

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.22 of 2018

Sri Shantanu Paul, S/o. Late Kiran Shankar Paul, partner of M/S Shankar Paul, Jaggery and General Merchants and Commission Agents, Netaji Subhash Road, Agartala-799001, West Tripura.

-----Petitioner(s)

Versus

Sri Mirusingh Purohit, proprietor of Matheshwari Traders, Jaggery Merchants, No.1917, 4th Cross, Subhash Nagar, PO-Mandhya, HO(Subhash Nagar), Mandhya, Karnataka-571401.

-----Respondent(s)

For Petitioner(s) : Mr. S. Bhattacharjee, Advocate.

For Respondent(s) : Mr. A.R. Barman, Advocate.

HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL

Order

28/02/2019

Assailing the order dated 03-01-2018 passed by the learned Civil Judge (Senior Division), Agartala, West Tripura, Court No.1, in Misc. (Exe) No.04 of 2017 titled as *Shantanu Paul versus Sri Misrasingh Purohit* learned counsel for the petitioner refers to and seeks reliance upon the decisions rendered by the Apex Court in ***Oil and Natural Gas Commission versus Utpal Kumar Basu and Others*** reported in **(1994) 4 SCC 711** and ***Sunder Dass versus Ram Parkash*** reported in **AIR 1977 SC 1201**.

Having perused the record so made available, as also heard learned counsel for the parties, this Court is of the considered view that the impugned order cannot be said to be perverse,

illegal or erroneous, tendered as incomplete or incorrect appreciation of material on record.

It is not in dispute that the parties to the lis i.e. the petitioner herein is the defendant and the respondent herein is the plaintiff in a suit which filed in the Court of Addl. Civil Judge & JMFC at Mandya (State of Karnataka) and the subject matter of the said suit being commercial transaction entered into by the plaintiff with defendant, and non-payment of dues in relation thereto, wherein plaintiff alleged the defendant to have approached him for supply of Jaggery at Agartala, on credit basis which was so effected and payments in relation thereto, remitted in part through RTGS/Cheque.

With respect to the remaining amount, suit filed stands decreed in terms of judgment dated 06-08-2013 and decree thereof passed by learned Addl. Civil Judge & JMFC at Mandya in O.S. No.206/2013 titled as *Misrusingh Purohit versus Shantanu*.

It is a matter of record that the defendant did not contest the suit and only when the decree was sought to be executed in accordance with law at Agartala, did he raise the issue of the said judgment and decree being a nullity and that the interest awarded being against the statutory provisions.

Vide impugned order dated 03-01-2018, the Court below has dismissed such objection petition filed under Section 47 of CPC.

From the judgment and decree passed by the Civil Court, it is apparent that there are series of transactions in relation to the supplies contracted for. The cause of action accrued both with the State of Karnataka as also at Agartala. It is not that the Court at Mandya had no jurisdiction to try the suit; that no part of transaction took place within the State of Karnataka or that the parties had exactly conferred jurisdiction at the courts at Agartala. As such, it cannot be said that the judgment and decree in question is a nullity. Reliance on ***Oil and Natural Gas Commission*** (*supra*) is misconceived in law for there the Court was dealing with a case where the advertisement in the newspaper was read at Calcutta on the basis of which petitioner initiated action at Calcutta and the Court finding no cause of action to have arisen at that place dismissed the petition. More so, for the same had been filed with an ulterior motive only to give pecuniary advantage, by delaying the process of tender for which the advertisement stood issued.

Equally, the ratio laid down in ***Sunder Dass versus Ram Parkash*** (*supra*) does not help the petitioner in the said case, the Court was dealing with the judgment and decree which stood passed prior to the enactment of a special legislation dealing with specific issues, exclusively conferring jurisdiction on a specially constituted Tribunal, which is not the case in hand.

Issue of jurisdiction is a mixed question of fact and law which in the instant case stands conclusively adjudicated by the Civil Court situate in the State of Karnataka. Perhaps the only

remedy available with the petitioner is to challenge the decree in accordance with law.

As such, this Court finds no reason to interfere with the impugned order dated 03-01-2018 passed by the learned Civil Judge (Senior Division), Agartala, West Tripura, Court No.1, in Misc. (Exe) No.04 of 2017 titled as *Shantanu Paul versus Sri Misrusingh Purohit* and accordingly, the instant petition is dismissed.

(SANJAY KAROL), CJ



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