CASE NO.:
Appeal (civil) 2726 of 2000

PETITIONER:
HARSHAD CHIMANLAL MODI

RESPONDENT:
DLF UNIVERSAL LTD. & ANR.

DATE OF JUDGMENT: 14/12/2005

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T
INTERLOCUTORY APPLICATION NO.3
IN
CIVIL APPEAL NO. 2726 OF 2000

C.K. Thakker, J.

This interlocutory application is filed by the applicant/ appellant in a disposed of appeal. The applicant was the original plaintiff who instituted a suit on the Original Side of the High Court of Delhi for declaration, for specific performance of agreement, for possession of property and for permanent injunction. The suit was filed in 1988. Written statement was filed by the defendants-respondents in 1989 contesting the claim of the plaintiff on merits but without raising any objection as to jurisdiction of the Court. The jurisdiction of the Court was 'admitted'. The suit was then transferred to District Court, Delhi in 1993. In 1997, issues were framed which did not include issue as to jurisdiction of the Court as it was not disputed by the defendants. After more than eight years of filing of the written statement, however, an application was filed by the defendants under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') seeking an amendment in the written statement by raising an objection as to jurisdiction of the Court. It was contended that the suit was for recovery of immovable property situated in Gurgaon District. Under Section 16 of the Code, such a suit for recovery of property could only be instituted within the local limits of whose jurisdiction the property was situated. Since the property was in Gurgaon, Delhi Court had no jurisdiction. The said application was allowed in spite of objection by the plaintiff.
On the basis of the amended written statement, an additional issue was framed by the trial Court as to the jurisdiction of Delhi Court to entertain and try the suit. After hearing the parties, the trial Court held that the suit was covered by Clause (d) of the Section 16 of the Code and Delhi Court had no jurisdiction as the property was situated at Gurgaon. Accordingly, the plaint was ordered to be returned to the plaintiff for presentation to proper Court. The said order was confirmed by the High Court as well as by this Court. (See Harshad Chimanlal Modi v. DLF Universal Ltd. & Anr.; (2005) 7 SCC 791).
In the present application, it is stated by the applicant that when he approached this Court against the judgment and order of the High Court of Delhi, notice was issued on December 6, 1999 and status quo was ordered to be maintained. On April 17, 2000, leave was granted and the operation of the judgment of the High Court was stayed. The Additional District Judge, Tis Hazari, Delhi was allowed to proceed with the suit. It was, however, stated that the Court would not deliver judgment 'until further orders'. According to the applicant, in pursuance of the said order, the trial Court proceeded

with the suit, pleadings were completed by the parties, evidence was led and the matter was ready for final arguments and for disposal. It is further stated that an order was passed by the District Court on April 11, 2005 declaring that the defendants' evidence was closed but since the judgment could not be pronounced in the light of direction issued by this Court on April 17, 2000, the suit was adjourned sine die. This Court finally decided the appeal and delivered the judgment on September 26, 2005 confirming the order passed by the trial Court as well as by the High Court. According to the applicant, now the suit will have to be tried and decided by the Gurgaon Court. Since 17 years have passed from the institution of the suit and the pleadings are complete, evidence is recorded and the arguments are over, this Court may direct the Gurgaon Court to take up the suit from the stage at which it stands transferred and to decide it expeditiously.

The application is resisted by the respondent by filing a counter. It is contended that the application is not maintainable as it is misconceived. According to the respondent, in the guise of interim application, the appellant is seeking review of the judgment of this Court. Such a prayer was made when the appeal was heard by this Court, but the prayer was not granted. According to the respondents, this Court held that there was inherent lack of jurisdiction in Delhi Court and since the subject matter of the suit was immovable property and the prayer in the plaint related to recovery of possession of such property, the only Court which had jurisdiction was Gurgaon Court where the property was situated. In view of the settled legal position, the Court directed return of the plaint for presentation to proper Court. According to the respondents, when the plaint will be presented before Gurgaon Court, it would not be treated as continuation of proceedings of the Court which had no jurisdiction but a suit would commence on the day when the plaint would be presented to the proper Court. Hence, the prayer made by the applicant to direct Gurgaon Court to try suit from the stage at which it was in Delhi Court cannot be granted. The application, therefore, deserves to be dismissed.

