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

+ CS(OS) 1565/2009

% ***Judgment dated 16.05.2014***

SHRI RAM CHAND RUPANA Plaintiff

Through: Mr.S.S. Jain, Advocate

versus

STATE BANK OF PATIALA Defendant

Through: Mr.I.S. Alag and Mr.J.S. Lamba, Adv

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

I.A. 4316/2010

1. This is an application filed by the defendant under order 7 Rule 11 CPC for rejection of the plaint.
2. The necessary facts of the case as per the plaint are that the plaintiff. The plaintiff was kept out of service for around 30 years and at the time of filing of the suit he was a senior citizen of 70 years of age.
3. The matter was referred to the CBI for investigation. A case was registered and charges were framed for causing wrongful loss to the defendant of Rs.91,59,680/-. It is the case of the plaintiff that without conducting any enquiry the plaintiff was placed under suspension on 5.7.1979; and the action initiated by the defendant is against the service rules of S.B.P. It is also contended that after a protracted trial of 27 years, the plaintiff was acquitted.
4. In view of above, plaintiff has claimed damages of Rs.30.0 lacs from defendant for inhuman sufferings and on account of pendency of the FIR and protracted trial, which the plaintiff has suffered. In addition thereto

plaintiff has also claimed re-instatement and other perks.

5. The applicant / defendant has raised three grounds for rejection of the plaint i.e. (i) the present suit is hopelessly barred by limitation; (ii) the present suit does not disclose any cause of action; and (iii) this court has no territorial jurisdiction to try and entertain the present suit.
6. Counsel for the non-applicant/ plaintiff submits that the present application is not maintainable, as a complete reading of the plaint shows that the plaintiff has been able to disclose a cause of action. Counsel also submits that the plaintiff was acquitted in the criminal case on 4.7.2006 and the present suit has been instituted within three years thereafter, thus the suit is within limitation and further this court has the territorial jurisdiction to try and entertain the present suit as the Regional Controlling Officer of the defendant Bank is situated at Delhi. Relying on the explanation to Section 20 of the Code of Civil Procedure, Mr.S.S. Jain, counsel for the plaintiff submits that since the regional controlling office of the defendant is in Delhi, this court would have the territorial jurisdiction to try and entertain the present suit.
7. It is the case of the defendants that the plaintiff was dismissed from service on 24.11.1986 and an appeal filed by the plaintiff on 7.1.1987 against the order of dismissal was also dismissed on 12.5.1987. It is also contended that the plaintiff has suppressed and withheld material facts in the present suit inasmuch as that the plaintiff had filed a writ petition being WP(C)No.673/2009 impugning the order of dismissal from service. The aforesaid writ petition was dismissed for non-appearance on 31.5.2011 only after Single Judge called upon the petitioner to address arguments on admission. The order dated 20.5.2011 passed by Single Judge of this Court in WP(C)No.673/2009, reads as under:

“The counsel for the petitioner seeks adjournment. Even though the petition is of the year 2009, no notice has been issued as yet. The petition impugns the order of dismissal from service dated 24th November, 1986 and the order dated 18th May, 1987 of dismissal of the departmental appeal referred by the petitioner. The writ petition has been filed after 22 years. The counsel for the petitioner states that the writ petition was filed after acquittal in the prosecution arising from the same incident.

Prima facie, the acquittal in the prosecution would have no bearing qua the departmental proceedings. The law in this regard has been noticed in *Daya Swaroop Saxena Vs. The Presiding Officer MANU/DE/1373/ 2010*. Last opportunity is granted to the petitioner to address arguments on admission.

List on 31st May, 2011.”

8. On 31.5.2010⁷ the following order was passed in WP(C)No.673/2009:

“None has appeared for the petitioner in spite of passover. It appears that in view of the observations contained in the order dated 20th May, 2011 the petitioner is not interested in pursuing the petition.

Dismissed in default.”

9. It is submitted that since the plaintiff did not challenge the order of dismissal of the writ petition; the order has attained finality and no relief can be granted to the plaintiff and the suit thus lacks cause of action.
10. As far as the plea of territorial jurisdiction is concerned, counsel for the defendant submits that admittedly, the plaintiff was posted in Ghaziabad. As per the admission made in paragraph 2 of the plaint, FIR was lodged at P.S. Masoori, District Ghaziabad.
11. Counsel for the plaintiff submits that no order should be passed on merits

of the matter and the question of territorial jurisdiction should be decided first, as in case the court comes to the conclusion that this court does not have territorial jurisdiction, any observation made on merits in this order would adversely affect his case, in case the plaint is returned. In my view, there is force in the submission made by counsel for the plaintiff.

