

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

C.R.No.7981 of 2017

Dr. Balbir Singh Virk and Anr.

....Petitioners

Versus

Rajinder Kumar Mangal

....Respondent

Date of Order: 01.06.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. M.S. Khillan, Advocate for the petitioners.

Mr.Sanjiv Kumar Aggarwal, Advocate for the respondent.

AMIT RAWAL, J (ORAL)

Defendant-petitioners have preferred the instant revision petition against the impugned order dated 16.8.2017 passed by learned Addl. District Judge, Kaithal whereby the appeal filed by the plaintiff-respondent against the order dated 30.7.2016 passed by learned Civil Judge (Sr. Division), Kaithal ordering for return of the plaint for want of territorial jurisdiction has been accepted.

Learned counsel for the petitioners submitted that the Appellate Court has committed grave illegality while accepting the appeal of the plaintiff-respondent, for, the treatment as well as the follow up of the injury sustained by the plaintiff-respondent in a road accident was conducted in a hospital situated at Karnal, therefore, the suit filed before the court at Kaithal was not maintainable, in view of Section 20 CPC. It is in these background of the matter that the provisions of Order 7 Rule 10 CPC were invoked and the trial Court has rightly allowed the application of the

petitioners. He submitted that the provisions of Sub Sections (a) & (b) are fully attracted instead of Section 20 (c) as sought to be projected before the lower Appellate Court. In support of his contentions, he relied on judgments rendered by Hon'ble Supreme Court in **M/s Kusum Ingots & Alloys Ltd Vs. Union of India and Anr, 2004 AIR (SC) 2321** and **Eastern Coalfields Ltd & Ors Vs. Kalyan Banerjee, 2008(3) SCC 456** and a judgment of Gauhati High Court reported as **Anand Traders and Anr. Vs. S.K Enterprises 1989 (3) CurCC 638** to submit that the expression "wrong done" cannot be stretched too far to bring within its ambit place or places where "the effect of the wrong might be felt by the Plaintiff". Such an attempt will go counter to the very object and scheme of Section 19 which is to restrict the territorial jurisdiction of the Courts to a place where either the wrong is done or the defendant resides and will whittle down the express provisions contained in Section 19 of the Code.

Per contra, learned counsel for the respondent-plaintiff submitted that there is no illegality in the impugned order rendered by lower Appellate Court whereby the appeal preferred against the trial Court rejecting the plaint for want of territorial jurisdiction has been accepted, for, in a suit for damages, plaintiff has to file the suit either at a place where wrong was done or where cause of action arose. In support of his contention, he relied upon a judgment of Himachal Pradesh High Court reported as **Dr. Rita Bherwal Vs. Raghav Gupta and others, 2017(2) Civ CC 631**.

After hearing learned counsel for the parties and appraising the paper book, I find no force and merit in the submissions of learned counsel for the petitioners.

It would be apt to reproduce Sections 19 and 20 of the Code of Civil Procedure, which read as under:

“19. Suits for compensation for wrongs to person or movable .- 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.

20. Other suits to be instituted where defendants reside or cause of action arises .- Subject to the limitations aforesaid, 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.

On the conjoint reading of aforesaid provisions of the CPC, it is crystal clear that the suit for damages, which has been instituted at Kaithal claiming the amount for the alleged wrong done during the performance of

the treatment can be filed at the choice of the affected person. The plaintiff will have an option of suing the defendant in either of the Courts. A bare reading of the aforesaid provision makes it clear that the plaintiff has option to sue a wrong doer at the place within whose local limits the wrong was done or in the court within whose jurisdiction the defendant resides or carries on business or personally works for gain.

Even provisions of Sections 20(a) & (b) of CPC would not come to the rescue of the petitioners-defendants being resident of Karnal rather sub Section (c) of Section 20 CPC would be attracted as part of cause of action arose at Karnal though only the operation was performed at Karnal but the plaintiff thereafter stayed at Kaithal and suffered complications, which necessitated to institute the suit.

For the adjudication of the application submitted by the petitioners-defendants regarding territorial jurisdiction, I am of the view that the opinion expressed by the lower Appellate Court while accepting the appeal of the plaintiff-respondent is correct, for, the judgment cited as **M/s Kusum Ingots's case (supra)** was not a case of damages, therefore, the provisions of Section 20(c) CPC were interpreted against the party alleging cause of action which arose at a place where he was residing. Another case cited in **Eastern Coalfields Ltd's case (supra)** was service matter wherein the aggrieved party had filed a writ petition within the jurisdiction of Calcutta High Court whereas the office of the General Manager of the respondent was in the state of Lucknow. As regards **Anand Traders's case (supra)**, the same is also not applicable to the facts of the present case as in that case the provisions of Section 19 & 20(c) invoked by another party were negated.

On the other hand, the judgment relied upon by learned counsel for the respondent-plaintiff in **Dr. Rita Bherwal's case (supra)** is an identical case where the suit for damages on account of injuries having been suffered by the plaintiff during the performance of treatment was filed at Shimla though wrong was done at Nahan. Likewise, in the present case also the surgery was conducted at Karnal whereas the plaintiff is resident of Kaithal.

Thus, viewed from any angle, the findings recorded by the lower Appellate Court, in my view, do not call for any interference.

Dismissed.

June 01, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No