

A M/S BIHAR STATE FOOD AND SUPPLIES CORPORATION LTD.

v.

M/S GODREJ SOAPS PVT. LTD. AND ORS.

DECEMBER 2, 1996

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Code of Civil Procedure, 1908 :*

C *Section 25—Suit—Transfer of—Suit pending before Subordinate Judge, Patna—Pursuant to Supreme Court direction suit ordered to be transferred and tried with another suit pending before original side of Bombay High Court—Suit pending before High Court decreed against which appeal was pending—Thereafter application filed by appellant that the suit already transferred be transferred to Subordinate Judge Patna—Ground that the order passed by Supreme Court for joint trial had outlived its purpose—Held, having regard to the facts and circumstances and the nature of the disputes between the same parties in both the suits, instead of retransferring suit to the Court of Subordinate Judge, Patna, the Judge on the original side of the Bombay High Court should frame necessary issues within six weeks from the date of the receipt of this order—He should try the suit on day to day basis within*

D *four weeks from the date of the framing of issues.*

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CIVIL ORIGINAL JURISDICTION : Transfer Petition (C) No. 458 of 1995.

(Under Section 25 of the Code of Civil Procedure).

F P.P. Rao, T. Dayal and R. Mukherjee for the Petitioner.

Soli J. Sorabjee, D.A. Dave, Ravinder Narain, Ms. Nisha Bagachi, Rajan Narain, M. Vasudev, B.B. Singh, Pratap Venugopal and K.J. John for the Respondents.

G The following Order of the Court was delivered :

Having heard the learned counsel on both sides, we think that instead of transferring the suit, the following course would meet the ends of justice.

H The Civil Suit No. 336/79 pending on the file of the Subordinate

Judge, Patna was transferred by an order of this Court dated February 15, 1988 to be tried along with Suit No. 1028/78 pending on the original side of the Bombay High Court. It is now not in dispute that though Suit No. 1028/78 was posted along with transferred suit which was numbered as Suit No. 398/89, and they were adjourned for some time, the evidence was adduced in Suit No. 1028/78 and it was decreed by the learned single Judge. An appeal came to be filed and we are informed that the appeal is pending disposal.

It would appear that UCO Bank has also filed an appeal and that is also pending. After the disposal of Suit No. 1028/78, now the appellants have filed this application for transfer of Suit No. 298/89 to the file of the Subordinate Judge, Patna for trial on the ground that the order passed by this Court for joint trial had out lived its purpose and Suit No. 398/89 requires to be tried on issues which are not covered in Suit No. 1028/78. Having regard to the facts and circumstances and the nature of the disputes between the same parties in both the suits, instead of retransferring Suit No. 398/89 to the Court of Subordinate Judge, Patna, the learned Judge on the original side is requested to frame necessary issues in Suit No. 398/89 within six weeks from the date of the receipt of this order. If the relevant documents have already been filed or any additional documents are required, the same may be filed within two weeks thereafter. The learned Judge is requested to post the suit and try the suit on day to day basis within four weeks from the date of the framing of issues. The learned trial Judge is requested, after recording the entire evidence to be adduced by the parties, as stated earlier, on day-to-day basis, to transmit the entire evidence and the record of the suit to the Division Bench for consideration along with the Appeal Nos. 20 and 120/95 for disposal so that conflict of decisions could be avoided. The matter can be disposed of expeditiously. Liberty is given to make the request before the Division Bench after the receipt of the record to adduce evidence in the suits for early disposal thereof.

The Transfer Petition is accordingly disposed of.

T.N.A.

Petition disposed of.