12. In support of his plea that since the defendant is carrying on business and the regional office at the relevant period was in Delhi, this court would have territorial jurisdiction in the matter, the plaintiff has placed reliance on explanation to Section 20 of the Code of Civil Procedure.
13. In my view this submission made by counsel for the plaintiff is without any merit. Section 20 of the Code of Civil Procedure, reads as under:

“20. Other suits to be instituted where defendants reside or cause of action arises.-

Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation -- A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations

(a) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.”

14. This court in the case of *M/s.Swastik Polytex Pvt. Ltd. Vs. Oriental Insurance Company* [CS(OS)No.1480/2010 decided on 12.3.2014], while deciding a similar question has held as under:

“6. The explanation to Section 20 CPC on which counsel for plaintiff has sought to place reliance, takes into account two situations. First part of the explanation deals with the situation where a corporation merely has a sole or a principal office. In such a situation, obviously the place where the sole or the principal office of the corporation is situated, will have the jurisdiction. As opposed to this, the second part of the explanation, deals with a situation wherein the cause of action arises at a place where the corporation has its branch / subordinate office, and as per the explanation to section 20, the Courts at such place where the subordinate office is situated, alone will have the territorial jurisdiction to entertain the suit.

7. Although counsel for plaintiff has laboured hard to persuade the court that the case of the plaintiff would be covered under the first part of the explanation on the ground that since the principal office of the defendant is situated at Delhi, the courts in Delhi would have territorial jurisdiction, in my view, this argument of the

plaintiff is erroneous and misplaced. In my considered opinion, the latter part of the explanation to section 20 is squarely applicable to the present case at hand, as the cause of action has arisen at Udaipur, where the branch / subordinate office of the defendant is situated and hence, it is the courts at Udaipur that will have the jurisdiction.

8. In the case of **Patel Roadways Limited Bombay Vs. Prasad Trading company**, (1991) 3 SCR 91 the Supreme Court of India had considered similar argument. It was held as under:

“The explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the explanation applies only to such a corporation which has its sole or principal office at a particular place. In that event, the courts within whose jurisdiction, the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the explanation. The latter part of the explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words “at such place” occurring at the end of the explanation and the word “or” referred to above which is disjunctive clearly suggest that if the case falls within the latter part of the explanation it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction “in respect of any cause of action arising at any place where it has also a subordinate office.”

9. Similar view has been expressed in the case of **New Moga Transport Co. Vs. United India Insurance Co. Ltd. & Ors.**, 2004 4 SCC 677. The relevant portion of the judgment reads as under:-

“10. On a plain reading of the Explanation to Section 20 CPC it is clear that the Explanation consists of two parts : (i) before the word “or” appearing between the words “office in India” and the words “in respect of”, and (ii) the other

thereafter. The Explanation applies to a defendant which is a corporation, which term would include even a company. The first part of the Explanation applies only to such corporation which has its sole or principal office at a particular place. In that event, the court within whose jurisdiction the sole or principal office of the company is situate will also have jurisdiction inasmuch as even if the defendant may not actually be carrying on business at that place, it will be deemed to carry on business at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The expression “at such place” appearing in the explanation and the word “or” which is disjunctive clearly suggest that if the case falls within the latter part of the explanation, it is not the Court within whose jurisdiction the principal office of the defendant is situate but the court within whose jurisdiction, it has a subordinate office which alone has the jurisdiction in respect of any cause of action arising at any place where it has also a subordinate office.”

10. A Single Judge of this Court in the case NTPC [General Manager] & Anr. Vs. Lt. Col. A.P.Singh (Retd.) & Anr., 156 (2009) DLT PAGE 572, has also held as under:-

“9. Thus it is clear that where the cause of action takes place within the jurisdiction of the subordinate office, it is only the Court situated at that place where the suit can be brought. I, therefore, consider that the trial Court wrongly came to conclusion that the Court at Delhi had jurisdiction. In the instant case, it was specifically provided in the Contract that the Court at Bhagalpur would have the jurisdiction. The entire cause of action had taken place within Bhagalpur.”

15. Having regard to the settled position of law and taking into consideration that the plaintiff was posted as Branch Manager of the State Bank of Patiala, Jindal Nagar Branch, Ghaziabad from 26.4.1978 to 5.7.1979; on

1.1.1979 the plaintiff was promoted as officer Grade-I (Old grade) equal to Middle Management Scale-III; in the year 1979 an FIR was lodged against the plaintiff under Section 409, 120-B and 471 IPC at P.S. Masoori, District Ghaziabad; the head office of the plaintiff bank is situated in Patiala and, thus, no part of cause of action has arisen in Delhi, this court would have no jurisdiction to try and entertain this matter. Accordingly, let the plaint be returned to the plaintiff to enable him to file the same in the appropriate court of jurisdiction within six weeks from the date of return of the plaint, in view of the intervening holidays. All legal objections of the defendants are kept open.

G.S.SISTANI, J

MAY 16, 2014

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