

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CIVIL REVISION APPLICATION NO. 195 OF 2016

Abdul Moiz Mohammad s/o Abdul .. **Applicant**
Sattar, Age 33 years, Occ.
Service, R/o. Nagreshwar Mandir
Road, Sayyadan Mohalla, Hatai,
Dist. Nanded.

VERSUS

- 1 Regional Head, (Human Resources), ..**Respondents**
HDFC Bank Ltd., 9th Floor, Lodh
Campus Next to Kanjumarg (East),
Mumbai.
- 2 Regional Service Manager, (Human
Resources), HDFC Bank Ltd., 9th
Floor, Lodh Campus Next to
Kanjumarg (East), Mumbai.
- 3 Branch Manager, HDCE Bank Ltd.,
"Amber Plaza", Wing-A, Railway
Station Road, Old Bus Stand,
Ahmednagar.
- 4 Cluster Head, HDFC Bank Ltd.,
"Amber Plaza", Wing-A, Railway
Station Road, Old Bus Stand,
Ahmednagar.
- 5 Branch Manager, HDFC Bank Ltd.,
Sonawane Complex, Shriranar,
Nanded.

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Mr. N.V. Gaware, Advocate, H/f Mr. S.B. Munde,
Advocate for the Applicant/petitioner.
Mr. M.D. Narwadkar, Advocate, for respondents No.1 to
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CORAM : K.L. WADANE, J.

RESERVED ON : 21.08.2017.

PRONOUNCEMENT ON : 23.08.2017.

ORAL JUDGMENT :-

1 With the consent of the parties, this revision application is taken up for final hearing.

2 The revision applicant/original plaintiff assailed the order passed by 3rd Joint Civil Judge, Junior Division Nanded on 10.10.2016 below Exh. 49 in Reg. Civil Suit No. 207/2013.

3 The respondents/original defendants have filed application Exh.49 under section 9(A) of the Code of Civil Procedure for framing preliminary issue. The plaintiff filed his say at Exh. 52.

4 The plaintiff/revision applicant filed a suit for declaration that, he is confirmed and in permanent employment of defendants-Bank and also for mandatory

injunction restraining the defendants from removing from the job. According to defendants, the plaintiff executed an employment agreement with the defendants wherein the parties irrevocably submits to the exclusive jurisdiction of any Competent Court at Mumbai. In case of any service dispute, proceedings only initiated in the Court at Mumbai. The defendants further submitted that, the plaintiff was never transferred to Nanded and no cause of action arose at Nanded. Hence, according to defendants the Civil Court Nanded has no jurisdiction to try and decide the suit.

5 Plaintiff/revision applicant filed his say and contended that, though specific court is referred in the agreement, if a subsequent cause of action arises out side the said jurisdiction, the Court within whose jurisdiction the subsequent cause of action arose will be empowered to entertain the suit. According to plaintiff/revision applicant he was transferred to Nanded and is still in service there. It is further submitted that, the plaintiff was at Nanded due to his ill-health and subsequent event took place at Nanded.

Hence, according to plaintiff/revision applicant, the Civil Court at Nanded has jurisdiction to try and decide the suit by and between the parties.

6 I have heard the arguments of learned counsel Mr. Gaware for the revision applicant/plaintiff who submitted that, at the relevant time of filing of the suit the plaintiff/revision applicant was transferred to Nanded and he joined his services with effect from 01.03.2013. Therefore, Court at Nanded has jurisdiction to try and decide the suit between the parties.

7 Mr. Gaware learned counsel further submitted that, the jurisdiction of the Court has to be decided on the basis of the pleadings and the cause of action mentioned in the plaint. Therefore, by referring the contents in para NO. 10 and 11 of the plaint, has submitted that, cause of action is arose within the territorial jurisdiction of Civil Court at Nanded.

