

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1268 OF 2016**

Shri Sudhir Babasaheb Chavan Petitioner
Vs
Shri Gunaji Bhiku Amre .. Respondent

Mr.Shakeeb Shaikh i/b S.B.legal Associates, Advocate for
Petitioner.

Mr. Vijay V. Sonawane, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 18/03/2016

PC:

1. Heard Mr. Shakeeb Shaikh, learned counsel for the petitioner and Mr. Vijay Sonawane, learned counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 16.12.2015 passed by the learned Judge presiding over Court Room No. 27 of the City Civil Court at Greater Bombay, in Notice of Motion No.3820 of 2015 in Summary Suit No.174 of 2015. By that order, the learned trial Judge dismissed the Motion taken out by the petitioner, hereinafter referred to as 'defendant', for returning plaint under Order VII, Rule 10 of C.P.C. on the ground that City Civil Court has no territorial jurisdiction to entertain and try the suit.

3. Plaintiff has instituted suit for recovery of Rs.40,76,400/-, inter-alia, on the ground that the defendant had issued three

cheques in the sum of Rs.50 Lacs, which are annexed at Exhibits-B-1, B-2 and B-3 respectively. The plaintiff has alleged that the defendant resides in Chembur, Mumbai. The plaintiff intended to buy agricultural land and, therefore, he approached the defendant. The defendant promised to secure agricultural land at village Tale Road, Tal. Indapur, District -Raigad, and promise was made at Chembur, Mumbai at the residence of defendant. The plaintiff handed over cheques and cash of Rs. 50,76,400/- to the defendant at his residence in Chembur, Mumbai. The Bank from which the said cheque was issued to the plaintiff by defendant is situate in Chembur, Mumbai and, therefore, entire cause of action has arisen in Mumbai. In paragraph 11, the plaintiff reiterated that as the entire cause of action arose in Mumbai and the defendant resides in Mumbai, City Civil Court has jurisdiction to entertain and try the suit.

4. The defendant took out Notice of Motion No.3820 of 2015 for returning the plaint under Order VI, Rule 10 on the ground that the defendant is a real estate agent in Ratnagiri and resides at village Yegaon, Taluka Chiplun, District Ratnagiri. Address of the premises which is shown in the cause-title, is occupied by his father, mother and wife, children (son and daughter) of the defendant. It is further alleged that the agreement between the parties was executed in Raigad, District-Maharashtra. Even on this count, City Civil Court Mumbai will have no jurisdiction to

entertain and try the suit.

5. By the impugned order, the learned trial Judge dismissed the Motion. It is against this decision the defendant has instituted the present petition.

6. Mr. Shaikh relied upon the decision of Punjab and Haryana High Court in the case of Mohan Mohan Singh Vs Lajya Ram , AIR 1956 P&H 188 as also the decision of the Apex Court in the case of Union of India Vs. Ladu Lal Jain, AIR 1963 SC 1681. He has also relied upon the decision of the Apex Court in the case of Hardesh Ores Pvt Ltd Vs Hede and Company, (2007) 5 SCC 614.

7. Mr. Shaikh submitted that the defendant voluntarily and ordinarily resides in Ratnagiri. The plaintiff has instituted suit on the ground that the defendant resides in Mumbai. As the defendant actually and voluntarily resides at Ratnagiri, City Civil Court will have no jurisdiction to entertain and try the suit.

8. On the other hand, Mr. Sonawane supported the impugned order. He submitted that cheques were drawn by the defendant on ICICI Bank, Dapoli Branch. Cheques were presented in Canara Bank, Mumbai Branch and cheques were dishonoured in Mumbai. Apart from that, in the Agreement dated 21.4.2014 was executed at Raigad, address of the defendant is shown at Mumbai. In short, he submitted that the defendant resides in Mumbai and the cause of action also accrued in Mumbai.

9. I have considered the rival submissions advanced by the

learned counsel appearing for the parties. I have also perused the material on record. Perusal of the impugned order shows that the learned trial Judge, while dismissing the Motion, has observed in paragraph 5 that the documents produced by the defendant are not sufficient to establish that he is not residing within the jurisdiction of the City Civil Court or that he is permanently residing at Village Yegaon, Taluka Taluka. Learned trial Judge also referred Agreement dated 21.4.2014 on which suit is filed, was executed on the stamp paper purchased at Mumbai. Agreement also records address of the defendant of Chembur, Mumbai which was also mentioned in the suit. Demand notice dated 11.12.2014 was issued to the defendant on the address of Mumbai and the same is not denied by the defendant. He did not produce any material to substantiate that he was residing at Village Yegaon. The defendant did not produce Ration Card of his wife and children to establish that he is not residing at Mumbai. The learned trial Judge also referred to Aadhar Card which shows address of the defendant is of Mumbai.

10. In view thereof as also having regard to the fact that cheques annexed at Exhibits B-1, B-2 and B-3 were dishonoured at Mumbai, I do not find that the learned trial Judge has committed any error in passing the impugned order. In paragraph 5 the learned trial Judge has discarded the case of the defendant that he was resident of Ratnagiri and held that he is resident of

Mumbai.

11. Apart from the above, Section 16 (a) to (f) of C.P.C. lays down that suits shall be instituted where subject matter is situate. Section 17 lays down place of institution of suits for immovable property situate within the jurisdiction of different Courts. Section 18 lays down place of institution of suit where local limits of jurisdiction of Courts are uncertain. Section 19 provides for suits for compensation for wrongs to person or movables. Mr. Shaikh was not in a position to demonstrate that present suit falls in any of the clauses (a) to (f) of Section 16 or that Sections 17 to 19 are applicable to the facts of the present case.

12. Section 20 reads thus:

“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. “

Perusal of Clauses (a) and (b) of Section 20 shows that subject to the limitations contained in Sections 15 to 19, every suit is to be instituted in a Court within the local limits of whose jurisdiction the defendant, at the time of the commencement of the suit, actually and voluntarily resides. Clause (c) provides that suit can also be instituted in a court within the local limits of whose jurisdiction cause of action, wholly or in part, arises.

13. I have already held that cause of action accrued in Mumbai. The learned trial Judge has held that the defendant is actually and voluntarily residing in Mumbai. In view of Section 20 of C.P.C, I do not find that the learned trial Judge has committed any error in dismissing the Motion. The decisions relied by the petitioner do not assist the case of the Petitioner. In view thereof, petition fails and the same is dismissed.

(R.G.KETKAR, J.)