

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 105

SAO NO.77 of 2016 (O & M)
Date of Decision: *February 01, 2017*

Vinod Gunia

..... PETITIONER

VERSUS

Cipla Ltd. & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

. . .

PRESENT: - Mr. Abhivadya Sood, Advocate, for the appellant.

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Jaspal Singh, J

CM No.411-CII of 2017

Application is allowed.

Copy of order of the trial court is taken on record.

SAO No.77 of 2016

1. Challenge in this appeal is to judgment/order dated August 08, 2016 passed by the Additional District Judge, Patiala, whereby he has upheld/ confirmed the order dated July 06, 2015 passed by the Civil Judge (Junior Division), Patiala, vide which, he has ordered the return of the plaint to appellant – plaintiff for its presentation in the competent court of jurisdiction.

2. While assailing the impugned orders, it has been contended by learned counsel for the appellant that the impugned judgment/orders are

absolutely against the settled canons of law and are result of mis-appreciation of various terms & conditions of the letter of appointment and agreement arrived at between the parties. It is an undisputed fact that the appellant – plaintiff joined the services with respondent – company in the year 1998 at Jammu Headquarter. Subsequent thereto, in February 2009, he joined the respondent – company at Patiala and worked as Business Manager from May 17, 2011. He was confirmed on September 01, 2011. Since his annual grade increment was not released in the year 2014, he was constrained to file the suit for declaration, mandatory injunction as well as permanent injunction at Patiala whereby plaint was returned by the trial court vide order dated July 06, 2015 holding that the said court has no jurisdiction to entertain and try the suit which necessitated the filing of appeal before the lower appellate court which has also been dismissed vide judgment dated August 08, 2016. Dis-satisfied with the return of the plaint as well as dismissal of appeal by the courts below, appellant – plaintiff has approached this Court through the instant appeal.

3. Learned counsel for the appellant further contends that both the courts below have wrongly interpreted Clause 19 of the appointment letter. Infact, the instant suit is not with regard to any dispute connected with the appointment letter. Rather, it is a service matter relating to withholding of annual grade increment, harassment and mental torture meted out to the appellant – plaintiff by the defendants. Infact, salary and other emoluments are being disbursed to the appellant – plaintiff by the defendants at Patiala. Hence, a part of cause of action has accrued to the appellant – plaintiff at Patiala. Moreover, it is not practicable for the appellant – plaintiff to approach the judicial court at Mumbai for redressal of his grievances.

4. While relying upon observations made by the Hon'ble Apex Court in **Central Inland Water Transport Corporation Ltd. & another vs. Brojo Nath Ganguly & another, AIR 1986 SC 1571**, it has been submitted by learned counsel for the appellant – plaintiff that a contract arrived at in between the parties, in the course of its trading activities, ought not to be interfered with. However, if there is any such contract in between an employee and a powerful employer, it is not possible to equate a contract of employer with a mercantile transaction. In the case in hand, the respondent – defendant Company is at a dominant position and has incorporated Clause 19 with regard to jurisdiction in case of any dispute having arisen between the parties. Moreover, a part of cause of action has accrued to the appellant – plaintiff at Patiala as he is used to get his terminal benefits i.e. salary etc. at Patiala and as such, Patiala courts have got the territorial jurisdiction to adjudicate upon the matter in issue. Thus, the impugned judgment/order(s) passed by the courts below are not sustainable in the eyes of law and deserve to be set aside.

5. After bestowing due consideration to the aforesaid submissions made by learned counsel for the appellant – plaintiff and scrutinizing the impugned judgment/orders passed by the courts below, this Court does not find any infirmity or illegality therein. Rather, the same are absolutely in consonance with the legal proposition to the facts & circumstances of this case.

6. The main question which requires determination in the instant appeal is whether the civil courts at Patiala have got the territorial jurisdiction to entertain and try the suit and the answer to the question is in the negative in view of reasons mentioned below.

7. Undisputably, Clause 19 was incorporated in the appointment letter as per settlement arrived at between the parties to the effect that courts at Bombay (now Mumbai) shall have the exclusive jurisdiction in case of any dispute concerning the service matter. The appellant – plaintiff had accepted those terms & conditions of the appointment letter and signed the same on May 18, 2011. In pursuance thereof, he joined the service of the respondent – company. It would be proper to re-produce Clause 19 of the appointment letter which reads as under:-

“19. Any dispute arising out of and/or related to your employment of company shall be subject to Mumbai jurisdiction only.”

8. The terms and conditions of the appointment letter including the one referred to above were never challenged by the appellant – plaintiff earlier at any point of time, and it was only in pursuance of the dispute allegedly arisen on account of non-release of increments since April 2014 or alleged issuance of threats by respondent Nos.2 and 3 to transfer him or to terminate his service, the appellant – plaintiff filed the suit for declaration, mandatory injunction as well as permanent injunction at Patiala against the respondent – defendant company.

9. Now, it is to be seen whether in view of Clause 19, referred to above, the civil courts have got the jurisdiction to entertain and try the instant lis? Such a controversy came before the Hon’ble Apex Court in case **A.B.C. Laminart Pvt. Ltd. & another vs. A.P. Agencies Salem, (1989) 2 SCC 163**, in which, the following observation was made:-

“.....Thus it now a settled principle that here there may be two or more competent courts which can entertain a suit consequent upon a part of the cause of action having arisen therewithin, if the parties to the contract agreed to vest jurisdiction in on one such court to try the

dispute which might arise as between themselves the agreement would be valid. If such a contract is clear, unambiguous and explicit and not vague it is not hit by sections 23 and 28 of the Contract Act. This cannot be understood as parties contracting against the statute....”

10. Similarly, in another case **Shriram City Union Finance Corporation Ltd. vs. Rama Mishra, (2002) 9 SCC 613**, the Hon’ble Apex Court has held as under:-

“It is open for a party for his convenience to fix the jurisdiction of any competent court to have their dispute adjudicated by that court alone. In other words, if one or more courts have the jurisdiction to try any suit, it is open for the case parties to choose any one of the two competent courts to decide their disputes. In case parties under their own agreement expressly agree that their dispute shall be tried by only one of them then the parties can only file the suit in that court alone to which they have so agreed.”

11. An identical question came for decision before the Hon’ble Supreme Court in case **Hakam Singh vs. Gammon India Ltd., (1971) 1 SCC 286**, wherein it was categorically observed that though, it is not open to the parties by agreement to confer by their agreement jurisdiction on a court which it does not possess under the Code, yet where two courts or more have, under the Civil Procedure Code, jurisdiction to try a suit or proceeding, an agreement between the parties that the dispute between them shall be tried in one of such courts is not contrary to public policy. Such an agreement does not contravene Section 28 of the Contract Act.

12. Adverting to the facts of the case in hand, there is a specific Clause No.19 in the appointment letter to the fact that any dispute arising out of/and related to the appellant’s employment of the company shall be subject to Mumbai jurisdiction only. Though, the cause of action has partly arisen at Patiala where he is posted and is drawing salary and emoluments but since

his employment, he is barred from agitating the matter at Patiala. The trial court has rightly returned the plaint for its presentation before competent court of jurisdiction. Thus, this Court does not find any infirmity or perversity either in the order dated July 06, 2015 passed by the trial court or judgment August 08, 2016 passed by the lower appellate court. Both the orders are perfectly in accordance with law and do not call for any interference by this Court.

13. In the light of what has been discussed above, this Court does not find any merit in the instant appeal and the same is dismissed.

February 01, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No