

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.1963 of 2012 (O&M)
Decided on:-08.01.2015.

Smt. Santosh Khanna and anotherPetitioners.

Versus

Vimal Krishan Khanna and othersRespondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. A.P.S. Sandhu, Advocate
for the petitioners.

Mr. Sheerish Gupta, Advocate
for respondents No.1 to 3.

Dr. Bharat Bhushan Parsoon, J.

Order dated 15.11.2011 (Annexure P-6) passed by Civil Judge (Junior Division), Amritsar vide which application of defendants No.2 and 6, petitioners herein, under Sections 16, 20 and 21 read with Order VII Rule 10 and Section 151 CPC for return of the plaint, claiming that the courts at Amritsar have no jurisdiction, was rejected, is under challenge in this revision petition.

2. Suit for dissolution of partnership M/s Khanna Spinning Mills (hereinafter mentioned as the partnership firm) and for rendition of accounts, was filed by the plaintiffs, respondents No.1 to 3 herein. Without filing any written statement, objection of jurisdiction was raised by the petitioners-defendants claiming that only the courts at Bombay had the jurisdiction as

partnership deed was executed at Bombay and income tax assessment of the firm was also being made at Bombay. This plea of the petitioners-defendants was contested tooth and nail by the respondents-plaintiffs detailing multiple circumstances showing cause of action having arisen at Amritsar as well though jurisdiction of the courts at Bombay was not denied. It was claimed that business of the firm is also being conducted from Amritsar in the premises of M/s Amritsar Swadeshi Woollen Mills, Ram Tirath Road, Amritsar and the partnership firm has its staff and operations as also bank account at Amritsar.

3. Counsel for the parties have been heard at length.

4. Counsel for the petitioners-defendants, referring to Section 20(c) CPC urges that a suit is to be instituted where cause of action wholly or in part arises. In support of his contention, he has placed reliance on ***Subodh Kumar Gupta Versus Shrikant Gupta 1993(2) PLR 728 (SC)*** wherein it was held by the Hon'ble Apex Court that if no cause of action arises at a place, suit cannot be filed at such place. Support has also been sought from ***Manmohan Muttappa Attavar and others Versus Harendra Sakarlal Parikh and others 2003(6) BCR 423 (Bombay); Jayakrushna Sahu Versus Harinarayan Ram 1988 CivCC 302 (Orissa); Raghunath Rai Rambilas, Firm Versus Surajmal Nagarmal, Firm AIR 1936 Patna 6 and Mahomedbhai Huseenbhai and others Versus Admji Halimbhai and others AIR 1922 Bombay 152.***

5. Concedingly, the partnership firm was carrying on, inter alia, transport business. Partnership deed dated 1.4.2000 (Annexure P-1) in certain terms reveals that business of partnership concern was to be carried on at Bombay and Amritsar and could also be carried on at any other place by mutual consent of the partners. This partnership was in extension of earlier partnership deed of 1.4.1999 in which also, concedingly, there was no

prohibition of carrying on of business at Amritsar. Merely because the partnership deed (Annexure P-1) was executed at Bombay and income tax assessment had also been made there is not the circumstance to deny jurisdiction of courts at Amritsar particularly when despite denial by the petitioners-defendants, there are clear pleadings of the plaintiffs that business of the firm was being run from Amritsar and even now, trucks are being plied from there and sale office of the said firm is continuing working from the premises of M/s Amritsar Swadeshi Woollen Mills, Ram Tirath Road, Amritsar where there is separate staff and bank account is being operated in Standard Chartered Bank, the Mall, Amritsar.

6. It is an admitted fact that for determining jurisdiction of the courts to entertain a suit, averments made in the plaint only, irrespective of the pleadings of the defendants, are to be considered. The fact that the firm is running its business at Amritsar and also has a bank account and had been preparing its balance sheet there and also had its staff and office, weighed heavily with the lower court and rightly so, for determining the question as to whether the courts at Amritsar have jurisdiction to entertain the suit? It is worth notice that the suit by the respondents-plaintiffs was filed as back as on 11.11.2006 and is pending adjudication because of delaying tactics adopted by the petitioners-defendants.

7. Keeping in view the facts and circumstances as discussed earlier, the impugned order is not only well-written taking into consideration all the attending facts and circumstances but has also considered the documents unfailingly revealing conducting of business by the firm at Amritsar in tune with the partnership deed, where the firm also has a bank account and is operating its transport business with its separate premises and the staff. The present petition is nothing but a misuser of the process of the Court which has been filed merely to delay the adjudication of the suit pending below.

8. Sequelly, there being no factual or legal infirmity in the impugned order, no ground to interfere with the same is made out. Affirming the impugned order, this petition, being devoid of any merit, is dismissed with costs of Rs.5,000/-.

9. Vide impugned order dated 15.11.2011 (Annexure P-6) of the lower court, last opportunity was given to the defendants to file written statement but the defendants have been whiling away the time. Since the suit has become old, the same would be decided within six months by the lower court by giving reasonable opportunity to both the parties to lead their evidence and even by conducting day to day proceedings, if found necessary.

10. Parties are directed to appear before the lower court on 27.1.2015.

(Dr. Bharat Bhushan Parsoon)
Judge

January 08, 2015
'Yag Dutt'

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