

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO No.398/2009 & CM 18721/09**

% **18th July, 2011**

SURESH KUMAR Appellant

Through: Mr. S.B.S.Vashishtha, Adv.

VERSUS

DIRECTOR GEN OF C.R.P.F & ORS Respondents

Through: Mr. Anuj Aggarwal and Mr. Gourav
Kumar Khanna, Advocates for R-1 and 2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this First Appeal is to the impugned order dated 16.7.2009 which has returned the plaint for presentation to the competent Court.

2. The facts of the case are that the appellant/plaintiff was employed as a constable with CRPF. It is the case of the appellant in the plaint that while he was posted to Nagaland he had to be hospitalized in Kolkatta and where the respondent/defendant No.3 was a doctor who operated upon him. It is alleged that there was negligence by the defendant

No.3 as a result of which the appellant suffered severe infection causing serious complications. It is further alleged that he was diagnosed as multi organ failure from septicemia and his condition deteriorated. It was further the case of the plaintiff that his employer i.e. defendant Nos.1 and 2 (CRPF) did not take any action despite a memo dated 11.4.2003 was issued by the Police Surgeon Kolkata. The further averments in the plaint are with respect to admission of the plaintiff in another hospital in Kolkata and thereafter another hospital in Delhi. The sum and substance of the plaint therefore is the case of negligence of the doctor/defendant No.3 and the unhelpful attitude and the consequent negligence of his employers, defendant Nos.1 and 2.

3. The relevant paras and averments in the plaint are contained in paras 3 to 6 and 16 and the same read as under:-

“3. That due to his sickness the plaintiff was admitted to Police Hospital, Kolkata on 28.2.2003 for treatment of Gall Bladder Stone and on 6.3.2003 Dr. Sudipta Dutta, respondent no.3 conducted Open Cholecystectomy operation for removal of Gall Bladder Stone.

4. That during the operation due to negligence of respondent no.3 and other hospital staff the plaintiff got infection which caused serious complications and was diagnosed as multi organ failure from Septicemia and due to this the condition of the plaintiff deteriorated to such a condition that hospital authorities were not in a position to treat the petitioner. A memo was issued by Police Surgeon, Kolkata dated 11.4.2003 to the commandant of 43 Br. C.R.P.F. Damdam Airport, Kolkata – 52 but C.R.P.F. Authority did not take any action and the condition of the plaintiff was deteriorating from bad to worse day by day.

5. That due to the failure of C.R.P.F. Authorities to take proper action the family members of the plaintiff got him

discharged from Police Hospital, Kolkata, Andul Road, Howrah (West Bengal) in a very critical condition. The family members of the plaintiff were advised by Doctors at Police Hospital, Kolkata that chances of survival of plaintiff are few and the only hospital which can effectively treat the plaintiff in Kolkata is West Bank Hospital which is equipped with all facilities to treat such type of cases and in such a critical condition plaintiff was admitted at West Bank Hospital on 15.3.2002 and remained there upto 16.4.2003.

6. That after discharge from West Bank Hospital, Kolkata, the family members of the plaintiff brought him at Delhi and tried to get him admitted in the Safdarjung Hospital, New Delhi but due to non-availability of bed the plaintiff was kept at Sonia Hospital at Nangloi, Delhi in I.C.U. Unit for 3 days and thereafter the plaintiff was admitted to Safdarjung Hospital in the month of April 2003 and got the treatment upto May 2003 and thereafter he remained admitted at C.R.P.F. Hospital upto 24th October, 2003 and thereafter he was advised rest upto 17.12.2003.

16. That the defendants are liable to pay damages individually and severally for the rash and negligent acts of defendant no.3 who is an Officer of Defendant no.1. Defendant no.3 is also personally liable to his rash and negligent acts in performing the operation without due care and precaution. Defendant no.1 is responsible for payment of damages due to the inaction of the authorities and defendant no.2 being the employer of defendant no.1 is liable to pay the damages for the acts and omissions committed by defendant no.1 and 3."

4. The basic cause of action therefore alleged is with respect to the negligence of the defendant No.3 in conducting the operation and the post operative complications and infections. No doubt remains with respect to the fact that there is a joinder of cause of action in the plaint i.e. one cause of action qua defendant Nos.1 and 2 and another cause of action qua defendant No.3 and which becomes clear from the para 17 of the plaint and which reads as under:-

“17. The cause of action for filing of the present suit firstly arose when defendant no.3 performed the operation in a rash and negligent manner without observing the maximum precautions required. It further arose when the authorities failed to act in a responsible manner to provide the required services to the plaintiff for his treatment. It lastly arose on 12.1.2004 when a legal notice was served upon the defendants and defendants did not respond to the lawful demand of damage of the plaintiff. The defendants have not paid the damages till date to the plaintiff, hence the cause of action is still continuing against the defendants.”

5. On account of the aforesaid averments, the territorial jurisdiction of the Courts in Delhi was claimed as per para 18 of the plaint which reads as under:-

“18.That the defendants no.1 and 2 are having their head quarters at New Delhi and defendant no. 3 being an employee of defendant no.1 and also under defendant no.2. Hence this Hon'ble court has jurisdiction to try and entertain the present suit.”

6. The Supreme Court in the case of **Dhodha House Vs. S.K. Mainge, 2006 (9) SCC 41** has held that once there is a joinder of cause of action, the Court which tries the suit must have territorial jurisdiction with respect to all the causes of action. Para 54 of the judgment reads as under:-

“54. For the purpose of invoking the jurisdiction of a court only because two causes of action joined in terms of the provisions of the Code of Civil Procedure, the same would not mean that thereby the jurisdiction can be conferred upon a court which had jurisdiction to try only the suit in respect of one cause of action and not the other. Recourse to the additional forum, however, in a given case, may be taken if both the causes of action arise within the

jurisdiction of the court which otherwise had the necessary jurisdiction to decide all the issues.”

