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

CR-6581-2015

Date of decision : 26.03.2018

Kotak Mahindra Bank and another

... Petitioner(s)

Versus

Jagjit Singh and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. P.K. Sekhon, Advocate
for the petitioners.

Mr. Sanjeev Gupta, advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 10.08.2015 (Annexure P-6), whereby an application (Annexure P-4) seeking framing of additional issues on the basis of preliminary objections taken in the written statement qua lack of territorial jurisdiction and bar of suit under Order 2 Rule 2 CPC, had been dismissed.

Learned counsel for the petitioners submitted that the respondent-plaintiff instituted the suit for claiming recovery of an amount of ₹8 Lacs (an odd amount) on the premise that some amount was embezzled by the bank's employees. However, in reply, the following preliminary objections were taken:-

- 1. That the suit under reply deserves dismissal for want of territorial jurisdiction. Kotak Mahindra Bank Ltd. (hereinafter for the sake of brevity referred as 'Bank') is*

having its registered office at 36-38-A, Nariman Bhavan, 227, Nariman Point, Mumbai 400 021 and is having several branches throughout India. Plaintiffs opened their joint saving bank account number 02540120021924 at SCF No.108, Phase 3B2, SAS Nagar, Mohali Branch of the Bank. The said branch of the bank is impleaded as defendant No.2. Since the account of the plaintiffs is in Mohali and the plaintiffs have not shown how the matter is related to Chandigarh Branch, the Court at Chandigarh does not have jurisdiction.

- 2. That the suit under reply is barred by the provisions of Order 2 Rule 2 of the Code of Civil Procedure. In fact, the plaintiff No.1 has already filed a suit for recovery in the Court of Civil Judge (Sr. Divn.) and Mr. Sachin Talwar as defendant Nos.2 and 4 respectively. The said Civil Suit No.316 dated 18.10.2011 titled as "Jagjit Singh V/s Manjit Kaur and others" is pending adjudication in the Court of Sh. Ajaib Singh, Civil Judge, SAS Nagar, Mohali and is fixed for 25.08.2012. The copy of the said plaint 14.10.2011 is appended herewith as Annexure D-1/1. In the earlier suit at Annexure D-1/1, the plaintiff No.1 has omitted to sue in respect of the claim made in the suit under reply, therefore, the suit under reply is not maintainable due to statutory bar under Order 2 Rule 2 of the CPC.*
- 3. That the plaintiffs have concealed the material facts and withheld the relevant documents from this Hon'ble Court, therefore, on this score alone the suit deserves dismissal at the very outset. In fact, the plaintiff No.1 made a complaint dated 04.05.2010 claiming that he has not done lot of transactions shown in his Account 02540120021924 and requested the answering defendant to investigate the matter. However, the plaintiff No.1 withdrew the said complaint by letter dated 12.05.2010 and expressed being sorry for the inconvenience caused. Copy of the aforesaid complaint*

dated 04.05.2010 and the letter dated 12.05.2010 for withdrawal of complaint is appended herewith as Annexure D-1/2 and D-1/3, respectively. However, the answering defendant forwarded a subsequent complaint dated 19.11.2010 of the plaintiff No.1 to the police in good faith so that the fair inquiry/investigation into the claims made by the plaintiff No.1 could be carried out. The said complaint of the plaintiff no.1 forms part of the police proceedings in FIR No.8 of 2010, Police Station Mataur, Mohali.

In this context it would be apt to refer to the following observations of Hon'ble Supreme Court in the matter of "S.P. Changalvaraya Naidu (dead) by LRs V/s Jagannath (dead) by LRs, reported in 1994 (1) SCC 1 :-

"A litigant, who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side than he would be guilty of playing fraud on the Court as well as on the opposite party."

As in the present case, the plaintiff has concealed the material facts and withheld the relevant documents from this Hon'ble Court, the suit deserves dismissal on this score alone."

There is an objection qua territorial jurisdiction as the plaintiffs opened their joint bank account at Mohali, whereas the suit had been filed at Chandigarh and the similar civil suit for recovery of an amount on the basis of the same very alleged misappropriation had been instituted by the plaintiffs at Mohali, therefore, the second suit would be hit by the provisions of Order 2 Rule 2 CPC, but the trial Court has failed to address the aforementioned issue, resulting into, dismissal of the application. The suit was at the stage of the respondent-plaintiff's evidence, therefore, no

harm and prejudice would be caused as the plaintiff would be able to cross-examine the witnesses.

Learned counsel for the respondent submitted that the suit filed at Mohali was for a different transaction and had nothing to do with the suit filed at Chandigarh, therefore, the provisions of Order 2 Rule 2 CPC would not apply. The part of the cause of action had accrued at Chandigarh and it is, in that aspect of the matter, the suit at Chandigarh was filed, which would be subject matter of the decision in view of the following issues framed on 31.07.2013:-

- 1. Whether the plaintiff is entitled to recovery of suit amount as alleged? OPP*
- 2. If issue No.1 is proved, whether the plaintiff is entitled to interest, if so, at what rate? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD*
- 4. Whether the plaintiffs have concealed the material facts? OPD*
- 5. Relief.”*

thus, urges this Court for dismissal of the present revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that though in the application Annexure P-4, the petitioners-defendants have not suggested the additional issues, but the fact of the matter is that in view of the preliminary objections already taken, intended to be impressed upon the trial Court for framing of the issues with regard to the territorial jurisdiction and Order 2 Rule 2 CPC, it is a legal issue, which can always be addressed by the parties, but the defendants may not be confronted with at the final stage of the suit. In my view, the prayer

in the application was most innocuous and would not have prejudiced the right of the plaintiff, though the parties are at liberty to lead evidence as to whether the pendency of the suit at Mohali was in respect of same alleged cause of action or different one.

For the foregoing reasons, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside and the application (Annexure P-6) is allowed and the trial Court is directed to frame the following issues:-

1. *Whether the Civil Court at Chandigarh would have territorial jurisdiction to try the suit ? OPD*
2. *Whether the suit by the plaintiff is barred under the provisions of Order 2 Rule 2 CPC? OPD*

Since the suit is at the stage of plaintiff's evidence, both the parties shall be at liberty to lead evidence in support of their averments.

With the aforesaid observations, the present revision petition stands disposed of.

26.03.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**