

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

CIVIL REVISION PETITION Nos.5534 & 5602 of 2015

Between:

C.R.P.No.5534 of 2015

M/s. Convergys Corporation

.....Petitioner

and

Mr. Sreenivasu Ruttala and 4 others

.....Respondents

-
C.R.P.No.5602 of 2015

M/s. Convergys Corporation

.....Petitioner

and

Mr. Sreenivasu Ruttala and 4 others

.....Respondents

Date of Judgment pronounced on : 05-08-2016

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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> HEAD NOTE:

! Counsel for the petitioners : Sri Vedula Srinivas

^ Counsel for the respondents : Sri K.V. Rusheek Reddy

? Cases referred

1. AIR 1952 SC 47
2. (1996) 1 SCC 243
3. 2002 (Vol.112) (Orissa) 527
4. 1969 Company Cases (Vol.39) 1
5. MANU/DE/2980/2005
6. 2003 (2) ALD 392
7. AIR 1986 SC 1
8. AIR 1986 SC 1370
9. (1988) 3 Comp.L.J. 1 (SC)
10. (1994) 1 Comp.L.J. 263

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HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5534 & 5602 of 2015

COMMON ORDER:

M/s. Convergys Corporation with Head Quarters in U.S.A., represented by its Authorized Signatory is the petitioner in both the revision petitions impugning the common order passed by the trial Court in the respective applications in I.A.Nos.3089 of 2014 & 242 of 2015 in the pending suit O.S.No.1610 of 2013. In the suit, the revision petitioner is the 2nd defendant. The plaintiff was

Mr. Sreenivasu Ruttala. The other defendants are Net Cracker Technology Solutions (India) Private Limited (previously known as Convergys Information Management (India) Private Limited represented by its Managing Director) as 1st defendant, Net Cracker Technology with its Global office at USA, represented by its President and CEO as 3rd defendant, Mr. Bhaskar Dutt Ranjan and Mr. Samit Banerjee as defendant Nos.4 & 5 being the Director and Vice President of CA Technologies Private Limited and Amdocs Development Centre India Private Limited of Mumbai and Pune respectively.

2. In the suit, there was an endorsement of defendant Nos.4 & 5 are only proforma parties impleaded, thereby no relief sought against defendant Nos.4 & 5. The suit filed by the plaintiff against defendants supra is to pass a decree in favour of the plaintiff for Rs.3,50,00,000/- towards damages, together with interest thereon @ 18% per annum from the date of suit till realization with costs and to grant such other just reliefs. The defendants having been served in the suit after the

plaint was numbered and summons ordered by the trial Court-cum-Principal District Judge, Ranga Reddy District at L.B.Nagar. The 2nd defendant filed two applications, amongst one is I.A.No.242 of 2015 under Order VII Rule 11-A CPC to reject the plaint in so far as against the

2nd defendant with exemplary costs alleging there is no cause of action from reading of the plaint, besides the suit claim is with ulterior motive and malafide intention to have wrongful gain and with false allegations in approaching the Court also with unclean hands to the prejudice of the 2nd defendant, in particular, to cause monetary loss if any and to tarnish the reputation. The other application I.A.No.3089 of 2014 is filed under Order I Rule 9 CPC to strike out or delete the name of the 2nd defendant from the array of the plaint supra in saying it is outcome of mis-joinder of the

2nd defendant with no privity of contract between the petitioner and the 2nd defendant and the suit claim is of speculative effort to cause monetary loss and ill-reputation to the 2nd defendant. The affidavit averments in both the petitions of the 2nd defendant through their HR head in India by name Mr. Amit Kumar, is selfsame in saying without prejudice to the right to file detailed written statement in the suit subject to outcome of the applications disputing the suit claim of the plaintiff against the defendants and in particular against the 2nd defendant, the claim is misleading, incorrect and erroneous against the 2nd defendant and with baseless allegations. Though erstwhile 2nd defendant and 1st defendant-Convergys Information Management India Private Limited has been acquired by 3rd defendant-Net Cracker Technology, a Subsidiary of NEC Japan from the 2nd defendant in the year 2012 by acquisition of all of information management business of the 2nd defendant including erstwhile 1st defendant company and as such, the assets and liabilities including all stocks of Convergys Information and

Management India Private Limited stood transferred from 2nd defendant to 3rd defendant vide agreement dated 22.03.2012. It is also averred that the 2nd defendant Corporation was only a parent company of 1st defendant and plaintiff thereby never an employee of 2nd defendant Corporation and never associated with 2nd defendant and plaintiff. Plaintiff's averments also demonstrate no privity of the contract between plaintiff and 2nd defendant, but for with 1st defendant to plaintiff and 1st defendant was taken over by 3rd defendant and there are no specific allegations against the 2nd defendant and 2nd defendant Corporation has no connection to the suit claim of plaintiff much less any privity of contract and the array as 2nd defendant in the suit is thereby unwarranted, unjust and outcome of wrong impleadment with mala fide intention and there is no cause of action against the 2nd defendant by the suit claim.

