

277

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6479 of 2016
Date of Decision : 08.09.2017

SANJEEV BHARTI

....PETITIONER

VERSUS

M/S OFFSHORE A-ONE TECHNOLOGY PVT LTD AND
ANOTHER

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Ms. Sonia G. Singh, Advocate
for the petitioner.

Ms. Harshita, Advocate with
Mr. N.S. Sodhi, Advocate
for the respondents.

RAMESHWAR SINGH MALIK, JUDGE (ORAL)

Feeling aggrieved against the impugned order dated 16.08.2016 (Annexure P-4), passed by the learned trial Court, directing the defendant to furnish surety of 50% of the total amount, while granting him leave to defend, defendant has approached this Court by way of present civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued.

Heard learned counsel for the parties.

During the course of hearing, learned counsel for the petitioner has placed strong reliance on clause No.11 of Deputation

Agreement (Annexure P-3), which reads as under:-

*“11. **CHOICE OF LAW**: The Employee acknowledges and agrees that the Employer principal operating office in the United States with respect to matters related to deputation and other employee human resources services is located in the state of New York, United States. Accordingly, the parties agree that this agreement shall be governed by the laws of the State of New York without giving effect to its internal principal of conflict laws.”*

On the above said clause No.11 agreed between the parties, learned counsel for the petitioner submits that the learned trial Court shall not have territorial jurisdiction to entertain and try the suit for recovery filed by the plaintiff-respondents. She further submits that in such a situation imposing condition on the defendant to furnish surety of 50% of total amount sought to be recovered by the plaintiff, was wholly unwarranted and without jurisdiction. She prays for setting aside the impugned order by allowing revision petition.

On the other hand, learned counsel for the respondents-plaintiff places reliance on Clause 9.1, at page 27 of the paper book, which reads as under:-

*“9.1 **Termination of Deputation by Employee**: Employee acknowledges and agrees that employee shall pay 3 months of US salary to the Employer if he / she shall resign or leaves the employer during deputation in the United States including Attorney’s expenses incurred by the Employer on Employee’s H1 / L1 visa processing respectively.”*

Learned counsel for the respondents-plaintiff submits that in

view of abovesaid Clause 9.1, defendant-petitioner was liable to pay the amount in question to the plaintiff-respondents. He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the totality of facts and circumstances of the case noted hereinabove, the impugned order is patently illegal and the same cannot be sustained, particularly to the extent of imposing condition of furnishing surety of 50% of the total amount, while granting leave to defend.

It is so said because there was no such occasion or special reason for the learned trial Court to impose the condition on the defendant to furnish surety of 50% of the total amount sought to be recovered by the plaintiff. Having said that, this Court feels no hesitation to conclude that the learned trial Court exceeded its jurisdiction while putting the abovesaid condition on the petitioner-defendant and said part of the order cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 16.08.2016 (Annexure P-4) passed by the learned trial Court is hereby set aside. Leave granted to the petitioner-defendant

to defend the suit shall remain intact. However, the defendant-petitioner shall not be liable to furnish surety of 50% of the total amount sought to be recovered from him by the plaintiff.

Further, keeping in view the above said clause 11 at page 29 of the paper book, the learned trial Court is directed to treat the issue of territorial jurisdiction as a preliminary issue and decide the same in accordance with law.

Resultantly, with the abovesaid observations made and directions issued, the present revision petition stands allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

September 08, 2017

rajneesh

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No