

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3109 OF 2015

John Fernandes ... Petitioner
Versus
M/s.Centennial Surgical Sutures Ltd. & others ... Respondents

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Mr. A. A. Siddiquie i/b A. A. Siddiquie & Associates for the
Petitioner.

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CORAM : M. S. SONAK, J.

DATE : 12th OCTOBER, 2018.

P. C.:

1. Heard Mr. A. A. Siddiquie learned Counsel for the petitioner.
2. The challenge in this petition is to the judgment and order dated 28th November, 2014, by which the City Civil Court at Mumbai has returned the plaint in S.C. Suit No. 2229 of 2000 instituted by the petitioner for presentation to the Court of the proper jurisdiction.
3. The Trial Court, framed and answered the issues in the suit in the following manner.

Sr. No.	Points	Findings
1	Do the plaintiffs prove that their services in defendant No.1 company had been illegally terminated and that the said termination is liable to be set aside?	In the negative
2	Whether this Court has jurisdiction to entertain and try the present suit?	In the negative
3	Do the plaintiffs prove that liabilities created by defendant Nos. 2 and 3 against the assets of defendant No.1 are their personal liabilities and not the liability of defendant No.1?	In the Negative.
4	Do the plaintiffs prove that they are entitled for the reliefs as prayed?	In the negative.
5.	What order	The plaint is returned to the plaintiffs for being presented to the Court of proper jurisdiction.

4. Mr. Siddiquie, the learned Counsel for the petitioner submits that the trial judge has answered issue No.2 which related to the territorial jurisdiction incorrectly. In any case, he submits that once this issue was decided against the petitioner, the learned trial Judge was not justified in deciding the remaining issues as framed.

5. As regards Mr. Siddiquie's alternate contention, the provisions of the CPC require the learned trial Judge to decide all the issues which arose in the suit. This is because if the finding on

jurisdiction were to be reversed by the superior Courts, the necessity of remand would be obviated.

6. The learned trial judge in this case has held that the petitioner, in the plaint had himself stated that the Registered office of the defendant No.1 company was at PF-29, MIDC Murbad, Thane-421401. In such circumstances it was quite clear that no part of the cause of action had arisen in Mumbai so as to clothe the learned trial judge with any territorial jurisdiction in the matter.

7. Mr. Siddiquie did contend that originally the registered office of the Defendant No.1 company was at Dalamal Towers Nariman Point, Mumbai and therefore the learned trial judge retained jurisdiction in the matter. He also pointed out that the change of registered address was effected without adopting the procedure as prescribed under the Companies Act, 1956.

8. On the perusal of the plaint it is seen that the main reliefs applied for by the petitioner relate to the termination of his services, for access to records, for a restraint upon incurring liabilities and so on. The petitioner has not prayed for any relief in

relation to change of registered address of the registered office of the Defendant No.1 company. In any case, it is quite doubtful whether the learned trial judge could have gone into this issue of change of address of the registered office of the Defendant No.1 company in the proceedings before it.

9. From the material on record, there is really no case made out to interfere with the findings recorded by the learned trial Judge that no part of cause of action had arisen within its jurisdiction and since, the registered office of the Defendant No.1 Company was at Thane, the proper Court to institute the suit would be the competent Courts in Thane and not the City Civil Court at Mumbai. There is no jurisdictional error in the view taken by the learned trial judge so as to warrant any interference in exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India.

10. Order 7 Rule 10 A of the Code of Civil Procedure deals with the power of the Court to fix a date of appearance in the Court where the plaint is to be filed after its return. This exercise seems to have escaped the notice to the learned trial judge.

11. The apprehension expressed by Mr. Siddiquie that the findings recorded by the learned trial Judge on the other issues in the suit might prejudice the petitioner in prosecution of his suit before the competent Court at Thane, lack any basis. In any case, it is clarified that the court of competent jurisdiction in Thane shall proceed to dispose of the petitioner's suit *de novo*, without in any manner influenced by the findings recorded by the trial Court in the impugned judgment and order. Accordingly, this petition is dismissed with the aforesaid clarification.

12. In addition, now that necessary intimation has been given as regards the return of plaint, the petitioner to follow the procedure prescribed in Order 7 Rule 10 A of the CPC and obtain orders in terms thereof.

(M. S. SONAK, J.)

Shridhar
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