3. The two petitions were opposed by the plaintiff with contentions that the 2nd defendant was the parent company of 1st defendant being 100% subsidiary of it. On to the knowledge of the plaintiff there are some business adjustments between defendant Nos.1 to 3 inter se and with their inter connectivity for the suit claim they are proper and necessary parties and there is nothing misjoinder of 2nd defendant and the contra allegations are untenable and the dispute as to the merits of the suit claim to be adjudicated and the suit contains cause of action and the petitions are thereby deserves dismissal and sought for dismissal accordingly.

4. It is pursuant to the said contest, both the petitions by impugned common order dated 28.07.2015 were dismissed by the trial Court. The operative portion of the order reads when it is not in dispute of 2nd defendant is a parent company of the erstwhile

1st defendant being its 100% subsidiary, the affairs of plaintiff and 1st defendant company have bearing on the 2nd defendant company to decide in the suit including in contention of no nexus with the affairs of the 1st defendant and its employees to the 2nd defendant and there is no misjoinder and the alleged misjoinder is a matter to be adjudicated in the suit and when the plaint specifically pleaded interconnections in the business transactions between defendant Nos.1 to 3, it has to afford an opportunity to the plaintiff to substantiate in the course of adjudication of the lis and plaint thereby cannot be rejected and it cannot be contended that there is no cause of action in the plaint much less against the

2nd defendant or the 2nd defendant array is a misjoinder and dismissed in saying the plaint cannot be rejected and the 2nd defendant array cannot be deleted from the suit.

5. The contentions in the grounds of revision as referred supra were reiterated by the learned counsel appearing for the revision petitioner in both the revisions, which are taken up for common hearing. The plaintiff as revision co-respondent supported the order of the lower Court and seeking to dismiss the revision and the 1st defendant also one way supports the array of the

2nd defendant and existence of cause of action against the

2nd defendant also, if at all there is any cause of action against defendant Nos.1 and 3.

6. Heard and perused the material on record.

7. Before coming to discuss the facts and correctness of the impugned order on the limited scope of revision under Article 227 of Constitution of India to interfere by sitting against the impugned orders, it is necessary to refer Section 20 clause (c) CPC which gives jurisdiction to institute a suit within the local limits of the Court where

the cause of action wholly or in part arise. Thus, a part of cause of action confers jurisdiction to maintain the suit. The cause of action means a bundle of facts, which are necessary to establish the claim of a party to get relief on proof. Thereby it is to be considered pleadings, as a whole of the suit claim as to cause of action exists or not to sustain the suit. If on reading of a plaint as a whole, where it no way discloses any cause of action, then only the plaint is liable to be rejected. It is not for mere non-mention of all material facts in the cause of action Para, the plaint is liable to be rejected as there is nothing to say, but for disclosing cause of action, of all facts constitute cause of action must invariably mentioned in the plaint. In this regard, Order IV Rule 1 speaks the plaint shall comply with rules contained in Orders VI & VII as far as they are applicable only. As per Order VI Rule 2, the pleadings either plaint or written statement state only a concise form of statement as to material facts and not evidence. The pleadings have to be interpreted not with formalistic rigour, but with latitude or awareness of law and legal literacy of the litigant who approaches the Court. In this regard, the law speaks Court shall not keep its common sense in understanding and construing pleadings, in a cold storage but for adopt a latitude while construing the pleadings as the procedural law is a hand made and not mistress of justice. Coming to Order VII Rule 1 CPC, it speaks the plaint while containing the name of the court, name, description and place of residence of plaintiffs and defendants to the extent ascertainable, also any incapacity of any of the parties to the suit and the facts constituting cause of action and when it arose, besides Court jurisdiction and relief claim with any set off or relinquishment of the portion out of the claim including for purpose of Court fees or jurisdiction. Thus, it only shall contain facts from reading of the plaint that constitute cause of action and not necessarily to mention the cause of action of all essential facts in relation to it specifically in the cause of action Para. It is to say even the cause of action para is not clear to as of whole cause of action, a

