

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 25.03.2014

+ CMI 2/2014
RAJIV KUMAR GUPTA Petitioner
Through Mr. H.S. Kohli, Adv.

versus

S.C. SWAMI Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (oral)**

1. The present petition impugns an order dated 11.07.2013 passed by the learned ADJ (Central) Tis Hazari Courts Delhi whereby the suit filed by the petitioner herein was dismissed. The suit was dismissed owing to the lack of territorial jurisdiction conferred upon the Court in Delhi and the suit being barred by limitation.

FACTS

2. In year 2007-2008 the petitioner had come across an advertisement of the respondent, who was a practicing doctor in *Ayurvedic* medicines, claiming to cure baldness and facilitate regrowth of hair. He contacted the respondent/doctor and ultimately agreed to purchase the medicines prescribed by the latter. The respondent/doctor practices and resides in Bareilly, Uttar Pradesh from where the medicines were delivered to the petitioner at his residence in

Delhi being No. 1405, Chappar Wala Kuan, Karol Bagh, New Delhi-05. The total payment for the said treated amounted to Rs. 98,055/- for a period between December 2007 and August 2008. The petitioner made one part of the payment through demand draft and deposited the rest into the bank account of the respondent/doctor and his wife.

3. The petitioner submitted that he suffered from several side effects from the medicines and wanted the respondent/doctor to refund the amount paid. The petitioner filed a suit in 2012 claiming the principal amount in addition to damages. The petitioner filed the suit as an indigent person. The petitioner claims to suffering schizophrenia, depression, suicidal tendency and insomnia and is seeking treatment from the Institute of Human Behaviour and Allied Sciences (IHBAS) Delhi. It is in the background of these facts, that he filed a suit claiming an amount of Rs. 98,055/- with interest and damages amounting to Rs.4,00,000/- from the respondent/ doctor.

IMPUGNED ORDER

4. The petitioner/ plaintiff filed the suit claiming refund of the amount paid to the respondent/ doctor for the treatment in addition to the damages. The plaintiff filed the suit and an application was moved to sue as an indigent person. The application to sue as an indigent person was allowed vide order dated 18.4.2012.

It was the submission of the petitioner/plaintiff before the Trial Court that he suffered from schizophrenia, depression and insomnia, which led him to believe the claims made in the advertisement were true and subscribe to the medicines given by the doctor. The petitioner submitted that the claims made by the respondent in the advertisement were false as the medicines caused severe side effects. The petitioner wanted the refund of the amounts paid since the medicines were ineffective. In addition, the petitioner submitted that the suit was filed after the expiry of the statutory period of three years, as provided under the Limitation Act, 1963 for the reason that he has been suffering from schizophrenia. Accordingly, an application under section 6 of the Limitation Act was moved.

The respondent/ doctor, defendant in the suit, took the preliminary objection that the suit is barred by limitation and that the plaintiff lacked cause of action. The defendant denied having induced the plaintiff for hair regrowth. The defendant submitted that he had given proper *Ayurvedic* treatment to the plaintiff. The claim of the petitioner/plaintiff being schizophrenic and that he suffered from depression was also specifically denied.

From the pleadings, the Court framed the following preliminary issues;

- i. Whether this Court has jurisdiction to try and entertain the present case?
- ii. Whether the suit of the plaintiff is barred by law of limitation?

5. On the first issue, the Trial Court noted that the plaintiff/petitioner claimed Rs. 400,000/- as damages apart from the principal amount of Rs. 98,055/- but also noted that the respondent was a doctor residing and practicing out of Bareilly, Uttar Pradesh. The Trial Court relied upon Section 20 of the Code of Civil Procedure (CPC) to hold that the territorial jurisdiction to entertain the suit did not lie with it as the respondent/ doctor is a resident of Bareilly and that the petitioner had taken treatment from Bareilly. Furthermore, all payments were made to Bareilly thereby giving rise to the cause of action in Bareilly. The petitioner's submission that since the medicines were delivered to him in Delhi, the cause of action also arose in Delhi thereby vesting the Courts in Delhi with the jurisdiction to entertain the suit was not accepted by the Trial Court. The Learned ADJ held that a mere delivery of a parcel, containing the medicines which were ordered from Bareilly, would not be sufficient to conclude that the cause of action arose in Delhi. In conclusion, the Court held that only the Bareilly Court has the jurisdiction to hear the suit and not the Court in Delhi.
6. On the second issue of the suit being barred by limitation, the Trial Court noted that the payments were made to the respondent doctor between December 2007 and August 2008 and that the present suit was filed on March 2012 i.e. after the limitation period of three years. An application seeking condonation of delay under Section 6 of the Limitation Act was moved on the ground of him being schizophrenic and suffering from depression. In

