

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Civil Revision Petition No.2539 of 2015

ORDER:

This petition under Article 227 of the Constitution of India is filed challenging the order, dated 19.1.2015 passed in I.A.No.1694 of 2013 in O.S.No.662 of 2013 on the file of the I Senior Civil Judge, City Civil Courts at Hyderabad, whereby the trial Court declined to return the plaint by exercising power under Order 7 Rule 10 of C.P.C. assigning its own reasons.

2. The present petition is filed on the ground that when there is an agreement between parties limiting the jurisdiction in a legal proceedings to a particular place, the parties are bound by such agreement, but the trial Court did not consider the contents of Ex.A1 where both parties agreed to confer jurisdiction on the Courts in Bangalore. Thus, the order passed by the Senior Civil Judge is contrary to law declared by the Apex Court.

3. During hearing, learned counsel for petitioners-defendants Sri Sai Gangadhar Chamarty drew the attention of this Court to the letter of appointment, dated 20.10.2011 issued by Y.N.Kumara

Swamy Raju, Marketing Director for Biovitamin & Minerals and submits that on the strength of the limiting jurisdiction over the Court at Bangalore, the Courts at Hyderabad have no territorial jurisdiction and he placed reliance on two judgments of the Apex Court reported in *A.V.M. Sales Corpn. Vs. Anuradha Chemicals (P) Ltd*¹ and *B.E.Simoese Von Staraburg Niedenthal Vs. Chhattisgarh Investment Ltd*². On the strength of law rendered by the Apex Court, it is contended that the impugned order, dated 19.1.2015 passed in I.A.No.1694 of 2013 in O.S. No.662 of 2013 on the file of the I Senior Civil Judge, City Civil Court at Hyderabad is contrary to law and liable to be set aside and prayed to set aside the impugned order and direct the I Senior Civil Judge Court to return the plaint by exercising the power under Order 7 Rule 10 of C.P.C.

4. Whereas, counsel for Respondent-plaintiff Sri C.N.Moorthy would contend that it is only a letter of appointment and the respondent did not accept the terms contained therein. Therefore, in the absence of any conclusive contract between the parties, the clause pertaining to jurisdiction of the Court to decide the dispute between the parties with regard to the terms of letter of appointment cannot be said to be concluded contract and apart from that, explanation to Section 20 permits the parties to file suit where the branch office of

¹ (2012) 2 SCC 315

² (2015) 12 SCC 225

the petitioner is situated and branch office of the petitioner is located in Hyderabad, thereby the respondent-plaintiff is entitled to file his suit and prayed for confirmation of orders, dismissing the revision petition filed by the defendants in the suit.

5. Indisputably, the respondent-plaintiff was appointed as Regional Sales Manager by the company through letter, dated 22.6.2011 and after completion of probation of six months, he was appointed on regular basis by letter, dated 20.10.2011 on the salary of Rs.23,675/- per month incorporating several conditions on service and one of the condition is with regard to jurisdiction of the Courts to decide the dispute between plaintiff and defendants.

6. Clause 19 of the appointment letter, dated 20.10.2011 reads as follows :

“JURISDICTION : The office at Bengaluru will govern you and Bengaluru office shall have the ultimate control of all your activities. Your salaries shall be deemed to have been paid at Bengaluru and for all purposes during your appointment any dispute that may arise between you and the company in connection with any matters specified in the appointment letter or in connection with your employment terms specifically agreed and understood by and between the parties that the courts situated in Bengaluru alone shall have the jurisdiction to try and enter in such matters.”

7. In view of the specific term in the appointment letter, any dispute with regard to the matter specified in the terms of

appointment, the jurisdiction is with the Courts at Bangalore alone to try and entertain any such matter. The plaintiff filed the suit for recovery of salary which remained unpaid and payment of salary is one of the terms of the employment under letter, dated 20.10.2011 i.e., clause No.3. Therefore, violation of term with regard to payment of salary is covered by clause 19 of the appointment letter and to decide such disputes, the Courts at Bangalore alone are having jurisdiction. Section 28 of the Indian Contract Act deals with agreement in restraint of legal proceedings, but there are certain exceptions to the rule. Therefore, the agreement conferring of jurisdiction on the specified court is not hit by Section 28 of the Indian Contract Act and an identical question came up before the Apex Court in *A.V.M. Sales Corpn.'s case* (supra) where the Apex Court considered the scope of Sections 28 and 23 of the Indian Contract Act and Section 20 of C.P.C. and held that the parties cannot contract against the statute and any mutual agreement intending to restrict or extinguish right of a party from enforcing his/her right under or in respect of a contract held would be void to that extent. However, in para 2 of the judgment, there is a specific reference about the clause in the contract for conferring jurisdiction on Calcutta High Court and upheld the condition conferring jurisdiction on the Court. In later judgment in *B.E.Simoes Von Star Aburg Niedenthal's case* (supra) the Apex

Court discussed about the validity of the clause providing jurisdiction on a specific Court alone or only upon exclusive jurisdiction and finally concluded that such clause is not hit by Section 23 of the Contract Act and such clause is neither forbidden by law nor is it against the public policy. It does not offend Section 28 of the Contract Act in any manner. Therefore, the parties agreed to submit themselves to a jurisdiction of a particular courts in a particular area by agreement either by necessary implication or by express contract, the suit relating to such dispute shall be filed in the courts situated within the area agreed by the parties.

8. Though the counsel for the respondent-plaintiff contended that the present case is covered by explanation to Section 20 C.P.C.; that cannot be upheld for the reason that if there is no agreement between the parties conferring jurisdiction on courts in a particular area, then the respondent-plaintiff is entitled to claim benefit under Section 20 of C.P.C., but when there is an agreement, this benefit cannot be extended to such person.

9. The trial Court discussed various provisions of C.P.C., even without advertng to the provisions of Contract Act, more particularly Section 28 and the law declared by the Apex Court and dismissed the petition erroneously and declined to return the plaint. Thus, the

Senior Civil Judge committed an error in passing the order, therefore, the same is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed setting aside the order, dated 19.1.2015 passed by the I Senior Civil Judge, City Civil Courts at Hyderabad in I.A.No.1694 of 2013 in O.S.No.662 of 2013, directing the Senior Civil Judge to return the plaint for presentation in proper Court after affording an opportunity under Order 7 Rule 10-A of C.P.C. within one month from the date of receipt of a copy of this order. No order as to costs.

11. Miscellaneous petitions, if any, pending, shall stand closed.

M.SATYANARAYANA MURTHY, J.

Dt: 20-04-2017

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