reading of the plaint when discloses cause of action, the plaint is not liable to be rejected, but for on reading of plaint as a whole still it no way from the liberal construction show no existence of any cause of action, in particular, against all or any of the defendants to survive the claim to decide by adjudication of the lis claim therein. No doubt Order VII Rule 5 CPC speaks the plaint shall show the defendant is or claims to be interested in the subject matter and liable to be called upon to answer the suit claim. Thereby, it is the substance and not the form that is criteria in construing pleadings. The Apex Court in this regard in **Kedar Lal Seal & Another Vs. Hari Lal Seal**^[1], observed categorically that Court would be slow to throw out a claim on mere technicality of a pleading when the substance of the thing is there from its reading and where no prejudice is caused to the other side, however clumsily or inartistically a plaint may be worded and in any event, it is always open to a Court to give the plaintiff such general or other relief as it deems just to the same extent as if it had been asked for, provided that occasions no prejudice to the other side beyond what can be compensated for in costs. In **Kuldeep Singh Vs. Ganpat Lal & Another**^[2], the Apex Court held that even an error of a fact as to date of cause of action etc., mentioned in the plaint is not a fatal to the maintainability of the plaint in saying it is in plaint claim that requires to constitute existence of cause of action. Thus, from the propositions and provisions, the cause of action to be construed is only based on plaint averments and from reading of the plaint averments as a whole and not from reading of cause of action Para.

8. From this coming to the plaint averments, whether constitutes any cause of action against the 2nd defendant or there is mis-joinder of him without basis. The plaint at Para 2 stated that the 1st defendant is an independent company where plaintiff had joined in service and was working and the defendant company utilised the service of plaintiff and

2nd defendant is the parent company of erstwhile 1st defendant, which was a 100% subsidiary of 2nd defendant and 3rd defendant is parent company of

1st defendant, which was taken over the information and management business unit worldwide of 2nd defendant during May 2012 and defendant Nos.4 & 5 were the employees of the

1st defendant, to whom the plaintiff was reporting at Thailand and they were made only as proforma parties. It is averred the plaintiff is qualified software professional placed at the post of Senior Analyst with 1st defendant based on experience, qualification and talent with exemplary record at work and a diligent besides faithful employee with rating quality plus contributor of the years 2007-08 and the 1st defendant wholly owned subsidiary of 2nd defendant, having operations globally. While the plaintiff was in employment working with Information Management Business Unit, which provides solutions for business support systems, communications support systems etc. The plaintiff was asked to travel to Cairo & Egypt twice in the year 2008 on a Business visa, to work at client's office and later found to have been illegal, as work is not permitted on business visa. However being faithful employee, he choose to oblige the orders of the defendant company, as he was given to understand that all companies does this routinely and while so, in 2010 he was again to work on an off shore project (TOT Thailand) and was asked to go to Thailand to work at clients office and he showed reluctance to travel and informed the management through e-mails in October 2010. However, the 1st defendant's representatives informed that work permit cannot be done at Hyderabad and plaintiff has to get the business visa and process work permit at Thailand. Later, the business visa was accordingly processed by the defendants upon the invitation letter from Thailand client's office where accommodation also provided and as per schedule plaintiff was to return back to India on 17.12.2010, however,

he was asked to work unwillingly. Further on 24.10.2010, pursuant to the company directions he reach Bangkok where he asked 4th defendant, who was the project manager there about the work permit and to his surprise, 4th defendant replied of everyone travel on tourist, business and on arrival visas to work at the clients office can get thereby. Despite reluctance on his going to Thailand, 1st defendant insisted and compelled him to attend the work and he obliged for sake of his carrier and plaintiff's reaching Thailand, 4th defendant had a discussion regarding the working on business visa without work permit as per immigration rules and he reached Bangkok at the instructions and while working there at TOT as instructed by Management of the defendant company with team consisting of 8 members and while so, there was a surprise ride by Bangkok police on 05.11.2010 and a criminal case was registered for illegally working without requisite permits and plaintiff faced most traumatic experience with mental, physical and emotional agony so also the team members. The management and the legal team of the 1st defendant started running pillar to post to sort out, as there is every possibility of the company would be raked in the issue and in this context, email dated 09.11.2010 addressed by Senior Director. Apart from the above, there are series of emails till 09.11.2010 from the team leaders and members working outside Thailand and the Thailand police also seized passport of plaintiff and other team members and plaintiff referred email correspondence of 2nd defendant in saying the situation would be quickly resolved and plaintiff will get passport back and particularly, there is further email by 2nd defendant through its CEO on 03.12.2010 to the plaintiff and his team members addressed as team of they want to personally thank all of the hard work on behalf of TOT and they understand the unexpected problem encountered by the team members who held up in the country unable to move out and receiving regular updates by Bob Lento and other legal team and they ensure