7. The trial Court while disposing of the issue of territorial jurisdiction has given the following relevant observations:-

“21. The plaintiff has filed the present suit for damages, allegedly suffered by him. The suit as provided u/S 19 of CPC, has to be filed at a place. (i) where the wrong is done or (ii) where the Defendant resides or carries on business or personally works for gain. Admittedly, the wrong, if any, was done at Kolkata and the defendant no.3 does not reside or carry on business or personally works for gain in Delhi but at Kolkata. The suit, therefore, could be instituted only at Kolkata.

22. A bare reading of Section 20 of CPC also makes it clear that where there are more than one Defendant, a suit can be instituted in a court within the local limits of whose jurisdiction, where each of the Defendants actually and voluntarily resides or carries on business or personally works for gain. But in case of a Defendant who does not reside or carries on business or personally works for gain, the suit can be instituted only with the leave of the court or if the Defendant acquiesces in such suit. The Defendant no.3 admittedly resides and works in Kolkata (West Bengal) outside the jurisdiction of this court. The plaintiff has not sought leave of this court for proceedings with the suit against the Defendant no.3 in Delhi and the Defendant no.3 has not acquiesced in the suit. The suit, therefore, could not have been filed as against the Defendant no.3 in this court.

23. The plaintiff has claimed damages on account of negligence, principally on part of Defendant no.3 while discharging his duty and the damages as against the Defendant no.1 and 2 are only ancillary. Since the principal relief is against the Defendant no.3 only, the suit could have been filed in the courts at Kolkata. The contention of Id. Counsel for the Plaintiff that the Head Office of Defendants no.1 and 2 are located in New Delhi and therefore Plaintiff could file the suit either at Delhi or at Kolkata and since part of cause of action arose at Delhi, this Court has jurisdiction, has no merits in the eyes of law. The plaintiff has undergone surgery for Gall Bladder Stone at Police Hospital, Kolkata. The Defendant no.3 Dr. Sudipta Dutta is an employee of State of West Bengal. He works for gain at Kolkata. He performed the operation at Kolkata. The principal grievance is also against the Defendant no.3 only. By no stretch of imagination, it can be said that part of cause of action

arose at Delhi, only because the Defendants no. 1 & 2 have their Head offices at Delhi. The contention of Id. Counsel for the plaintiff has no force in the eyes of law and hence rejected. The issue is accordingly, decided against the Plaintiff and in favour of the Defendant.”

In my opinion, it cannot be said that there is a principal cause of action against defendant No.3 as the trial court holds in the aforesaid para 23. There is a separate cause of action against defendant Nos.1 and 2 independently and another cause of action against defendant No.3 independently and both of which causes of action have been joined in the plaint.

8. Learned counsel for the appellant sought to argue that since the head office of the appellant/plaintiff was situated in Delhi, the Courts in Delhi would have territorial jurisdiction. The argument is completely misconceived because unless and until the leave sanctioning authority is in Delhi or there is any failure on account of the Head Office in Delhi, it cannot be said that the suit can be filed in Delhi merely because the head office of the employer/CRPF is situated in Delhi. In terms of provisions of Sections 19 and 20 of Code of Civil Procedure, 1908 (CPC), territorial jurisdiction lies with that Court where whole or part of cause of action arises and in the present case the appellant/plaintiff was posted in Nagaland and was operated upon in Kolkata. No part of cause of action therefore accrued so far as defendant Nos.1 and 2 are concerned in Delhi. So far as defendant No.3 is concerned, admittedly, the entire cause of action has occurred in Kolkata because

operation was performed on the appellant in Kolkata and where it is alleged that appellant/plaintiff got infection due to alleged negligence of defendant No.3.

Learned counsel for the appellant further argued that this Court should give leave under Section 20 CPC to sue defendant No.3 in Delhi. This argument is once again misconceived because the issue with regard to leave to sue defendant No.3 in Delhi would arise only if at all firstly there is territorial jurisdiction of the Courts in Delhi on account of cause of action having occurred in Delhi as against defendant Nos.1 and 2/employer. I have already stated above that no cause of action has occurred in Delhi qua defendant Nos.1 and 2 i.e. the Courts in Delhi have no territorial jurisdiction. Issue with respect to grant of leave arises only if one or more of the defendants reside at Delhi or part of cause of action against one or more of the defendants arise in Delhi and thereafter qua other defendant/defendants leave can be claimed to sue in Delhi. Since there is no whole or part of cause of action arising in Delhi against any of the defendants no.1 and 2, the issue of granting leave as prayed by the counsel for the appellant does not arise.

9. At this stage, learned counsel for the appellant states that this Court should instead of returning of the plaint, transfer the suit as a whole to Kolkata inasmuch as the impugned judgment has been passed at the final stage of the suit after complete evidence was led. It is argued that unless the suit as a whole is transferred there will be unnecessary wastage of time,

money and efforts of the parties. I am afraid that I may not be able to help the appellant inasmuch as I do not have power to transfer the suit from the Courts in Delhi to a Court in another State except under Section 22 CPC which does not apply because the present is not a case where courts of two or more States have jurisdiction and one of which State is Delhi. The power thus to transfer the present suit only vests with the Supreme Court under Section 25 CPC. If so advised, the appellant may take such steps as required in law for transfer of the suit.

10. With the aforesaid observations, the appeal is dismissed, leaving the parties to bear their own costs.

July 18, 2011
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VALMIKI J. MEHTA, J.