8 Mr. Gaware learned counsel further pointed out

that, in para 11 of the plaint it is specifically mentioned by plaintiff that, vide e-mail communication dated 18.03.2013 on the personal ID of plaintiff, the defendant No. 2 seems to have expressed his decision of relieving plaintiff from job with effect from 30.03.2013. So according to Mr. Gaware learned counsel the last communication about the expression of the intention of the defendant No. 2 to terminate the services of the plaintiff/revision applicant was happened within the jurisdiction of Civil Court at Nanded.

9 As against this, Mr. Narwadkar, the learned counsel appearing for the defendants/respondents submitted that, the revision applicant/plaintiff was never transferred to the branch of HDFC Bank at Nanded, nor he joined his services at Nanded. Therefore, no event had taken place within the jurisdiction of Civil Court Nanded. There is no remote reference in any of the document to show that the plaintiff was relieved from one Bank to join his services at HDFC Bank Branch at Nanded.

10 Mr. Narwadkar learned counsel further submitted that there is absolutely no evidence to show that the plaintiff/revision applicant was serving at Nanded at any point of time. Therefore, no cause of action or fraction of cause of action arose at Nanded.

11 Mr. Gaware learned counsel relied upon the observations in following cases.

1. 2008 AIR (Supreme Court), 2553.

2. 2008 AIR (Supreme Court), 685.

By relying on the observations in the aforesaid authorities, Mr. Gaware, learned counsel, has submitted that the Civil Court at Nanded has jurisdiction to decide the suit.

12 Mr. Gaware, learned counsel, further submitted that, another suit filed by the present plaintiff/revision applicant against the defendants is pending and in that suit the issues based upon the pleadings as regards to the jurisdiction were already framed. In such circumstances, it was for the Trial

Court to frame all the issues based upon the pleadings of the parties, in the present suit also.

13 The defendants No. 1 to 5 in their application under section 9(A) of the Code of Civil Procedure have specifically contended that the defendants have submitted their written statement on 13.10.2014 before the Court. It is submitted in para No. 6 of the written statement that, as the plaintiff has voluntarily resigned from bank services by submitting his resignation on 03.01.2013 to the Branch Manager Ahmednagar. Therefore, there was no question of transfer of plaintiff from Ahmednagar to Nanded as alleged by the plaintiff/revision applicant. As the plaintiff/revision applicant was not in service so the plaintiff has not joined his services at HDFC Bank Branch at Nanded.

14 Before passing the order below Exh. 49 the plaintiff was aware about the pleadings of the defendants in their written statement as well as in the application under section 9(A) of the Code of

Civil Procedure. Therefore, it was for the revision applicant/plaintiff to produce on record a documentary evidence to show that at the relevant time of filing of the suit he was transferred to the Bank at Nanded branch and he was in service.

15 I have carefully perused the record and proceedings of the case. Not a single document is produced on record by the plaintiff/revision applicant to show that at the relevant time he joined his service at Nanded and he was serving at Nanded. So basically there is absolutely no evidence to show that, a cause of action or fraction of cause of action arose at Nanded.

16 It is the contention of the defendants that, the resignation issued by the plaintiff/revision applicant was accepted on 03.01.2013. Therefore, there was no question of service of plaintiff at Bank at Nanded with effect from 01.03.2013.

17 In view of the facts and circumstances of the

case, the observations of the Apex Court in case reported in 2014 ALL SCR 2949, Nawal Koshore Sharma V/s. Union of India and others, is applicable to the facts of the present case, wherein it has been observed by the Apex Court that,

"Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any high Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction."

18 The aforesaid observation is applicable to the facts of the present cause. Because, herein present case the plaintiff/revision applicant miserably failed

to establish that, any point of time, he was serving at Nanded and cause of action or fraction cause of action was arose within the jurisdiction of Civil Court Nanded.

19 In view of the above, I am of the opinion that the learned Trial Court has passed reasoned and proper order. Therefore, it is not necessary to interfere with the findings recorded by the learned Trial Court. Consequently, there is no substance in the revision application, therefore, it is liable to be dismissed and accordingly it is dismissed.

(K.L. WADANE, J.)

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