that the 2nd defendant to plaintiff and team members and they committed to quick and successful resolution and they engaged attorneys in U.S. and Thailand and involved Home Embassies and as a US based company, they also requested assistance from US government agencies in Thailand, thereby not to hesitate to contact them. The plaintiff referred this email also.

9. The plaint further averments with reference to the email correspondence of 2nd defendant shows there is some privity between 1st defendant and 2nd defendant being 1st defendant is 2nd defendant's 100% subsidiary and there is implied tie up from combined reading of the plaint averments between defendant Nos.1 & 2.

10. The revision petitioners in their applications for rejection of plaint are the alleged misjoinder and seeking to delete the 2nd defendant from array did not explain what made them to have the email correspondence with plaintiff and other team members by 2nd defendant on behalf of 1st defendant. No doubt they can set out their defence by filing written statement and so far as rejection of plaint concerned, as the law is very clear where there is no existence of cause of action, the plaint is liable to be rejected from reading of plaint averments. When the above averments show the link between defendant Nos.1 to 3 and the averments made in the plaint show the cause of action at least in part so far as 2nd defendant, it cannot be said plaint is liable to be rejected at the threshold in particular against the 2nd defendant or even not entitled to say the 2nd defendant is without any basis, wrongly impleaded or there is mis-joinder and requires deletion of the 2nd defendant from the array of defendants in the suit.

11. Learned senior counsel appearing for the revision petitioners

placed reliance on the following expression in **Industrial Development Corporation Orissa Limited & Another Vs. Regional Provident Fund Commissioner & Others**^[3], the Orissa High Court in Company Cases observed that when the holding company and subsidiary companies, independent incorporated entities, holding company cannot be made liable for dues of subsidiary company for the provident fund dues of subsidiary company. It was held in the facts of that case that the relation between the holding company and subsidiary company therein was status of a shareholder. The other decision placed reliance is of Delhi High Court Division Bench in **Free Wheel (India) Limited Vs. Dr. Veda Mitra & Another**^[4], the company matter in relation of winding up and the power of the Company Court to pass interim orders and third parties interest protection and the assets of the company. It came for discussion, the corporate veil and application of the principle, where it was observed that the tendency of different courts to tear the corporate veil in varying circumstances and it may not be possible to put in a strait jacket of judicial definition as to when a subsidiary company will really be treated as a branch, or an agent or a trustee of the holding company and each case must necessarily turn on its own facts and circumstances such as profits of subsidiary company being treated as those of the parent company, the control and conduct of business of subsidiary company resting in the nominees of the holding company and the brain behind the trade of the subsidiary company being really the holding company, may indicate that the subsidiary company is only a branch of the holding company. Thus, it all depends upon the facts of the case and it is for defendant Nos.1 & 2 to explain their inter se relation and without which what made to have been correspondence with plaintiff and other team members. It clearly indicates from the plaint averments prima facie of the 1st defendant is practically a branch of the 2nd defendant and both are not independent companies and once such is the case, there is

cause of action against the

2nd defendant also from the plaint averments. It is in fact if at all the defendants dispute and demonstrate their status is not like a branch office or head office and both are independent and one is not responsible for the acts and business of the other, they have to demonstrate the same as part of their contest by filing written statement for considering the disputed claims by adjudication and it is premature to go into that when plaint averments show the inter-link between defendant Nos.1 & 2. Thereby, the two decisions relied supra have no assistance in favour of the defendants much less to reject the plaint or to delete the array of any of the defendants. In this regard, coming to the decision placed reliance of Single Judge of Delhi High Court in **Arunesh Punetha Vs. Boston Scientific Corporation And**

