

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5527 OF 2014
 (Arising out of SLP (C) No.26157 of 2012)

Coffee Board

.... Appellant

versus

M/S. Ramesh Exports Pvt. Ltd.

.... Respondents

J U D G M E N T**Pinaki Chandra Ghose, J.****1.** Leave granted.

2. This appeal is preferred against the judgment and order dated December 19, 2011 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No.1033 of 2005 partly allowing the appeal filed by the respondent herein and partly decreeing the Original Suit being O.S. No. 4763 of 1986 filed by the respondent being the original plaintiff. The said original suit

was dismissed by a judgment and decree dated March 17, 2005.

- 3.** Pre-liberalization, till 1996 all the coffee grown in India was pooled with the appellant-Board which is a statutory body under the Coffee Act, 1942. The appellant-Board (hereinafter referred to as "Board") marketed the pooled coffee and distributed the net realization to the growers in proportion the quantity pooled by them. The Board marketed the pooled coffee by means of auctions and separate auctions were held for export and domestic market. Only registered exporters are allowed to participate in the said auctions and the successful bidders amongst them enter into contracts with the Board for the purchase of the coffee. The Board is a member of the International Coffee Organization (hereinafter referred to as "ICO") which is the main intergovernmental organization controlling and regulating the global coffee export and import. Majority of the coffee growing and consuming countries are members of the ICO. The import and export of coffee is regulated by ICO by fixing quotas on the member countries in accordance with the quantum produced. As per the then

International Coffee Agreement of 1983 the export quota system was supported by an obligatory system of controls. Each export by a Member was covered by a Certificate of Origin. Importing Members did not admit coffee from Members unless the Certificate was validated by coffee export stamps issued by the Organization. When quotas were in effect importing Members were required to limit their imports from non-members and exports to non-members were closely monitored.

- 4.** Accordingly, India being a member of ICO through the Board was subject to the same agreement and as per the fixed quota for exporting coffee the Board received stamps from ICO for each quarter through State Bank of India. Thus, the Board subject to ICO rules and regulations regulated the coffee production and marketing in India by accordingly distributing stamps to the exporters who had successfully purchased coffee from the auctions. The respondent M/s. Ramesh Exports Pvt. Ltd. being the original plaintiff was registered with the Board as an exporter during the coffee year October 1, 1981 to September 30, 1982.

5. In this backdrop, the facts leading to the present appeal are as under:

5.1. On August 24, 1980, the appellant Board sent the 'Terms and Conditions of Sale of Coffee in the Course of Export', after amendment of certain clauses, to all the registered exporters of coffee. On October 9, 1980 the appellant Board issued a Circular regarding introduction of Coffee Export stamp system for export of coffee to member importing countries of ICO from November 1, 1980. The respondent purchased coffee at the export auction. The respondent shipped 230.4 tonnes of coffee to USA and Germany who were members of ICO, on 1st, 2nd and 3rd September, 1982 without valid ICO certificate of origin. On September 22, 1982, the respondent wrote to the appellant Board requesting for ICO stamps for export of 230.4 tonnes of coffee and on September 29, 1982, the respondent wrote to the appellant Board for issue of necessary permit/authority to re-import 230.4 tonnes of coffee into India. The appellant Board issued a show cause notice to the respondent alleging that the respondent has committed breach of terms of ICO Agreement by making false statement. The respondent replied

to the show cause notice. Thereafter, the respondent filed two suits against the appellant Board in the Court of City Civil Judge, Bangalore, one being O.S. No.3150 of 1985 praying for a decree of Rs.5,32,012.31 p. with interest at the rate of 19% per annum and costs of the suit and another suit being O.S. No. 4763 of 1986 praying for a decree of Rs.11,70,446.39 p. with interest at the rate of 19% per annum and costs of the suit. The appellant Board resisted the suits and denied the claims made by the respondent.

5.2. By judgment dated February 14, 2002, the Trial Court decreed O.S. No.3150 of 1985 with costs and interest at 6% per annum. Aggrieved by the judgment and decree dated February 14, 2002 passed by the Trial Court, the appellant Board filed R.F.A. No.901 of 2002 before the High Court of Karnataka. However, the other suit being O.S. No. 4763 of 1986 was dismissed by the Trial Court by judgment dated March 17, 2005 and aggrieved thereby, the respondent filed R.F.A. No.1033 of 2005 before the High Court of Karnataka. After considering the submissions of both the parties, the High Court partly allowed the regular first appeals. Aggrieved by the

judgment and order dated December 19, 2011 passed by the High Court of Karnataka at Bangalore in Regular First Appeal No.1033 of 2005, the appellant Board has come up before this Court.

- 6.** The case of the appellant before us is based on two grounds. Firstly, it has been contended by the learned counsel appearing for the appellant that the High Court has incorrectly held that the Original Suit being O.S. No.4763 of 1986 is not barred by the provisions of Rule 2 of Order 2 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”). In support of the same, it has been submitted by the learned counsel that the High Court incorrectly determined the above without considering the specific pleadings in O.S. No.3150 of 1985 filed by the respondent, as against the pleadings in the original suit being O.S. No.4763 of 1986. It was further submitted that the High Court also did not consider the cogent findings of the judgment dated March 17, 2005 passed by the Trial Court in O.S. No.4763 of 1986.

