

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 469 of 2018

ORDER:

1) Assailing the order dated 21.02.2017, passed in I.A.No.9 of 2017 in O.S.No.85 of 2013 on the file of the V Additional District Judge, East Godavari District at Rajamahendravaram, wherein an application filed under Order XIV Rule 2 of C.P.C., to frame an additional issue that “whether the said Court has got jurisdiction to entertain the suit” was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The 1st respondent herein filed a suit against the petitioners herein and others for recovery of Rs.2,04,11,751/- . The written statement filed by the 13th defendant on 04.09.2014 disputes the averments made in the plaint. Pending trial, the petitioners herein filed I.A.No.9 of 2017, requesting the Court to frame an additional issue that “whether the said Court has got territorial jurisdiction to entertain the suit”. The petitioners herein challenged the territorial jurisdiction of the said Court to entertain the suit on the ground that as per the credit invoice of the plaintiff's firm, only the Courts at Yanam will have jurisdiction to entertain the

suit and that by virtue of the specific term contained in the credit invoice, the jurisdiction of the Courts at Rajamahendravaram is specifically excluded.

3) A counter came to be filed by the plaintiff stating that as per Section 20 of C.P.C. the plaintiff can file the suit against the defendants where the defendants are residing or where the transaction took place. As the defendants are residing and doing business in Rajamahendravaram, the Court at Rajamahendravaram has got jurisdiction to entertain the suit and there is no need to frame an additional issue.

4) The learned trial Judge considered the question of jurisdiction and held that he had jurisdiction to entertain the suit. Challenging the same, the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioners would submit that the credit invoice of the plaintiff clearly contains a note as "subject to Yanam jurisdiction only", and as such the Courts at Rajamahendravaram do not have jurisdiction to entertain the suit.

6) Learned counsel for the plaintiff would submit that under Section 20 CPC, a suit can be instituted where any of the defendants resides or carries; on business or where the cause of action arises, wholly or in part. As the defendants are doing

business and residing within the jurisdiction of the Courts at Rajamahendravaram, the order under challenge warrants no interference.

7) It is not in dispute that the credit invoice of the plaintiff clearly contains a note “disputes subject to Yanam Jurisdiction only”. A perusal of the Credit invoice clearly shows that it was not signed by Buyer/ Buyer’s agent.

8) Under Section 20 CPC, a suit can be instituted where any of the defendants resides or carries on business or where the cause of action arises, wholly or in part. Therefore, law provides an option to the plaintiff to choose its forum where more than one Court has jurisdiction to try the suit. It is open to the parties to choose one of the forums for filing the suit by agreement and exclude the other forums, but it is not competent to the parties to invoke jurisdiction of a Court which has no jurisdiction, as consent cannot confer jurisdiction.

9) Apart from that it is to be noted the credit invoice was issued in the name of M/s. Sarala Foods Private Limited, Kakinada Delivery Chennai Port, Kakinada. In the said credit invoice, the guarantor name was mentioned as Vinod Agarwal, Kakinada. Neither Sarala Foods Private Limited nor the guarantor Vinod Agarwal is a party to the suit. There is no material to show that the credit invoice which was issued in favour of Sarala Foods Private

Limited showing the name of guarantor as Vinod Agarwal is connected to the defendants.

10) In *M/s. Patel Roadways Pvt. Ltd. v. the Republic Forge Co., Ltd.*,¹ this Court took the view that in the absence of any proof that the parties have agreed to the jurisdiction of a particular Court, it cannot be postulated that such a condition should be deemed to be an integral part of the agreement.

11) In view of the judgment referred to above and for the aforesaid reasons, I see no grounds to interfere with the findings of the lower Court.

12) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

13) As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

29.06.2018
gkv

¹ AIR 1985 AP 387

