

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.486 of 2017 (O&M)
Date of Decision: 29.05.2018**

Punjab Gramin Bank

.....Petitioner

Vs

Rajesh Bhandari

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. N.C. Sahni, Advocate
for the petitioner.

Mr. Ashish Aggarwal, Advocate for
Mr. Bhavesh Aggarwal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner-Bank has challenged the order dated 20.10.2016 passed by the Civil Judge (Jr. Divn.) Amritsar vide which application under Order 14 Rule 2 read with Section 151 CPC for framing preliminary issues and deciding the same before the main issues was declined.

[2]. Brief facts are that the respondent filed a suit for declaration to the effect that order of dismissal dated 19.02.2008, dismissing the plaintiff from service on 14.01.2008 and suspension prior to dismissal was illegal, void, *ab initio* and

were liable to be set aside. A suit for mandatory injunction was also filed directing the Bank to take plaintiff back in service with all consequential reliefs. In the said suit, respondent has pleaded in paras no.2, 3 and 5 of the plaint in the following manner:-

“2. *That on one very fine day i.e. 09.11.2005 one suspension notice was received by the plaintiff, when he was posted at defendant bank branch at Amritsar and it came as bold from blue, since no opportunity was given to the plaintiff to be heard, rather the written representation given by the plaintiff was not considered. Inquiry committee was set up for the inquiry of allegations made by the anonymous persons and details of said person was never provided to the plaintiff by the bank till date and the said committee was chaired by a person namely Shri H.S. Bajwa who had personal enmity/vengeance against the plaintiff on his personal grounds. Rather the plaintiff wrote the higher authorities of bank to appoint some other officials at his place to head the inquiry, but the bank was reluctant to take action against the plaintiff. The said drama all begin, when a FIR No.129, under Section 419, 420, 467, 468, 471, 120-B IPC was registered by P.S. Civil Lines, Batala and unfortunately arrested the plaintiff without providing opportunity to be heard. Rather the charge sheet of the bank was supplied to the plaintiff in the central jail, Gurdaspur in July, 2006 and in that position, the plaintiff was economically,*

socially and judicially was crippled to reply the same since he was in mental trauma and lot of social disgrace has to be faced by the plaintiff as well as his family members and ultimately without the plaintiff being heard the said H.S. Bajwa, Senior Manager HRD, thereby dismissed the plaintiff from his services on 14.01.2008 and informed the plaintiff vide circular No.03/2008, dated 19.02.2008.

3. *That the trial continued in the trial Court before Smt. Anita Singh, JMJC, Batala, bearing case No.CHI0002346/2014 and case No.52 and ultimately considering all the aspects of the case, the said learned court acquitted the present plaintiff from all the allegations leveled against him vide judgment dated 20.01.2015. The bank took all the action against the present plaintiff on the basis of complaint as well as FIR lodged by the concerned police mentioned above, and since the plaintiff has been acquitted from the said charges, hence the inquiry, dismissal, as well as suspension order thereby come to an end automatically by the operation of law.*
5. *That the cause of action arose in the favour of plaintiff and against the defendant bank since after the judgment is being delivered by the said court in January, 2015 and during the trial the plaintiff was unable to claim anything from the defendant bank. As such the present suit is well within time."*

[3]. The suit was contested by the defendant/Bank. An application under Order 14 Rule 2 read with Section 151 CPC

for framing of preliminary issues on the ground that the Bank has taken preliminary objection in respect of jurisdiction and limitation as the suit is not maintainable under the provision of law as no cause of action has arisen in favour of the plaintiff/respondent. The defendant/Bank also pleaded that the proceedings have taken place outside the jurisdiction of Amritsar. The fraud was committed at Batala, Distt. Gurdaspur. Inquiry was held at Kapurthala. Chargesheet was served at Central Jail, Gurdaspur and order of dismissal was served at Batala. The cause of action is deemed to have accrued to the plaintiff in the territory where the employee suffers its consequences and where his rights were infringed. With this defence, the defendant/Bank pleaded that the Court at Amritsar was having no jurisdiction merely because order of suspension was served upon respondent at Amritsar. The defendant/Bank also claimed that the suit filed by the plaintiff is hopelessly time barred as the order of dismissal was passed on 14.01.2008 and the suit was filed almost after 8 years of that order.

