue was also dealt with by their Lordships of the Hon’ble Supreme Court in the case of *Ganpat Giri* versus *Second Additional District Judge, Ballia & Ors.*¹ wherein their Lordships, while dealing with Section 97(1) of the Amending Act of 1976, held as under:-

“1. We are principally concerned in this case with the effect of Section 97 of the Civil Procedure Code (Amendment) Act, 1976 (104 of 1976) (hereinafter referred to as 'the Amending Act') on any amendment made or any provision inserted in the Civil Procedure Code 1908 (hereinafter referred to as 'the Code') by a State Legislature or a High Court prior to the commencement of the Amending Act, i.e., prior to Feb. 1, 1977 in the different local areas in India where the Code is in force if they be inconsistent with the provisions of the Code as amended by the Amending Act.

¹(1986) 1 SCC 615

2. S. 97(1) of the Amending Act reads thus :-

“any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.”

3. The above provision is however subject to sub-section (2) of Section 97 of the Amending Act which provides that notwithstanding that the provisions of the Amending Act have come into force or the repeal under sub-section (1) of Section 97 of the Amending Act has taken effect, and without prejudice to the generality of the provisions of Section 6 of the General Clauses Act, 1897, the provisions in clauses (a) to (zb) of that sub-section would prevail. Sub-section (3) of Section 97 of the Amending Act provides that save as otherwise provided in sub-section (2), the provisions of the principal Act, as amended by the Amending Act, shall apply to every suit, proceeding, appeal or application pending at the commencement of the Amending Act or instituted or filed after such commencement, notwithstanding the fact that the right, or cause of action, in pursuance of which such suit, proceeding, appeal or application is instituted or filed, had been acquired or had accrued before such commencement.

4. The principal Act referred to in Section 97 is the Code. By the Amending Act several amendments were carried out to the Code on the basis of the recommendations of the Indian Law Commission which had considered extensively the provisions of the Code before it submitted its 54th Report in 1973. By the time, the Law Commission took up for consideration the revision of the Code, there were in force in different parts of India several amendments to the Code which had been effected by the State Legislatures or by the High Courts. The subject of civil procedure being in Entry 13 of List III of the Seventh Schedule to the Constitution, it is open to a State Legislature to amend the Code insofar as its State is concerned in the same way in which it can make a law which is in the Concurrent List. Section 122 of the Code empowers the High Courts to make rules regulating the procedure of civil courts subject to their

superintendence as well as rules regulating their own procedure. These rules no doubt must not be inconsistent with the body of the Code. But they can amend or add to rules in the First Schedule to the Code. Section 129 of the Code which is overlapping on Section 122 of the Code to some extent confers power on the Chartered High Courts to make rules as to their original civil procedure. As mentioned earlier, before the Amending Act came into force on Feb. 1, 1977 many of the provisions of the Code and the First Schedule had been amended by the State Legislatures or the High Courts as the case may be and such amended provisions had been brought into force in the areas over which they had jurisdiction. When the Amending Act was enacted making several changes in the Code Parliament also enacted Section 97 providing for repeals and savings and the effect of the changes on pending proceedings.

5. There are three sub-sections in Section 97 of the Amending Act.

A reading of Section 97 of the Amending Act shows that it deals with the effect of the Amending Act on the entire Code both the main part of the Code consisting of sections and the First Schedule to the Code which contains Orders and Rules. Section 97(1) of the Amending Act takes note of the several local amendments made by a State Legislature and by a High Court before the commencement of the Amending Act and states that any such amendment shall except insofar as such amendment or provision is consistent with the provisions of the Code as amended by the Amending Act stands repealed, It means that any local amendment of the Code which is inconsistent with the Code as amended by the Amending Act would cease to be operative on the commencement of the Amending Act, i.e., on Feb. 1, 1977. The repealing provision in Section 97(1) is not confined in its operation to provisions of the Code including the Orders and Rules in the First Schedule which are actually amended by the Amending Act. The object of Section 97 of the Amending Act appears to be that on and after Feb. 1, 1977 throughout India wherever the Code was in force there should be same procedural law in operation in all the civil courts subjects of course to any future local

amendment that may be made either by the State Legislature or by the High Court, as the case may be, in accordance with law. Until such amendment is made the Code as amended by the Amending Act alone should govern the procedure in civil courts which are governed by the Code. We are emphasising this in view of the decision of the Allahabad High Court which is now under appeal before us.”