A rejoinder is filed by the applicant submitting that in case of transfer of a suit for want of jurisdiction, the Code provides the transferee Court to proceed with the suit from the stage at which it has been transferred. The applicant asserted that proceedings before Delhi Court were not null and void. Precisely for that reason, at the time of hearing of Special Leave Petition, this Court allowed the trial Court to proceed with the suit and the only order passed by the Court was not to pronounce judgment "until further orders". It was, therefore, submitted that this is immensely a fit case to exercise inherent powers under Section 151 of the Code and plenary powers under Article 142 of the Constitution for grant of the prayer of the applicant.

Having heard the learned counsel for the parties, in our opinion, the application is ill-founded and deserves to be dismissed. It may be stated that in Civil Appeal which was decided by us on September 26, 2005, we have held that since the dispute related to immovable property and the prayer was for specific performance of an agreement of sale of immovable property and recovery of possession thereof, the relevant provision was Section 16 of the Code. Under Clause (d) of the said section, only Gurgaon Court had jurisdiction. We also held that notwithstanding the agreement between the parties that only Delhi Court had jurisdiction, the said clause could not operate as Section 20 of the Code could not be invoked. According to us, Section 20 would apply where two or more courts had jurisdiction and the parties by an agreement consented that one of such courts would try the suit. Since Delhi Court had no jurisdiction, the contention of the defendants was upheld and the plaint was ordered to be returned to the plaintiff for presentation to the proper Court.

The learned counsel for the respondents is also right in submitting that a similar prayer, which is made in the present application, was sought at the time of hearing of the Appeal, but it was not granted.

In our opinion, the provisions of Section 24 and/or Section 25 of the Code have no application to the case on hand. The respondents are right in urging that this is not a case of 'transfer' of a suit but of lack of jurisdiction of the Court. Likewise, the provisions of Rule 15 of Order 18 also cannot be pressed in service which covers those cases where a successor judge deals with the evidence recorded by his predecessor and proceeds with the suit from the stage at which it was left by his predecessor.

We may in this connection refer to a decision of this Court in Amar Chand Inani v. Union of India (1973) 1 SCC 115 : AIR 1973 SC 313. In that case, the plaintiff\027a practising advocate, sustained serious injuries in a railway accident while travelling by a train. He instituted a suit for damages in Karnal Court which was then transferred to Panipat Court. The plaint was, however, returned for presentation to proper Court since Panipat Court had no jurisdiction to hear the suit. In pursuance of the said order, the plaint was presented to Ambala Court. At the time of presentation of the plaint to Ambala Court, an objection was raised that the suit was barred by limitation. The question before the Court was as to whether the suit was filed within the period of limitation. This Court held that since the Karnal Court had no jurisdiction to entertain the suit, it was not a proper Court. The submission that the suit instituted in Ambala Court after the plaint was returned from Karnal Court should be deemed to be a continuation of the suit filed in Karnal Court had been negatived.

Considering the provisions of the Limitation Act and Order 7, Rule 10 of the Code, the Court stated:
"It was, however, argued by Counsel for the appellant that the suit instituted in the Trial Court by the presentation of the plaint after it was returned for presentation to the proper Court was a continuation of the suit filed in the Karnal Court and, therefore, the suit filed in Karnal Court must be deemed to have been filed in the trial Court. We think there is no substance in the argument, for, when the plaint was returned for presentation to the proper Court and was presented in that Court, the suit can be deemed to be instituted in the proper Court only when the plaint was presented in that Court. In other words, the suit instituted in the Trial Court by the presentation of the plaint returned by the Panipat Court was not a continuation of the suit filed in the Karnal Court". (emphasis supplied)

Reliance placed on behalf of the applicant on a decision in Joginder Tuli v. S.L. Bhatia & Anr. (1997) 1 SCC 502 does not carry the case any further. In that case, the suit when filed was within the jurisdiction of the Court and it was properly entertained. In view of amendment in the plaint during the pendency of the suit, however, the plaint was returned for presentation to proper Court taking into account the pecuniary jurisdiction of the Court. Such is not the situation here. As we have already held in the appeal, the suit could not have been instituted in Delhi Court keeping in view the subject matter which was immovable property and recovery of possession thereof. Considering all these factors, we had not granted the prayer made at the time of hearing of the appeal which has been made in this application. The application, therefore, cannot be allowed and the prayer cannot be granted now.

For the foregoing reasons, the application deserves to be dismissed and is accordingly dismissed, however, with no order as to costs.