

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision : September 26, 2011

+ FAO(OS) No.459/2007

Dr.(Col.) Subhash Chandra Talwar & Anr. ...Appellants
Through: Dr.(Col.) S.C.Talwar, appellant in
person.

versus

Choithram Memorial Hospital & Ors. Respondents
Through: Mr.A.P.Dhamija, Advocate for
respondents No.1 and 2.
None for respondent No.3 and 4.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SUNIL GAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. Of the 2 plaintiffs only one, Dr.(Col.) S.C.Talwar (Retd.) is litigating with the respondents, i.e. the defendants.
2. The prolix plaint, competing with Sachin Tendulkar to score a century, consisting of 116 paragraphs, has rightly met its Waterloo, when the learned Single Judge held that the plaint discloses no cause of action having accrued at Delhi and thus the Delhi High Court has no territorial jurisdiction to entertain the plaint and as a consequence the suit was dismissed vide impugned judgment dated 10.9.2007 which order was corrected

on review vide order dated 24.10.2007, holding that the suit would not stand dismissed but the plaint stands rejected.

3. Thus, the issue before us is whether the learned Single Judge has correctly read the plaint.

4. 2 plaintiffs joined in a common action by filing a suit alleging breach of contract, unlawful business practices, conspiracy, illegal trafficking, criminal intimidation, violation of public policy, denigration, harassment, humiliation, false imprisonment, intentional interference with prospective economic advantage and breach of covenant of good faith and fair dealing.

5. A rolled over pleadings terminated by claiming damages in sum of ₹37,26,000/- in favour of plaintiff No.1 and ₹20,28,000/- in favour of plaintiff no.2.

6. Case rightly noted by the learned Single Judge as projected in the plaint was, that the plaintiff No.1 was hired to serve as a doctor in Sierra Leone by defendant No.1 and 2 through defendant No.3 and 4 who were pleaded to be the placement agencies; and that plaintiff No.2 was directly hired by defendant No.1 and 2.

7. The learned Single Judge noted that neither defendant No.1 nor defendant No. 2 were carrying any business or activity from Delhi. Qua defendant No.3 and 4, the learned Single Judge noted that said defendants were placement agencies acting as independent agents to recommend persons required by defendant No.1 and 2 and such other clients of defendants No.3 and 4 who sought their service.

8. The learned Single Judge has opined, and rightly so, after reading the plaint and the cause on which the action was based that the action for damages was based upon the plea of the contract for service of the plaintiffs being wrongfully terminated by defendants No.1 and 2. We highlight that the cause was a breach of contract by terminating the services of the plaintiffs. The termination admittedly never took place at Delhi.

9. Appellant No.1 says that defendant No.3 and 4 were acting as the agent of defendant No.1 and 2 and thus it can be said that said defendants i.e. No.1 and 2 were carrying on business at Delhi.

10. The submission runs in the teeth of the law declared by the Supreme Court in the decision reported as (2006) 9 SCC 41, Dhoda House vs. S.K. Maingji, in paragraph 46 whereof, it was observed as under:-

"The expression 'carries on business' and the expression 'personally works for gain' connote two different meanings. For the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried at a place through an agent or a manager or through a servant. The owner may not even visit that place. The phrase 'carries on business' at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereover. The expression is much wider than what the expression in normal parlance connotes, because of the ambit of a civil action within the meaning of Section 9 of the Code. But it is necessary that the following three conditions should be satisfied, namely:-

"(1) The agent must be a special agent who attends exclusively to the business of the principal and carries it on in the name of the principal and not a general agent who does business for any one that pays him. Thus, a trader in the mufassil who

habitually sends grain to Madras for sale by a firm of commission agents who have an independent business of selling goods for others on commission, cannot be said to 'carry on business' in Madras. So a firm in England, carrying on business in the name of A.B. & Co., which employs upon the usual terms a Bombay firm carrying on business in the name of C.D. & Co., to act as the English firm's commission agents in Bombay, does not 'carry on business' in Bombay so as to render itself liable to be sued in Bombay.

(2) The person acting as agent must be an agent in the strict sense of the term. The manager of a joint Hindu family is not an 'agent' within the meaning of this condition.

(3) To constitute 'carrying on business' at a certain place, the essential part of the business must take place in that place. Therefore, a retail dealer who sells goods in the mufassil cannot be said to 'carry on business' in Bombay merely because he has an agent in Bombay to import and purchase his stock for him. He cannot be said to carry on business in Bombay unless his agent made sales there on his behalf. A Calcutta firm that employs an agent at Amritsar who has no power to receive money or to enter into contracts, but only collects orders which are forwarded to and dealt with in Calcutta, cannot be said to do business in Amritsar. But a Bombay firm that has a branch office at Amritsar, where orders are received subject to confirmation by the head office at Bombay, and where money is paid and disbursed, is carrying on business at Amritsar and is liable to be sued at Amritsar. Similarly a Life Assurance Company which carries on business in Bombay and employs an agent at Madras who acts merely as a Post Office forwarding proposals and sending moneys cannot be said to do business in Madras. Where a contract of insurance was made at place 'A' and the insurance amount was also payable there, a suit filed at place 'B' where the insurance company had a branch office was held not maintainable. Where the plaintiff instituted a suit at Kozhikode alleging that its

account with the defendant Bank at its Calcutta branch had

been wrongly debited and it was claimed that the court had jurisdiction as the defendant had a branch there, it was held that the existence of a branch was not part of the cause of action and that the Kozhikode Court therefore had no jurisdiction. But when a company though incorporated outside India gets itself registered in India and does business in a place in India through its agent authorized to accept insurance proposals, and to pay claims, and to do other business incidental to the work of agency, the company carries on business at the place of business in India."

11. The appeal stands disposed of affirming the view taken by the learned Single Judge that the plaint did not disclose any cause of action having accrued at Delhi. But, it cannot be said that the plaint has to be rejected inasmuch as the plaint did evidence a cause of action, but not at Delhi. The plaint had thus to be returned to the plaintiffs to enable them to re-file the same in the Court having territorial jurisdiction. Thus, the impugned judgments and orders are modified by directing that the plaint be returned to the plaintiffs to enable them to re-file the same in the Court having territorial jurisdiction.

12. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(SUNIL GAUR)
JUDGE

SEPTEMBER 26, 2011

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