

A M/S GUPTE CARDIAC CARE CENTRE AND HOSPITAL
v.
OLYMPIC PHARMA CARE PVT. LTD.

APRIL 6, 2004

B [R.C. LAHOTI AND ASHOK BHAN, JJ.]

Code of Civil Procedure, 1908:

C Ss. 25 and 10—Transfer of suit—Two suits arising out of the same transaction filed in two different courts—Plaintiffs in both the suits seeking transfer of the other suits—Held, the two suits deserve to be heard and tried in one Court—Keeping in view the rule underlying s.10, the suit filed subsequently is transferred to the court wherein the suit first in point of time was instituted, and the said court will set down the cases for consolidated trial.

D The petitioner hospital and another company filed a suit at Nasik against a German Manufacturer and its dealer in India, the respondent, for recovery of certain amount including damages, as performance of the Heart-Lung Machine purchased by the petitioner from the defendants was not found satisfactory. Subsequently, the respondent dealer also filed a suit in the High Court of Delhi against the petitioner hospital for recovery of certain amount stated to be the balance price of the machine and interest thereon. The petitioner Hospital filed T.P. (C) No. 400 of 2003 for transfer of the suit at Delhi to Nasik and the dealer filed TP(C) No. 248/2004 seeking transfer of the suit at Nasik to Delhi.

F Allowing TP(C) No. 400 of 2003 and dismissing TP (C) No. 246 of 2004, the Court

G HELD: The two suits deserve to be heard and tried in one court. For exercise of discretionary jurisdiction under s.25 of the Code of Civil Procedure, 1908, the only consideration which is relevant is 'expediency of justice'. The Court will have regard to and respect for the rule enacted under s.10 of the Code whereunder the trial of the suit at Delhi being the later suit would be liable to be stayed. Of course, the considerations such as which is the place where most of the evidence is available, convenience

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of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view in an appropriate case to direct a transfer of case in departure from the rule underlying s.10 of the Code. So far as the present cases are concerned, the ordinary rule is followed, as there is no factor or consideration relevant for making a departure therefrom. The suit at Delhi is transferred to the Court at Nasik for the purpose of hearing and decision thereat. The Court at Nasik may frame consolidated issues taking into consideration the pleading in both the cases and thereafter set down the cases for consolidated trial. [918-D; 918-F-H; 919-A]

CIVIL ORIGINAL JURISDICTION : Transfer Petition (C) No. 400 of 2003.

(Under Article 139(A)(1) of the Constitution of India.)

WITH

T.P. (C) No. 248 of 2004.

Kumar Parimal, B.S. Sai, Aniruddha and P. Mayee for the Petitioner.

P.N. Mishra, Nishant Menon and Umesh Kumar Khaitan, for the Respondents.

The Judgment of the Court was delivered by

R.C. LAHOTI, J. Gupte Cardiac Care Centre & Hospital (hereinafter 'the Hospital', for short) representing Healing Touch Angiography and Cardiac Surgery Centre Pvt. Ltd, both situated at Nashik, have filed Special Civil Suit No. 62 of 2002 in the Court of Civil Judge at Nashik on 20.12.2001. The defendants impleaded therein are M/s. Jostra Medizintechnik AG and Olympic Pharma Care Pvt. Ltd. situated respectively at Germany and Delhi, (hereinafter referred to as 'manufacturer' and 'dealer', for short).

Olympic Pharma Care Pvt. Ltd., New Delhi has filed a suit against the hospital in the High Court of Delhi (Original Side) on 10.1.2002, which is registered as suit No.190 of 2002.

It appears that the Hospital needed a Heart-Lung Machine alongwith accessories manufactured by the German company (the manufacturer) and marketed by the 'Dealer' in India. The machine was delivered and installed.

A Disputes arose as the performance of the machine was not found to be satisfactory. There was correspondence and notices exchanged and then suits filed. The suit filed by the 'Hospital' at Nashik is for recovery of Rs.28,35,000. The plaintiffs therein have claimed the return of the advance paid, compensation equivalent to the additional amount spent by them for purchasing another machine and the interest on the said two sums. The suit instituted by B the 'Dealer' at Delhi is for recovery of Rs. 20,00,000 alleged to be outstanding by way of balance price of the machine and interest thereon. T.P. (C) No.400/2003 has been filed by the Hospital seeking transfer of the suit at Delhi to Nashik while T.P.(C) No. 248/2004 has been filed by the 'Dealer' seeking transfer of the suit at Nashik to Delhi.

C It has not been disputed at the Bar that the two suits arise out of the same transaction. Cause of action of one party arrayed as plaintiff would be its defence in the suit where it is arrayed as defendant. Though there are two plaintiffs and two defendants in the suit at Nashik while there is only one plaintiff and one defendant in the suit at Delhi but there is substantial identity D of the parties in the two suits. The issues arising for decision would necessarily be the same. Only one of the two suit can be decreed. The decree in one suit in favour of the plaintiff in that suit would entail the dismissal of the other suit. It cannot, therefore, be denied that the two suits deserve to be heard and tried in one Court. That would avoid the possibility of any conflicting decrees E coming into existence. And certainly the duplication of evidence, oral and documentary both, would be avoided. The parties and the Courts would save their time and energy which would needlessly be wasted twice over.

The suit at Nashik has been instituted first in point of time. By reference F to Section 10 of the CPC, the trial of the suit at Delhi, being the latter suit, shall be liable to be stayed. For the exercise of its discretionary jurisdiction under Section 25 of the Code of Civil Procedure, 1908 the only consideration which is relevant is — 'expediency for ends of justice'. The court will have regard to and respect for the rule enacted in Section 10 of the Code. Of course, the considerations such as which is the place where most of the G evidence is available, convenience of the parties and witnesses, which one of the two places is more convenient to access and attend and so on are also the factors to be kept in view and may in an appropriate case persuade this Court to direct a transfer of case in departure from the rule underlying Section 10 of the Code. All would depend on the facts and circumstances of a given case. So far as the present cases are concerned, we deem it proper to transfer H the suit at Delhi to the Court at Nashik for the purpose of hearing and

decision thereat. In doing so we are following the ordinary rule as we do not find any factor or consideration relevant for making a departure therefrom. A

T.P.(C) No.400/2003 is allowed. Suit No.190/2002 pending in the High Court of Delhi at New Delhi (Civil Original Ordinary Jurisdiction) is directed to be transferred to the Court of Civil Judge S.D. Nashik at Nashik. Both the suits shall be consolidated for the purpose of trial. The learned Civil Judge seized of the trial may frame consolidated issues taking into consideration the pleadings in both the cases, and thereafter, set down the cases for consolidated trial. B

The Registrar (Judicial), High Court of Delhi, shall soon on communication of this order, transfer complete record of the proceedings of Suit No. 190 of 2002 to the court of Civil Judge S.D. Nashik at Nashik. C

T.P.(C) No.400 of 2003 is thus allowed.

T.P.(C) No.248 of 2004 is dismissed. D

R.P.

T.P.(C) No.400/03 allowed.
T.P.(C) No.248/04 is dismissed.