- 7.** The second ground raised by the learned counsel for the appellant is on merits wherein it has been contended that when the respondent by letter dated September 29, 1982 agreed to re-import 230.4 tonnes of coffee into India which was exported without ICO Stamps by them in haste and against the ICO Regulations of which they were aware and which entailed in the debarring of India from the membership of ICO, then they are estopped from claiming any damages and costs being freight and other charges arising due to the re-import.
- 8.** Having heard the arguments advanced by the counsel appearing for the parties and considering the documents on record in light of the averments of the parties, we will first consider the procedural validity of the original suit and would accordingly proceed with the merits.
- 9.** It is the claim of the appellant being the original defendant in the original suit being O.S. No.4763 of 1986 that the present suit is barred by Order 2 Rule 2 of the Code. The said provision should be read in context of Rule 1 of Order 2. The relevant rules are reproduced below for ready reference:

“1. *Frame of suit.*—Every suit shall as far as practicable be framed so as to afford ground for final decision upon the subjects in dispute and to prevent further litigation concerning them.

2. *Suit to include the whole claim.*—(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court.

(2) *Relinquishment of part of claim.*—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs.*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

- 10.** The above rules are offshoots of the ancient principle that there should be an end to litigation traced in the Full Bench decision of the Court in *Lachmi vs. Bhulli*¹ and approved by this Court in many of its decisions. The principle which emerges from the above is that no one ought to be vexed twice for the same cause. In light of the above, from a plain reading of Order 2 Rule 2, it emerges that if different reliefs and claims arise out of the same cause of action then the plaintiff must place all his

¹ ILR (1927) 8 Lah 384

claims before the Court in one suit and cannot omit one of the reliefs or claims except without the leave of the Court. Order 2 Rule 2 bars a plaintiff from omitting one part of claim and raising the same in a subsequent suit. (See: *Deva Ram & Anr. vs. Ishwar Chand & Anr.*²). Furthermore, this Court in *Alka Gupta v. Narender Kumar Gupta*³ stated that:

“The object of Order 2 Rule 2 of the Code is twofold. First is to ensure that no defendant is sued and vexed twice in regard to the same cause of action. Second is to prevent a plaintiff from splitting of claims and remedies based on the same cause of action. The effect of Order 2 Rule 2 of the Code is to bar a plaintiff who had earlier claimed certain remedies in regard to a cause of action, from filing a second suit in regard to other reliefs based on the same cause of action. It does not however bar a second suit based on a different and distinct cause of action.”

- 11.** The bar of Order 2 Rule 2 comes into operation where the cause of action on which the previous suit was filed, forms the foundation of the subsequent suit; and when the plaintiff could have claimed the relief sought in the subsequent suit, in the earlier suit; and both the suits are between the same parties. Furthermore, the bar under Order 2 Rule 2 must be specifically

² (1995) 6 SCC 733

³ (2010) 10 SCC 141

pleaded by the defendant in the suit and the Trial Court should specifically frame a specific issue in that regard wherein the pleading in the earlier suit must be examined and the plaintiff is given an opportunity to demonstrate that the cause of action in the subsequent suit is different. This was held by this Court in *Alka Gupta v. Narender Kumar Gupta* (supra) which referred to decision of this Court in *Gurbux Singh vs. Bhooralal*⁴ wherein it was held that:

“**6.** In order that a plea of a bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out: (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.”

12. The Courts in order to determine whether a suit is barred by Order 2 Rule 2 must examine the cause of action pleaded by

⁴ AIR 1964 SC 1810

the plaintiff in his plaints filed in the relevant suits (See: *S. Nazeer Ahmed v. State Bank of Mysore & Ors.*⁵). Considering the technicality of the plea of Order 2 Rule 2, both the plaints must be read as a whole to identify the cause of action, which is necessary to establish a claim or necessary for the plaintiff to prove if traversed. Therefore, after identifying the cause of action if it is found that the cause of action pleaded in both the suits is identical and the relief claimed in the subsequent suit could have been pleaded in the earlier suit, then the subsequent suit is barred by Order 2 Rule 2.

- 13.** In the present case we have found the first suit is claimed to be O.S. No. 3150 of 1985 and the subsequent suit is claimed to be O.S. No.4763 of 1986. The first suit was filed by Ramesh Enterprises which is admitted to be the Coffee Division of Ramesh Exports Pvt. Ltd. which is the plaintiff in the second suit. It has also been admitted by the plaintiff in the second suit that Ramesh Exports Pvt. Ltd. is a wholly owned subsidiary of Ramesh Enterprises Pvt. Ltd. Both the entities are operated out of the same premises and suits were filed by their Director who

⁵ (2007) 11 SCC 75

is Mr. T. Thangapalam. Therefore, we are of the opinion that *de facto* the parties are the same in both the suits. Having perused the written statement of the defendant being the appellant before us in O.S. No.4763 of 1986 we have found that the defendant in paragraph 14(c) of his written statement has specifically pleaded that:

“The suit is barred under Order 2, Rule 2 of the CPC as the plaintiff having filed O.S. No. 3150/1985 in respect of the alleged failure of the board to supply stamps for the coffees purchased by it between 11-8-1982 and 8-9-1982, the claim now made must be deemed to have been relinquished.”

