

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.5291 of 2018(O&M)
Date of Decision-11.12.2018

Mahabir Singh and others

... Petitioners

Versus

Sarabjeet Singh and another

... Respondents

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

Present: Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Vivek Khatri, Advocate
for the petitioners.

Mr. Manjit Singh Khaira, Sr. Advocate with
Mr. Ravinder Singh Rawal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 25.07.2018 passed by Civil Judge (Junior Division), Rajpura, whereby application filed by the petitioners under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[2]. Petitioner No.1 filed a suit for declaration that he continues to be owner of LOI issued for the allotment of industrial plot measuring 1000 sq. yard for the draw of lots held by the GMADA in IT city against application form No.5309 with all proprietary rights on free hold basis and the order of transfer of the said LOI passed by GMADA through its Estate Officer in

favour of defendants No.1 and 2 in the said suit i.e. Sarabjeet Singh and his wife Harpreet Kaur is illegal, null and void. Consequential relief of permanent injunction was also sought, restraining defendants No.1 and 2 not to alienate or to deal with the property allotted against the said LOI in any manner. GMADA was also sought to be restrained not to grant any permission or to allot any plot in the name of defendants No.1 and 2 against the said LOI. The aforesaid suit is still pending in the Civil Court at Mohali.

[3]. Defendants No.1 and 2 of the aforesaid suit filed a suit for recovery of un-liquidated damages in the Civil Court at Rajpura on the ground that they have suffered mental agony, pain, suffering and loss of reputation due to filing of the aforesaid suit by the plaintiff/petitioner in the Court at Mohali. Para Nos.10, 11 and 12 of the aforesaid suit for recovery of un-liquidated damages filed by respondents No.1 and 2 herein are relevant to be quoted.

“10. That the plaintiffs are doctors by profession and they are specialist and are having great reputation in the locality and in the eyes of society and due to the above said act and conduct of the defendants, the plaintiffs have to suffer valuable time which was they have to spend on their profession.

11. That due to act of the defendants the reputation and personality of plaintiffs has been low down in the society. Even after the transfer of LOI, the defendants are

threatening the plaintiffs and want to extract money from them by way of black-mailing and threatening and even filed a wrong and false suit in the Civil Court, Mohali. The defendants also threatening the plaintiffs to various means just to harass and extract money.

12. That the plaintiff is entitled for uncertain, un-liquidated on account of damage suffered by the defendants due to file false suit and, loss of work for last one year, loss of reputation in the eyes of general public, neighbours and relatives. The plaintiffs are not looking after their profession work properly due to the above said conduct of the defendants.”

[4]. In the aforesaid suit for recovery, defendants/petitioners filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that the suit filed by petitioner No.1 is still pending in the Civil Court at Mohali. No cause of action accrues in favour of the plaintiffs to file suit for recovery of un-liquidated damages on account of mental agony, pain and suffering in the Court at Rajpura. The filing of the suit at Rajpura is hit by Sections 16 and 20 CPC and the Court at Rajpura has no jurisdiction to try and decide the suit.

[5]. The application was contested by the plaintiffs/respondents No.1 and 2 on the ground that all the payments were made through cheque/RTGS/cash by the plaintiffs to the defendants at Rajpura, therefore, the Court at Rajpura has got the jurisdiction as the documents regarding transfer of plot are legally registered at Rajpura.

[6]. By referring to Section 19 CPC, learned counsel for the respondents submitted that where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

[7]. Perusal of the record would show that the civil suit for declaration filed by petitioner No.1 in the Civil Court at Mohali is pending. Without there being any adjudication of the suit, presumption regarding the suit being false or the wrong has been done to the plaintiffs of second suit for recovery cannot be presumed. Section 19 CPC would arise only where the first suit is culminated to its logical end and it is found that the same was actuated with malice, thereby causing loss of reputation to the defendants therein. No such presumption of contingencies can be recorded, particularly when the suit itself is pending before the Court at Mohali.

[8]. As per Section 16 CPC, the suit is to be instituted where subject matter/property is situated or in the Court within the local limits of whose jurisdiction, defendant actually and voluntarily resides or carries on business or personally works for gain. The aforesaid Section relates to the property situated within

India. Other suit can be instituted where defendant resides or a cause of action arises. Section 20 CPC deals with the aforesaid situation. Every suit shall be instituted in a Court within the local limits of whose jurisdiction-

“(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part arises.”

As per Section 20(c) CPC, the suit can be instituted where the cause of action wholly or in part arises.

[9]. The cause of action pleaded in para No.14 of the suit reads as under:-

“14. That cause of action for filing the present suit arose to the plaintiff against the defendant on the date of agreement of the above said plot with the plaintiffs and continuous as the defendants are issuing notices on the false grounds and openly threatening to the plaintiffs by various means and lastly a day before yesterday when the defendants flatly refused to accept the genuine request of the plaintiffs, therefore, the suit is within limitation.”

