

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3299 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful petitioners/defendants is directed against the order dated 13.07.2015 of the learned XXVII Additional Chief judge, City Civil Court, Secunderabad passed in I.A.no.274 of 2015 in O.S.no.210 of 2014 filed under Order VII Rule 10 read with Section 151 of the Code of Civil Procedure, 1908 requesting to return the plaint in the aforementioned suit to the plaintiff for presentation before proper Court.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendants ('the defendants', for brevity) and the learned counsel for the respondent/plaintiff ('the plaintiff', for brevity). I have perused the material record.

3. The case of the defendants in support of the request in the aforementioned application, in brief, is this:

The trial court is not having territorial jurisdiction to entertain the suit of the plaintiff. The plaintiff ought to have filed the suit in an appropriate Court at Anakapalli as the cause of action for the suit arose at a place within the territorial jurisdiction of the Court at Anakapalli. The plaint averments are false. The defendants reserve their right to file a detailed written statement. In the purchase order, there is clause no. (14) wherein, it is stated that any disputes arising out of the transaction are subject to the jurisdiction of the Anakapalli Court. No part of the cause of action arose at a place situate within the territorial jurisdiction of the Court at Hyderabad. As such, the suit filed in the Court at Hyderabad is misconceived and hence, the plaint has to be returned to the plaintiff for presentation to proper Court.

4. On the other hand, the case of the plaintiff, in brief, is this:

The petition is not maintainable. The material averments in the petition

are false. When the Court is having territorial jurisdiction to entertain the suit, the clause in the purchase order will not oust the jurisdiction of the Court. A suit can be instituted in an appropriate court when the cause of action or a part of the cause of action arose at a place situate within the territorial jurisdiction of that Court. Clause (14) in the purchase order is not binding on the plaintiff.

5. Having heard the submissions of the learned counsel for both the parties, and having considered the pleadings of the parties, the Court below by the impugned order dismissed the application of the defendants. The Court below in its order recorded a finding that the purchase order of the defendants was addressed to the plaintiff's office at Secunderabad and that the information about the dishonour of the cheques was also given by the Oriental Bank of Commerce, Secunderabad branch and that, therefore, the cause of action for the suit arose at a place within the territorial jurisdiction of the Court at Hyderabad and hence, the plaintiff is competent to institute the suit before it.

6. The learned counsel for the defendants while advancing arguments in line with the case of the defendants would further contend as follows:

The plaintiff did not plead about any invoice either in the plaint or in the counter in the interlocutory application. The plaintiff ought to have raised its contentions in regard to invoice and ought to have filed the said document along with the plaint. In view of the clause in the purchase order, the application is filed by the defendants for return of the plaint to the plaintiff for presentation to proper Court. The clause therein is a contract. There is no bar for the parties to restrict the jurisdiction to one of the places when the cause of action had arisen at more than one place. Such a contract restricting the jurisdiction to one of such places is lawful. Where two or more Courts have jurisdiction, the parties by agreement may choose one of the two Fora. Therefore, the order impugned is liable to be set aside and the petition of the defendants is to be allowed.

7. On the other hand, the learned counsel for the plaintiff while supporting

the orders of the Court below would contend as follows:

In regard to jurisdiction, in the invoice there is a clause contrary to the clause in the purchase order. As per the said clause in the invoices raised by the plaintiff, the Court at Secunderabad is only having jurisdiction to entertain the suit. Materials were supplied from Secunderabad. Further, the court cannot reject the plaint taking into consideration the defence. In determining the territorial jurisdiction at the initial stage, the Court has to look into the plaint averments and not the defence. The defendants have not yet filed their written statement. The issue of jurisdiction being a mixed question of fact and law, the issue of jurisdiction in the instant suit has to be adjudicated along with other issues after full-fledged trial. Since a part of the cause of action had admittedly arisen at a place situated within the jurisdiction of the Court at Secunderabad, the present suit filed before the Court at Secunderabad is maintainable.

8. I have bestowed my attention to the facts and the submissions. The plaintiff brought the suit against the defendants for recovery of money. The defendants filed the instant application requesting the Court to return the plaint to the plaintiff for presentation to proper court on the ground that the trial Court is not having territorial jurisdiction to entertain the suit. As per the contentions of the defendants, the dispute, which is the subject matter of the plaint, arises out of a transaction covered by the purchase order, the relevant clause of which states that any dispute arising out of the transaction is subject to the jurisdiction of the Court at Anakapalli and that therefore, the parties have chosen a Forum and hence, the suit filed in the Court at Secunderabad is not maintainable. However, as per the contentions of the learned counsel for the plaintiff, in the invoice, there is a clause quite contrary to the term in the purchase order and that the said clause in the invoice would indicate that the Court at Secunderabad is having territorial jurisdiction to entertain the suit.

Therefore, from the purchase order and the invoice being relied upon by the parties, it is manifest that in regard to jurisdiction, there are conflicting/inconsistent clauses in the said documents. The parties being aware of such mutually inconsistent clauses in the respective documents

proceeded with the transaction. The plaintiff contends that a part of the cause of action admittedly arose at a place situate within the territorial jurisdiction of the Court at Secunderabad and that the materials were supplied from Secunderabad. The conflicting clauses in the respective documents apart, a reading of the plaint would indicate that there are averments in the plaint to come to a safe conclusion that the suit instituted in the Court at Secunderabad can be entertained as from the plaint averments it is *prima facie* clear that the Court at Secunderabad is having jurisdiction to entertain the suit. Further, the issue of territorial jurisdiction being a mixed question of fact and law and as there are two documents with two contrary clauses in regard to jurisdiction of the Court, such issue of territorial jurisdiction, which is a complex issue, in the facts and circumstances of the case, cannot be prejudged even before the defendants filed their written statement and that the said issue has to be determined along with other issues, after full-fledged trial, at the time of final adjudication.

9. Having regard to the facts and circumstances of the case, this Court is of the view that the order impugned brooks no interference.

10. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

01st June 2016
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