(15) Section 97(1) of the Amending Act of 1976 was once again dealt with by their Lordships of the Supreme Court while sitting in a Constitution Bench, in the case of *Pankajakshi (dead) through LRs & Ors. versus Chandrika & Ors.*² while dealing with the law laid down in the case of *Kulwant Kaur versus Gurdial Singh Mann & Ors.*³ and it was clarified in the said judgment that the expression ‘Principal Act’ occurring in Section 97(1) of the Amending Act of 1976 referred to the CPC, 1908. It was further clarified that any provision contained in any other Act though inconsistent with the amended provisions of the CPC, 1908 would not be effected by virtue of Section 97 of the Amending Act of 1976. In *Pankajakshi’s* case *supra* it was held as under:-

“25. We are afraid that this judgment in *Kulwant Kaur* does not state the law correctly on both propositions. First and foremost, when Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976 speaks of any amendment made or any provision inserted in the principal Act by virtue of a State Legislature or a High Court, the said Section refers only to amendments made and/or provisions inserted in the Code of Civil Procedure itself and not elsewhere. This is clear from the expression “principal Act” occurring in Section 97(1). What Section 97(1) really does is to state that where a State Legislature makes an amendment in the Code of Civil Procedure, which amendment will apply only within the four corners of the State, being made under Schedule VII List III Entry 13 to the Constitution of India, such amendment shall stand repealed if it is inconsistent with the provisions of the principal Act as amended by the Parliamentary enactment contained in the 1976 Amendment to the Code of Civil Procedure. This is further made clear by the reference in Section 97(1) to a High Court. The expression “any

² (2016) 6 SCC 157

³ (2001) 4 SCC 262

provision inserted in the principal Act” by a High Court has reference to Section 122 of the Code of Civil Procedure by which High Courts may make rules regulating their own procedure, and the procedure of civil courts subject to their superintendence, and may by such rules annul, alter, or add to any of the rules contained in the First Schedule to the Code of Civil Procedure.

26. Thus, Kulwant Kaur decision on the application of Section 97(1) of the Code of Civil Procedure (Amendment) Act, is not correct in law.”

(16) In view of Section 97(1) of the Amending Act of 1976 and the law laid down in the cases of Ganpat Giri and Pankajakshi *supra*, it leaves no manner of doubt that any amendment brought either by the State Legislature or by the High Court to the CPC, 1908 prior to coming into force of Amending Act of 1976 which was not consistent with the provisions of the Amending Act of 1976 would stand repealed.

(17) A bare perusal of the above-reproduced Rule 81 in Chapter 21 of Volume I of the High Court Rules and Orders amending Order XXXVII Rule 1 as it stood prior to the enactment of the Amending Act of 1976, shows that it was clearly in contradiction of the amended provisions of Order XXXVII as brought about by the Amending Act of 1976. Whereas, as per Rule 81 in Chapter 21 of Volume I of the High Court Rules and Orders, a summary suit could be filed only in the Courts enlisted in the said rule, however, as per the amended Order XXXVII Rule 1 of the CPC, 1908 the courts to which the said Order would apply are mentioned as being the High Courts, City Civil Courts and Courts of Small Causes, and other Courts. Rule 81 in Chapter 21 of Volume I of the High Court Rules and Orders is, therefore, clearly inconsistent with the provisions of Order XXXVII as amended by the Amending Act of 1976 since it very severely restricts the applicability of the said Order. In view of Section 97(1) of the Amending Act of 1976 and the judicial decisions mentioned above, the said Rule 81 in Chapter 21 of Volume I of the High Court Rules and Orders would, as a necessary corollary, stand repealed. The defendant-petitioners would not be able to garner any support therefrom.

(18) The present revision petition, which is wholly devoid of any merit, is hence dismissed.

(Ritambhra Rishi)