[10]. Apparently, cause of action as pleaded in the suit for recovery of un-liquidated damages is the subject matter of transfer of LOI and filing of suit in the Court at Mohali. The cause of action pleaded in para No.14 of the suit is dependent upon the subject matter of the suit property situated in SAS Nagar Mohali and para No.14 of the suit cannot be read in isolation from para Nos.10, 11 and 12 in any manner. The alleged mental agony, pain and suffering are on account of filing of suit at Mohali which has not been determined or held to be false so far. Without any such determination, the suit at Mohali cannot be held to be based on falsehood thereby giving mental agony, pain and suffering or to claim un-liquidated damages on account of loss of reputation of the respondents.

[11]. Reading of Section 20 CPC would show that unless a 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. Clauses (a) and (b) of the aforesaid Section, seek to confer the jurisdiction only on such Courts where defendant resides or carries on business. The explanation (II) in some measure, seeks to take into consideration the convenience of the plaintiffs as well where it happens to be pitched against Corporation having its head office located at different places.

[12]. The cumulative effect of interpretation gives rise to a positive case in favour of the petitioners 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 **AIR 1979 156 (Punjab) Surinder Kumar Arora v. The Bengal National Textile Mills Limited**. Paras No.9 and 10 of the judgment reads as under:-

“9. I am afraid this plea of the learned counsel does not carry conviction with me. If the cause of action, wholly or in part, had arisen within the jurisdiction of a given Court, then it is superfluous for the party to invoke either clause (a) or clause (b), for then the matter would squarely fall within the ambit of clause (c). It is only when the case does not fall within clause (c) that it has to be seen whether it falls within the ambit of clauses (a) or (b).

10. A plain reading of Section 20 would show that unless a case could be brought within the ambit of clause (c), it is the convenience of the defendant which appeared to be uppermost in the mind of the framers of the Code. That is why, clauses (a) and (b) sought to confer the jurisdiction only on such Courts where the defendant or the defendants resided or carried on business etc. Explanation II, in some measure, sought to take into view the convenience of the plaintiff as well where it happened to be pitched against a Corporation having, apart from its head-office, Branch Offices located at different places, for in such a case, so far as the Corporation as a defendant is concerned, it would not be inconvenienced for the reason that it happened to have its Branch Office at the place on the Courts whereof Explanation II read with clause (a) sought to confer jurisdiction in a suit against it.”

[13]. In terms of Sections 16 and 20 CPC, jurisdiction of the Court at Rajpura is barred. In **Begum Sabiha Sultan Vs. Nawab Mohd. Mansur Ali Khan and others, 2007(2) RCR (Civil) 837,** the filing of suit at Delhi was held to be without jurisdiction as the property was situated in Haryana. The plaint has to be read in a meaningful manner so as to find out the real intention of the plaintiffs behind the suit.

[14]. The suit for recovery is based on filing of suit for declaration in the Court at Mohali which is claimed to be false. The falsity of the suit has not been decided so far. The question of jurisdiction is required to be determined with reference to the date on which the suit is filed. As per the addresses shown in the suit filed by the respondents in Rajpura, defendants therein i.e. petitioners in the present revision petition are shown to be residents of Sonipat. The property qua which the suit for declaration was filed by petitioner No.1 is situated in Mohali. If the suit for recovery of money on account of un-liquidated damages is filed in a Court within whose jurisdiction defendant is not residing, such suit is not maintainable. Even if, defendant comes to reside in the territorial jurisdiction of such Court at a later stage, the question with regard to jurisdiction, is required to be determined with reference to the date of filing of the suit and not with regard to any future date. Apparently, the defendants are not residing in the territorial jurisdiction of Rajpura, nor the property

which is subject matter of mental agony, pain and suffering qua which LOI is the subject matter, is situated in Rajpura.

[15]. In view of **Mohannakumaran Nair Vs. Vijayakumaran Nair, 2008(1) RCR (Civil) 21 (SC)**, the civil suit for recovery of money instituted in a Court within whose jurisdiction, defendant was not residing is not maintainable. The subsequent change in respect of defendant coming to reside in the territorial jurisdiction of such case is of no consequence as question with regard to jurisdiction is to be determined with reference to the date on which the suit is filed and not with reference to any future date. If a cause of action arises at a later stage, a fresh suit may lie but that would not mean that the suit which was not maintainable on the date of its institution, can be held to have been validly instituted. Reference can be made to **Jindal Vijayanagar Stell (JSW Steel Ltd.) Vs. Jindal Praxair Oxygen Company Ltd., 2007(1) RCR (Civil) 295.**

[16]. The suit can only be filed in terms of Sections 16 and 20 CPC. Section 19 CPC is not applicable in the given situation because wrong has not been established so far as the suit at Mohali is still pending. Defendants are not residing within local limits of Rajpura.

[17]. Looking from any angle, the impugned order dated 25.07.2018 passed by Civil Judge (Junior Division), Rajpura is

not legally sustainable and is therefore, set aside. Revision petition is accordingly allowed. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

11.12.2018
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No