

HIGH COURT OF GUJARAT

**MUNDRA INTERNATIONAL CONTAINER TERMINAL PVT LTD
V/S
MUNDRA PORT & SPECIAL ECONOMIC ZONE LTD**

Date of Decision: 25 February 2008

Citation: 2008 LawSuit(Guj) 548

Hon'ble Judges: [D N Patel](#)

Case Type: Misc Civil Application

Case No: 798 of 2008

Subject: Civil

Acts Referred:

CODE OF CIVIL PROCEDURE, 1908 [SEC 19](#), [SEC 16](#), [SEC 15](#), [SEC 20](#), [SEC 16\(D\)](#),
[SEC 17](#), [SEC 18](#), [SEC 24](#)

Final Decision: Application dismissed

Advocates: [Mihir Joshi](#), [M J Thakore](#), [S B Vakil](#), [B H Chhatrapati](#), [Vikramsingh Gohil](#),
[Singhi & Co](#), K S Nanavati, [Rakesh Gupta](#), [Trivedi & Gupta](#)

Reference Cases:

[Cases Referred in \(+\): 2](#)

Judgement Text:-

D N Patel, J

[1] This Miscellaneous Civil Application has been preferred under Section 24 of Code of Civil Procedure,1908, for transfer of Civil Suit No.11 of 2008, pending before learned Civil Judge (S.D.), Bhuj, (filed by the respondent, against the present applicant), to the City Civil Court at Ahmedabad, where another Suit bearing Civil Suit No.282 of 2008 is pending (filed by the applicant).

[2] Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to transfer the proceedings pending before learned Civil Judge (S.D.), Bhuj to learned City Civil Court at Ahmedabad, mainly for the following facts and reasons:

(i) It appears that Civil Suit No.11/2008 has been filed by the respondent against the applicant, mainly for getting possession of the entire immovable property occupied by the present applicant (at Mundra Port), falling within , territorial jurisdiction of Bhuj Court.

(ii) Relevant part of Section 16 of the Code of Civil Procedure,1908, for the purpose of the suit, reads as under:

"16. Suits to be instituted where subject-matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits,-

(a)

(b)

(c)

(d) for the determination of any other right to or interest in immovable property,

(e)

(f)

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that"

(Emphasis supplied)

In view of the aforesaid provision, Civil Suit No.11 of 2008, has been instituted by the respondent before learned Civil Judge (S.D.), Bhuj, as the immovable property is situated at Mundra Port.

(iii) It also appears from the facts of the case that the present applicant has instituted Civil Suit No.282 of 2008, before learned City Civil Court at Ahmedabad for declaration and permanent injunction. It appears that the prayers made in this Suit by the applicant, is mainly for declaration that agreement dated 7th January,2003 is valid, subsisting and binding and its termination is illegal and also for getting perpetual injunction, restraining defendants from taking any steps, which are referred in letter dated 08/11/2007 (which is for taking over of possession of 'Container Terminal' at Mundra Port) and for getting perpetual injunction restraining defendants from using 'Second Stage Assets', (which is also another terminal situated at Mundra Port). Thus, the Suit at Ahmedabad is mainly preferred for the aforesaid purposes.

(iv) It appears that :

(a) The Suit at Bhuj bearing Civil Suit No.11 of 2008 is for getting possession of immovable property situated at Mundra Port, which is falling within territorial jurisdiction of Bhuj Court;

(v) In the Suit at Ahmedabad, main challenge letter dated 03/11/2007 issued by Gujarat Maritime Board for initiating action against the present applicant,

which is not at all subject matter of the Suit at Bhuj;

(c) Validity of the decision of Gujarat Maritime Board, which is under challenge at Ahmedabad, is not under challenge at Bhuj;

(d) The parties in these two suits are also different and the nature of prayers in both the suits are also different. One is for getting possession of immovable property (Bhuj Court matter) whereas another Suit at Ahmedabad, is for declaration and permanent injunction. Thus, there will not be a possibility of conflicting decision, if the Suits are tried independently.

(v) As per the decision rendered by the Hon'ble Supreme Court in the case of Harshad Chiman Lal Modi V. D.L.F. Universal Ltd. and another reported in AIR 2005 SC 4446, especially in para 11, 13 and 14, read as under:

"11. Mr.Rohatgi, Senior Advocate appearing for the respondents, on the other hand, supported the order passed by the trial court and confirmed by the High Court. He submitted that the suit relates to specific performance of agreement relating to immovable property. In accordance with the provisions of Section 16 of the Code, such suit can be instituted where the immovable property is situate. Admittedly the property is

[Section 16 & 20 of the Code of Civil Procedure]

situate in Gurgaon (Haryana), Delhi Court, therefore, has no jurisdiction to entertain the suit which is for specific performance of agreement of purchase of a plot-immovable property- situate outside Delhi. According to the counsel, even if it was not contended by the defendants that Delhi Court had no jurisdiction or there was an admission that Delhi Court had jurisdiction, it was totally irrelevant and immaterial. If the Court had no jurisdiction, parties by consent cannot confer jurisdiction on it. The counsel also submitted that this is not a case in which two or more courts have jurisdiction and parties have agreed to jurisdiction of one Court. According to Mr.Rohatgi, Section 20 of the Code would apply where two courts have jurisdiction and the parties

agree as to jurisdiction of one such courts by restricting their right to that forum instead of the other. When Delhi Court had no jurisdiction whatsoever, no reliance could be placed either on Section 20 of the Code or on Clause 28 of the agreement. The order passed by the trial court and confirmed by the High Court is, therefore, legal and lawful and the appeal deserves to be dismissed, submitted the counsel.

13. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

14. Section 16 thus recognizes a well established principle that actions against res or property should be brought in the forum where such res is situate. A Court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgement. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "equity acts in personam, recognized by Chancery Courts in England, Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgements by process in personam, i.e by arrest of defendant or by attachment of his property."

(Emphasis supplied)

Thus, in view of the aforesaid decision also, the suit for getting possession of immovable property (Container Terminal), which is situated at Mundra Port, which is falling within territorial jurisdiction of the Court at Bhuj, under Section 16 of the Code of Civil Procedure, 1908.

(vi) Learned counsel for the applicant submitted that the Suit filed at Ahmedabad is having a territorial jurisdiction, as the suit is for declaration and permanent injunction whereas it is contended by learned counsel for the respondent that the suit filed at Ahmedabad bearing Civil Suit No.282 of 2008 has been filed in a Court, having no jurisdiction. Looking to these rival contentions of both the sides on this point, prima facie, it appears to this Court that the Suit filed at Ahmedabad is basically for retaining immovable property situated at Mundra Port, which is falling within, territorial jurisdiction of Bhuj Court. It appears from the facts of the case that termination of Sub-Concession Agreement vide letter dated 08/11/2007, was also served at Mundra Port. It appears from the facts of the case that both the parties are doing their business at Mundra Port. As the suit at Ahmedabad is pending and as Notice of Motion application is also pending, I am not much analyzing these issues. At this stage, suffice it to say, (in this transfer petition) that the jurisdiction of City Civil Court at Ahmedabad is highly in dispute. It is held by the Hon'ble Supreme Court in the case of Harshad Chiman Lal Modi V. D.L.F. Universal Ltd. and another reported in AIR 2005 SC 4446, especially in para 30 and 31, read as under:

"30. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise jurisdiction it does not possess, its decision amounts to nothing'. A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.

31. In Kiran Singh v. Chaman Paswan, (1955)1 SCR 117: AIR 1954 SC 340,

this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the state of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

(Emphasis supplied)

Thus, the risk factor is to the extent that the decree passed without jurisdiction is nullity, non-est and is not enforceable. In this set of circumstances, when the jurisdiction at Ahmedabad is highly in dispute and very high degree of risk factor [decree without jurisdiction is nullity ? a decree passed without jurisdiction is "coram non judice], is present, I am not inclined to exercise discretionary jurisdiction vested in this Court, under Section 24 of the Code of Civil Procedure, 1908, for transfer of Civil Suit No.11 of 2008 of Bhuj, to the City Civil Court at Ahmedabad. The jurisdiction under this section must be exercised with extreme care, caution and circumspection. The search should be for justice and the court must be satisfied that justice could more likely be done between the parties by refusing to allow the plaintiff to continue his suit in the forum of his own choice. A mere balance of convenience in favour of the proceedings in another court, albeit a material consideration, may not always be a sure criterion justifying transfer.

(vii) Learned counsel for the applicant submitted that Section 16 of the Code of Civil Procedure, 1908, is not applicable but Section 20(d) of the Code of Civil Procedure, 1908, is applicable, in the facts of the present case. As both the suits are pending before Trial Court along with interim applications, without going much into the detail, in this aspect, suffice it will be for this Court to state that Section 20 of Code of Civil Procedure, 1908, is residuary section and covers all those cases, not dealt with or covered under Sections 15 to 19 of the Code of Civil Procedure, 1908. Even looking to the opening

words of Section 20 "subject to the limitations aforesaid" are significant and make it abundantly clear that section takes within its sweep, all personal actions. In a suit for getting possession of the immovable property, Section 16(d) is applicable and not Section 20 of Code of Civil Procedure,1908. Thus, if the suit is covered under Section 16(d) of Code of Civil Procedure,1908, no suit can be filed elsewhere with the aid of Section 20 of the Code of Civil Procedure,1908. Relevant part of Section 20(a) reads as under:

"20. Other suits to be instituted where defendants reside or cause o 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

(Emphasis supplied)

(viii) Learned counsel for both the sides have taken this Court at various averments and allegations of the pleadings in both the Suits and it is vehemently contended by learned counsel for the applicant that the Suit at Ahmedabad, is only for breach of contract whereas learned counsel for the respondent vehemently submitted that the suit at Ahmedabad, is basically to retain immovable property, which is known as 'Container Terminal' situated at Mundra Port and for getting permanent injunction to restrain respondent from using 'Second Stage Assets' (which is also immovable property at Mundra Port) and, therefore, City Civil Court has no jurisdiction. Learned counsel for the respondent has also submitted that looking to the prayer at para-91(d) of Civil Suit No.282 of 2008, (pending before City Civil Court at Ahmedabad), is also for immovable property situated at Mundra Port. As stated hereinabove, this Court is not concluding the issue about jurisdiction of the City Civil Court. Suffice it will be for the disposal of this Misc. Civil Application to state that, prima facie, when the jurisdiction of the City Civil Court at Ahmedabad, is highly in dispute and when risk factor is to the

extend that the decree passed without jurisdiction is nullity, non-est and not enforceable, I am not inclined to transfer the Civil Suit No.11 of 2008 filed by the respondent for getting possession of the immovable property situated at Mundra Port, which is filed before Civil Judge (S.D.), Bhuj to City Civil Court at Ahmedabad. Learned counsel for the applicant has cited several authorities before this Court, but, the facts of the present case, make the case different from those authorities, which are cited by the learned counsel for the applicant. This Court does not want to over burden this judgment by citing all these authorities.

[3] As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, there is no substance in this Miscellaneous Civil Application and, therefore, the same is hereby dismissed.

[4] Learned counsel for the applicant seeks stay of the aforesaid order, which is opposed by learned counsel for the respondent. Looking to the aforesaid facts and reasons, I see no reason to stay the aforesaid order passed by this Court.