Others ^[5], it is in relation to termination of plaintiff from the defendants company under hire and fire policy by the employer and for the allegation and threats, made a claim for damages and there were exchange of notices and different defendants filed applications to reject the plaint respectively against them and it was observed in this regard that Court has not only to look into the plaint, but even supporting documents filed by plaintiff when those are even foundation of the suit claim. Here the email messages rooted from the 2nd defendant are not in dispute addressed to the plaintiff and team members clearly show the connection between defendant Nos.1 & 2 inter se from the plaint averments to maintain the suit claim against the 2nd defendant also. It is for the defendants to explain what made of giving email messages by filing written statement to face trial and not a case to reject the plaint or to delete the array of

2nd defendant. No doubt in the expression in **Arunesh's case (Supra 5)**, the plaint against defendant Nos.1 & 2 were rejected and 3rd defendant's revision application dismissed by saying

4th defendant did not file any application on the peculiar facts of that

case and those facts cannot be applied to the facts here and that too there the claim was held barred by law under Order VII Rule 11 clause (d) CPC in rejecting the plaint and here, it is the alleged non-subsistence of cause of action from plaint averments and as referred supra the averments show cause of action against the 2nd defendant also. The other decision placed reliance is **Krishi Foundary Employees Union, Industrial Estate, Hyderabad Vs. Krishi Engines Limited and Others**^[6], where the learned Single Judge of this Court discussed the principle of Doctrine of lifting of corporate veil where while discussing the lifting of corporate veil observed that the same is not a universal principle and to a limited extent in certain situations the holding company was held by several expressions as omnipotent in the affairs of the subsidiary company and the legal position in India is no different to what is observed by the *Palmer's Company Law of the Rule of Salomon Vs. Salomon and Company*. Referring to the expression of the Apex Court in **Workmen, Associated Rubber Industry Limited Vs. Associated Rubber Industry Limited**^[7], it was observed that it is the duty of the Court, where ingenuity is expended to avoid taxing and welfare legislations to get behind the smokescreen and discover the true state of affairs, and the Court is not be satisfied with form, but should consider substance of a transaction. Referring to another expression of the Apex Court in **LIC Vs. Escorts Limited**^[8], where it was observed that it is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since, that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected. By referring to the another expression of the Apex Court in **State of U.P. Vs. Renusagar Power Company**^[9], which referred several other

expressions in turn including LIC supra in holding it must however depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. It referred the expression of Delhi High Court in **U.K. Mehra Vs. Union of India**^[10], observed that where a subsidiary is wholly owned by the principal company which has a pervasive control over it and the former acts as the hand and voice of the latter, the subsidiary would be nothing but an instrumentality of the principal company. It was observed ultimately referring to the expression of the Apex Court in **New Horizons Limited Vs. Union of India**^[11], that nonetheless, the lifting of corporate veil or piercing the corporate veil is permissible if public interest requires. It also discussed on facts as to the holding company has any legal obligation under Industrial Law and Company Law to safeguard the interest of the employees of the subsidiary company.

12. Thus, it all depends upon the facts that it requires to be demonstrated as part of defence of defendants to decide and it is not a case for rejection of the plaint or to delete the array of the 2nd defendant thereby. Accordingly, though the lower Court orders is not with such details, for this Court while sitting in revision against the order, there is nothing to interfere for the same otherwise sustain on its result conclusion.

13. Accordingly and in the result, both the revision petitions are dismissed. However, it is made clear that the dismissal of the revision petitions no way influence the mind of the trial Court in deciding the lis before it nor takes away any defence of the defendants by filing written statement to the plaintiff's suit claim to hear and formulate the issues pursuant to the same to decide the lis and if necessary to seek for deciding any issue as a preliminary issue.

Consequently, miscellaneous petitions, if any, shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 05.08.2016

Note: L.R. Copy to be marked

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- [\[1\]](#) AIR 1952 SC 47
 - [\[2\]](#) (1996) 1 SCC 243
 - [\[3\]](#) 2002 (Vol.112) (Orissa) 527
 - [\[4\]](#) 1969 Company Cases (Vol.39) 1
 - [\[5\]](#) MANU/DE/2980/2005
 - [\[6\]](#) 2003 (2) ALD 392
 - [\[7\]](#) AIR 1986 SC 1
 - [\[8\]](#) AIR 1986 SC 1370
 - [\[9\]](#) (1988) 3 Comp.L.J. 1 (SC)
 - [\[10\]](#) (1994) 1 Comp.L.J. 263
 - [\[11\]](#) (1995) 1 SCC 478