furtherance of this submission, the petitioner placed on record the medical certificate dated 11.08.2007 issued by the Institute of Human Behaviour and Allied Sciences, Delhi. The Court noted the admission of the petitioner that he continued to be a patient of schizophrenia and that his disability has not yet ceased. However, the medical certificate produced shows that the petitioner has been an outdoor patient since January 2003. There is no document on record to show that the petitioner's schizophrenia continued till date or that it existed in the year 2008-2012. The Court held that there was no proof to show that the petitioner could be termed as an insane person and that his condition would prevent him from filing the suit within the period of limitation. It further noted that the petitioner seemed capable enough to file the suit in his own capacity and advance arguments in Court. The actions of the petitioner only go to show that he was mentally stable and that the Court saw no reason to extend the period of limitation. The Trial Court accordingly dismissed the suit.

CONTENTIONS AND ANALYSIS

7. Mr. H. S. Kohli, Advocate was appointed as the *amicus curiae* in the present petition to assist the Court. Mr. Kohli has submitted a written synopsis elucidating his arguments on the stand of the petitioner. The learned counsel submits that the learned ADJ fell into error by dismissing the suit on preliminary grounds. It is submitted that the Court summarily dealt with the issues without affording an opportunity to the petitioner to produce all such documents which would show that the petitioner was within the

prescribed period of limitation to file the suit. It is submitted that the petitioner, a schizophrenic, got mentally depressed in 2010 due to the side effects of the medicines prescribed by the respondent and the petitioner filed the suit in 2012 claiming damages and refund of the amount paid. The learned counsel submitted that the learned ADJ erred in holding that there was no document on record to show that the petitioner suffered from any of the abovementioned conditions between 2008 and 2012. The Court only took into account the certificate issued by IHBAS wherein the petitioner had been classified as an outdoor patient since January 2003. The learned counsel submitted that documents, showing that the petitioner continued to suffer from schizophrenia and was undergoing treatment for the same between 2009 and 2012, failed to be taken on record. The Counsel submitted that these documents make it clear that the period of limitation continue to run against the petitioner at the time of filing the suit and that the suit was filed well within the prescribed period of three years as mandated under section 6 of the Limitation Act.

8. This Court is not persuaded with the aforesaid argument. There is absolute clarity in so far as Section 6 of the Limitation Act provides for the period of limitation to start running from the time the disability of the plaintiff has ceased to exist. Schizophrenia, no doubt, is a mental condition which causes suspicion about visual the perception, hallucinations including those being auditory in nature, and delusions that render an individual incapable of making reasoned decisions. However, this Court would not ignore the

actions of the petitioner. There is no doubt that the petitioner saw the advertisement of the respondent and contacted the latter for the medicines to be delivered in return for an agreed consideration. Thus, there is an agreement that is effectively established between the parties. What requires to be determined is whether the petitioner was capable of entering into an agreement when he claims to be suffering from an mental- illness. Section 12 of the Indian Contract Act reads as under:

12. What is a sound mind for the purposes of contracting.—
A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Section 12 makes it clear that the person, though suffering from mental condition, shall have entered into valid agreements if such contracts were made during period of lucidity. The petitioner herein may well be suffering from schizophrenia and depression but he decided to subscribe to the medicines provided by the doctor for an agreed amount. The suit was also filed by the petitioner himself when such medicines allegedly caused side effects. All such actions indicate the petitioner's capability of performing cognitive

functions which show that he was not suffering from schizophrenia or depression at the time when such decisions were made. The petitioner cannot take the shelter of being schizophrenic when acts were committed during lucid intervals. The Trial Court was correct in its reasoning that the intensity of schizophrenia is important to be determined before concluding that the petitioner was incapable of reasoned behaviour at all times. The medical records provided by the petitioner are prescription of medicines for schizophrenia. The records do not detail the severity of the petitioner's condition. Furthermore, the petitioner is being treated as an outdoor patient, which only goes to show that the petitioner's condition was not so grave that he was to be mandatorily hospitalized. In other words it was medically deemed that he could find his way about and carry on his daily chores. It is important to note that there are several varieties of schizophrenia and varying degrees of its intensity. This Court is of the view that the petitioner is barred by period of limitation and that the Trial Court was correct in refusing to condone the delay in filing the suit.

9. The next argument to be considered was that the learned ADJ erred in holding that the Court in Delhi did not have the territorial jurisdiction by relying on section 20 of the CPC. It was submitted that the contract of supply stood completed when the medicines were delivered to the residence of the petitioner in Delhi thereby giving rise to the cause of action in Delhi. The Trial Court was incorrect in holding that delivery of medicines in Delhi was insufficient to attract the territorial jurisdiction of Delhi Courts.

10. This Court is not persuaded with the aforesaid contentions. There is no doubt that the respondent/ doctor had his practice and place of residence in Bareilly, Uttar Pradesh. There is no evidence whatsoever to indicate that the respondent had any business in Delhi. As a consequence of residing in Delhi, the petitioner had the medicines delivered to himself in Delhi. The impugned order rightly referred to section 20 of the CPC. The section is a general one covering all personal actions (i.e., relating to person or movable property). Such personal action shall be instituted in a Court within whose local jurisdiction- (a) the defendant actually resides or carries on business or (b) any of the defendants actually resides and either the leave of the Court has been taken or the other defendants acquiesce, or (c) the cause of action or a part of it arises. What requires to be determined is if the cause of action or a part thereof arose in Delhi so as to confer jurisdiction upon the Delhi courts. Cause of action is a bundle of facts which taken with the law applicable, gives the plaintiff a right to relief against the defendant.¹ It is important to note that it is not limited to the actual infringement of right sued on, but includes all the material facts on which it is founded. Section 20 of the CPC provides the court having jurisdiction shall be the place of business or residence of the defendant or the place where the cause of action arises. The Court in *S. S. Jain & Co & Anr. v. Union of India*² while adjudicating the

¹Dhanajshaw v. Fforde (1887)ILR 11 Bom 649

² (1994)1 CHN 445

issue of action of action in a writ petition, which is akin to the cause of action dealt under the CPC, held:

“19. The High Court, in appropriate cases, can and should, examine the bundle of facts constituting the cause of action to see if some other High Court can be said to be dominantly connected with the cause of action, rather than itself. In case the High Court comes to such a conclusion, then in my opinion, it would be improper for the writ petitioner to proceed in the High Court having a far less, and a mere slender connection with the cause of action. The writ petitioner in that case should be relegated to seek his remedy before that other High Court, having the dominantly larger connection. Just as a litigant is not permitted to choose his judge, so also shall a litigant not choose his High Court in the matter of presentation of his writ application. He shall approach that High Court only which has by far the largest connection with the facts giving rise to his grievance.”

The Supreme Court, in a later decision **titled *Kusum Ingots and Alloys Ltd. v. Union of India***³ held:

“Forum conveniens

30. We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.”

This Court is of the view that there would be grave injustice to the respondent if the Courts in Delhi entertain the suit when section

³ (2004)6 SCC 254

20, CPC deems the Courts in Bareilly to be vested with jurisdiction to hear the suit i.e. where the defendant actually resides or carries on business. The Trial Court has correctly applied the section, keeping in mind the intention of the section and accordingly concluded that the suit lacks territorial jurisdiction. This Court agrees with the conclusion of the Trial Court.

11. In view of the aforesaid decision, this Court finds no merit in the present petition. The reasoning for the conclusion arrived at in the impugned order is a plausible view in law; it does not suffer from material irregularity, illegality or infirmity. The petition is without merit and is accordingly dismissed.

**NAJMI WAZIRI
(JUDGE)**

MARCH 25, 2014