The Trial Court also in its judgment dated March 17, 2005 specifically framed the following issue:

“(5) Whether Defendant prove that this is barred as per para 14 (c) of the Written Statement?”

- 14.** It is evident from the above that the two requirements for the operation of bar under Order 2 Rule 2 are met with and what remains to be seen is whether the cause of action in the subsequent suit is the same and the relief claimed therein

could have been claimed in the earlier suit. For the same, both the complaints are discussed in the subsequent paragraphs.

15. In the complaint in O.S. No. 3150 of 1985 being the earlier suit, it has been claimed by the respondent being the plaintiff therein that the appellant being the defendants failed to supply ICO Stamps for 268.08 tonnes of coffee purchased by him for export between August 11, 1982 and September 8, 1982, in spite of its assurances leading to delay in the shipment of the coffee resulting in losses to the plaintiff. On the basis of the same, the respondent claimed for the losses suffered by him along with damages. The respondent further averred that the cause of action for the suit arose on various dates when the respondent purchased coffee from the appellant in the auctions held by them on the assurance that the ICO Stamps will be supplied by the appellant to them.

16. The cause of action in the above suit is the failure of ICO to supply stamps to the respondent in spite of its assurances. The respondent to ensure the success of his claim, was required to prove that on account of the omission of the

appellant i.e. failure to provide ICO Stamps for the coffee purchased by them, the respondent suffered losses.

- 17.** In spite of the different wording of the plaint in O.S. No. 4763 of 1986, being the subsequent suit, the respondent has primarily claimed that in spite of the assurance given by the appellant regarding the ICO stamps by its Circular dated August 18, 1982, the appellant failed to provide the requisite ICO Stamps for 230.4 tonnes coffee purchased by it between July 25, 1982 and August 18, 1982. That on the basis of the assurance of the appellant the respondent started making preparations for the shipment and after requesting for the ICO Stamps on August 28, 1982 and waiting for the same, he was forced for shipment of the coffee without the necessary stamps which lead to the recalling of the ship. That the respondent had to bear to and fro freight charges and other costs being the damages to importers for delay in shipment as the shipment was called back wrongfully; on account of the omission of the appellant for which the respondent is not accountable; and the appellant is liable for the cost arising from the recall of the shipment. Furthermore, as per the plaintiff, the cause of action

arose when the circular assuring the availability of stamps was issued, when the coffee was shipped and subsequently called back.

18. Though the plaint in the subsequent suit is more specific, we however, find that the respondent so as to recover the cost of the freight charges and other costs suffered by it, must prove that the appellant was under a duty to provide ICO stamps; and its failure to provide the stamps timely lead to the coffee being shipped without the stamps and ultimately lead to the losses being suffered by the respondent.

19. In both the suits the fact required to be proved by the respondent (being the plaintiff therein), to succeed in its claims was that on account of the failure of the appellant (being the defendant) to provide the required ICO stamps as assured by it, the respondent had to suffer losses. The two separate reliefs claimed by the respondent are dependent on the same fact being the omission of duty by the appellant. The grounds of disparity in the suits are the amount of coffee and the dates when the same was purchased, however it must be noted that

the period between August 11, 1982 and August 18, 1982 is common to both the suits and there are no specific pleadings differentiating the same. Furthermore, the suits were filed within a span of nine days of each other.

20. In the light of the above, we are of the opinion that suits should have been merged with the claims against coffee purchased between July 25, 1982 and September 8, 1982, (a period arising from the merging of the two periods claimed in the suits wherein eight days overlapped each other) clubbed together in the same suit from which two reliefs, first being the losses due to delayed shipment and second being the costs and losses arising due to the recall of the shipment, could have been claimed.

21. In the present factual matrix both the reliefs are being claimed separately in the two concerned suits. This scenario negates the principle of Order 2, Rule 2 in absence of any explanation as to why the respondent failed to claim the relief by way of a single suit when the cause of action was the same in the both. Therefore, we are of the opinion that the Trial Court

in its judgment dated March 17, 2005 correctly held that in light of O.S. No. 3150 of 1985 the present suit is barred under Order 2 Rule 2 of the Code.

22. In view of the aforesaid discussion, we find that the High Court has misappreciated the facts in the light of Order 2 Rule 2 of the Code and thereby the reasoning of the High Court cannot be sustained in the eye of law. The said suit (O.S.No.4763 of 1986) is barred. Considering the facts, as discussed above, we set aside the judgment and order of the High Court and uphold the order of the Trial Court. Accordingly, the present appeal is allowed and the suit of the respondent is dismissed.

JUDGMENT

.....J.
(Chandramauli Kumar Prasad)

.....J.
(Pinaki Chandra

Ghose)
New Delhi;
May 9, 2014.

SUPREME COURT OF INDIA



JUDGMENT

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