

GAHC010139092022



THE GAUhati HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/154/2022

RAGHAV MANTRI AND 2 ORS
S/O- VIJAY KUMAR MANTRI, R/O- 205, SKY LINE APT. LANG FORD ROAD,
SHANTI NAGAR, OPP. DIVYASHREE CHAMBERS, MUSEUM ROAD,
BANGALORE-560025, KARNATAKA, PROPRIETOR OF M/S. INDIAN
EDUCATIONAL SERVICES, HAVING ITS OFFICE ST SMR HOUSE NO. 11, 1ST
FLOOR, CONVENT ROAD, RICHMOND TOWN, BANGALORE-560025,
KARNATAKA.

2: UNIVERSITY VILLAGE
HAVING ITS PRINCIPAL OFFICE AT SMR ROAD
RICHMOND TOWN
BANGALORE-560025
KARNATAKA.

3: IMMACULATE EDUCATION SERVICE PRIVATE LIMITED
HAVING ITS REGD. OFFICE AT SMR HOUSE
NO. 11
1ST FLOOR
CONVENT ROAD
RICHMOND TOWN
BANGALORE-560025
KARNATAKA

VERSUS

SAMIT DEY
S/O- LATE UMESH CHANDRA DEY, SASWATA, III FLOOR, DR. B. BARUAH
ROAD, ULUBARI, GUWAHATI-781007, DIST. KAMRUP(M), ASSAM

Advocate for the Petitioner : MR. R C SANCHATI

Advocate for the Respondent : MR. V K CHOPRA

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 21-04-2023

1. Heard Mr. S Sancheti, learned counsel for the petitioner. Also heard Mr. V.K. Chopra, learned counsel for the respondent.
2. The present petition is filed assailing an order dated 07.04.2022 passed by the learned Court of Civil Judge No.2, Kamrup (M) in Money Suit No.91/2021, rejecting an application filed under section 20 read with Order XIV Rule 2(2) of the Code of Civil Procedure.
3. The respondent as plaintiff filed a suit for realization of Rs. 34,48,274.00 only. The basic case of the plaintiff was that the son of the plaintiff found the website belonging to the petitioner with an advertisement for admission into Colleges & Courses and the advertisement contained EDUCATION.ForAnyone.Anywhere in India.
4. According to the plaintiff, on the basis of such advertisement the plaintiff approached the petitioners/defendants and entered into certain agreements for admission of the son of the plaintiff in MBBS course in Karnataka. Certain amounts were also paid to the defendants, however, the defendants violated the terms of such agreement and accordingly, the plaintiff demanded certain amount of money back. Part of such demand was fulfilled, however, the entire amount was not returned. Accordingly the suit was filed.
5. Coming to the cause of action, the plaintiff at paragraph

No.25 and 27 of the plaint pleaded the following:

“25. That the plaintiff begs to state that all the telephonic conversations with the defendant No.1 was held by the plaintiff from Guwahati. Apart from above, the payment as reflected in the foregoing paragraphs had been made from Guwahati. Whatever the amount returned as referred to in the foregoing paragraphs by the defendants were also paid through bank to the plaintiff's bank account at Guwahati. Thus, the cause of action has partly arose at Guwahati and this Hon'ble Court has the jurisdiction to entertain the claim of the plaintiff.”

27. That the cause of action for the suit arose on and from August 2018, 23/08/2018, 28/08/2018, 27/12/2018, 06/06/2019, 17/06/2019, 30/07/2019, 29/02/2020, 02/07/2020, 14/07/2020, 17/07/2020, 30/07/2020, 31/07/2020, 03/08/2020, 04/08/2020, 08/08/2020, 13/08/2020, 15/08/2020, 17/08/2020, 19/08/2020, 28/08/2020, 29/08/2020, 04/11/2020, 17/03/2021, 24/03/2021, 31/03/2021, 28/07/2021, 03/08/2021, 17/11/2021 and on other various dates when the plaintiff demanded the payment and the defendant failed to make the same.”

6. The defendant on receipt of summon appeared before the Court and filed a petition for framing a preliminary issue regarding jurisdiction of the learned court below. Such petition was registered as Petition No.704/2022 dated 15.03.2022. The defendant took a specific stand in reply to the aforesaid paragraph No.25 of the plaint to the following effect:

“5. That in paragraph 25 of the plaint, the plaintiff had stated that telephonic conversation with the defendant No.1 was held from Guwahati and that payment which was made and returned to the plaintiff in his bank account at Guwahati though the same does not give arise to any cause of action at Guwahati since the said

account is maintained by the plaintiff in Guwahati as the plaintiff is a resident of Guwahati and that telephonic conversation from Guwahati will not give rise to any cause of action at Guwahati."

7. The learned counsel for the petitioners submits that certain transactions were made to the bank account of the plaintiff, however, as admittedly the place of business of the defendants are in the state of Karnataka, more particularly in Bangalore, such payments made cannot give rise to any territorial jurisdiction to the learned trial Court.

8. Per contra, the learned counsel for the respondent submits that the learned trial Court has rightly decided the issue inasmuch as, it is an admitted position that certain transactions were made in the bank account of the plaintiff at Guwahati.

9. The admitted position is that the defendants are having their principle place and registered Office at Bangalore, Karnataka. From the plaint, it is also clear that admissions were to be given in institution which is not only in Karnataka but also in Rajasthan and other states. From the plaint it is also clear that the plaintiff met the defendants at Bangalore and entered into the agreement to take the service of the defendants for the purpose of admission of his son in MBBS courses and for that, certain amounts were also deposited in the bank account of the defendants. It is also an admitted position that certain payments were made from Guwahati and certain amounts were returned to the plaintiff by the defendants in his bank account maintained at Guwahati.

10. Section 20(C) of the CPC mandates and provides that a suit can be instituted where the cause of action, wholly or in part arises.

From the aforesaid discussion, it is clear that out of the contract between the plaintiff and the defendant, certain transactions were done in the bank account of the plaintiff at Guwahati and such transaction has also been admitted by the defendants. The averments that payments were made directly into the bank account of the respondent/plaintiff at Guwahati have not been denied by the petitioner/defendant. The fact also remains that from the plaint and the objections filed by the defendants, it is clear that under the agreement between the plaintiff and the defendants, no place of payment was specified and that certain amounts were transacted at the bank account of the plaintiff maintained at Guwahati.

11. The learned trial Court under its order dated 15.03.2022, relied on the paragraph 25 of the plaint and concluded that the cause of action arose within its jurisdiction. It was also seen that the learned trial Court below heard on 15.03.2022 and fixed the same for orders on 07.04.2022. On 07.04.2022 the learned trial Court has concluded that though the defendants belong to Bangalore, some monetary transactions has been made by the plaintiff from Guwahati, therefore, in terms of section 20(C) of the CPC some part of cause of action had arisen at Guwahati. Therefore the contention of the learned counsel for the petitioner that while rejecting the prayer no discussion or reasons has at all been given inasmuch as, the hearing was concluded on 15.03.2022 and submissions were recorded on that day and final order was passed on 07.04.2022.

12. In the considered opinion of this Court, the learned trial Court below had also not committed any jurisdictional error or passed such

an order resulting in miscarriage of justice or grave failure of justice.

13. In the considered opinion of this court, the part of cause of action arose on account of payment made by the defendants directly into the bank account of the respondent/plaintiff inasmuch as, there is nothing on record to show that the place of payment has been fixed. Accordingly, this court is of the view that the trial Court is having jurisdiction to try the suit.

14. In view of the aforesaid, this court finds no merit in the present revision petition. Accordingly, the same stands dismissed.

JUDGE

Comparing Assistant