[4]. The Civil Judge (Jr. Divn.) Amritsar vide the impugned order dismissed the application on the ground that questions of jurisdiction and limitation are mixed questions of law and facts and the same cannot be decided at that stage.

[5]. Learned counsel for the petitioner vehemently

submitted that issue of jurisdiction can always be treated as preliminary issue and the suit can be disposed of on the decision of that issue itself. Learned counsel by relying upon **M/s Punjab Beej Bhandar vs. M/s Kumar Fertilizers, 2009(1) R.C.R. (Civil) 299** contended that territorial jurisdiction of the Court at Amritsar can be questioned which would decide the fate of the suit itself besides treating issue of limitation which would also render the suit to be barred by limitation.

[6]. I have considered the submissions made by learned counsel for the parties.

[7]. Para no.2 of the plaint disclosed part of cause of action. In FIR No.129, under Sections 419, 420, 467, 468, 471, 120-B IPC which was registered against the plaintiff-respondent at Police Station Civil Lines, Batala ultimately resulted in acquittal of the plaintiff/respondent. On 20.01.2015, the Court of Sub-Divisional Judicial Magistrate, Batala acquitted the plaintiff for want of sufficient material on record and ultimately acquitted him from the charges. The Court also recorded that the prosecution against the plaintiff was on account of faulty investigation in which neither material witnesses were joined by the Investigating Officer, nor any witness was produced from the Bank. No record was obtained relating to loan accounts which were mentioned in the complaint. The acquittal of the plaintiff

was not on the basis of doubt, rather prosecution miserably failed to lead any such material in the context of complicity of the plaintiff. The use of word benefit of doubt in such circumstances can be treated to be on explanatory note. The judgment of acquittal has already attained finality as no appeal was filed by the prosecution. Virtually the said case was a case of no evidence by the prosecution and the plaintiff was acquitted in the said case. The cause of action pleaded in the suit is based on the acquittal of the plaintiff on 20.01.2015 as per pleadings made in paras no.3 and 5 of the plaint.

[8]. Question of territorial jurisdiction of the Court is always a mixed question of facts and law. Treating the same to be preliminary issue, depends upon facts and circumstances of each case. In some cases evidence is required to be led in support of said issue. If the evidence is to be required in respect of said issue, the same will lose its significance of being a preliminary issue. As per pleadings of the plaintiff in the reproduced paras of the plaint, the cause of action is dependent upon many factors. As per Section 20(c) CPC, a suit can be instituted where cause of action wholly or in part arises. Reading of Section 20 CPC, would show that unless case could be brought within the ambit of clause (c), it is the convenience of the defendants which appears to be upper most in the mind of

the framers of the Code. That is why clause (a) and clause (b) sought to confer the jurisdiction only on such Courts where defendants reside or carries on business. The explanation(II) in some measure, sought to take into view the convenience of the plaintiffs as well as where it happened to be pitched against Corporation having its head office located at different places.

[9]. The cumulative effect of interpretation gives rise to a positive case in favour of the plaintiff that firstly preference has to be given to the cause of action as covered in Section 20(c) CPC and thereafter in case of no applicability, clauses (a) and (b) would come into operation. Reference can be made to **Surinder Kumar Arora vs. The Bengal National Textile Mills Limited, AIR 1979 156 (Punjab)**.

[9]. Cause of action is dependent upon bundle of facts. In view of pleadings made by the plaintiff, it would be debatable as to the exact jurisdiction referable to any particular Court except the one in which cause of action has been pleaded by the plaintiff in terms of his pleadings. At this stage of litigation, no such firm finding can be recorded except to allow the trial Court to proceed with reference to evidence. Even as per ratio of precedents cited in **M/s Punjab Beej Bhandar's** case (supra), the question of jurisdiction was held to be a mixed question of facts and law. For treating that question to be preliminary issue,

if some evidence is required, then it would be wholly debatable as to whether such issue can be treated to be preliminary issue at that stage of the case. The cumulative effect of the pleadings and legal position on record would make the entire case to be dependent upon the evidence to be led by the parties at relevant stage. Issue of jurisdiction and limitation being mixed question of law and facts would be addressed by the trial Court at the relevant stage after receiving relevant evidence from the parties.

[10]. In view of aforesaid position, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 29, 2018

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No