

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 379 OF 2018**

GKB Hi-Tech Lenses Pvt. Ltd., Rep.
by its POA, Roshni Salgaonkar, Petitioner
Versus
Ajay Ghosh Respondent

Mr. Yogesh V. Nadkarni, Advocate for the Petitioner.

CORAM : C.V. BHADANG, J.**DATE : 25th September, 2019****ORAL ORDER:**

On 14.12.2018, a notice for final disposal was issued to the respondent. The respondent has chosen not to appear, though served. As such, the Petition is taken up for final disposal. I have heard Mr. Nadkarni, the learned Counsel for the petitioner.

2. The challenge in this Petition is to the order dated 11.08.2017, below Exhibit B-1, passed by the learned Senior Civil Judge at Mapusa in Special Civil Suit No. 40/2014/A, by which, the learned Trial Court has held that in view of Section 19 of the Code of Civil Procedure (CPC, for short), the Court has no territorial jurisdiction to try the suit. Subsequently, by an order dated 05.12.2017, the learned Trial Court has

directed the return of the plaint, subject to the petitioner complying with Order VII, Rule 10A(2) of the Code.

3. The brief facts are that the petitioner has filed the aforesaid suit for recovery of a sum of Rs.1,25,01,602/- alongwith interest. The case made out in the plaint is that the respondent was employed by the petitioner and the respondent was posted in Guwahati in Assam, where he collected various amounts from the customers of the petitioner, which amount he was required to deposit in the Account of the petitioner at Mapusa. Undisputedly, the petitioner is a Company having its Head Office at Mapusa. It was also contended that on 08.04.2014, there was a meeting held between the respondent and the representative of the petitioner at Mapusa, in which, the respondent had agreed that he has collected various amounts from the customers and did not deposit it in the Account of the petitioner.

4. It appears that the respondent remained absent in the suit and the suit was proceeded ex-parte. The petitioner led its evidence and when the suit was fixed for final hearing, the learned Trial Court found it necessary to hear the respondent on the point of territorial jurisdiction. After

hearing the learned Counsel for the petitioner, the learned Trial Court on the basis of Section 19 of the Code, has come to the conclusion that it lacks territorial jurisdiction to entertain the suit.

5. Mr. Nadkarni, the learned Counsel for the petitioner has placed reliance on the decision of this Court in the case of **Ocean Marine Environment Coatings Private Limited Vs. A.P. Usmani** (Commercial Appeal No. 4/2018, decided on 26.06.2019), in order to submit that the Court cannot take up the issue of jurisdiction as a preliminary issue, as it was an issue involving mixed question of law and facts. It is submitted that the Trial Court misdirected itself, in placing reliance on Section 19 of the Code, in holding that the Court lacks jurisdiction. It is submitted that under Section 20(c) of the Code, the Court would have territorial jurisdiction, as part of action has arisen within the jurisdiction of the Trial Court.

6. I have considered the submissions made. Para 26 of the plaint pertaining to jurisdiction reads thus:

“26. The plaintiff states that the plaintiff is having its registered office and head office at 50, Tivim Industrial Estate, Karaswada, Mapusa, Goa. The plaintiff states that the appointment letter of the

defendant was issued by the plaintiff from its registered office at 50, Tivim Industrial Estate, Karaswada, Mapusa, Goa, as also the salary invoices of the defendant were generated and salary cheques were issued at Mapusa. It is also stated that the defendant has admitted and signed the minutes to the meeting at Mapusa office of the plaintiff. The defendant had to deposit the misappropriated amounts in the bank accounts of the plaintiff at Mapusa. As such, this Hon'ble Court has jurisdiction to try and entertain the present complaint."

7. The learned Counsel for the petitioner submitted that the petitioner is not relying on the fact that the appointment letter of the respondent was issued by the petitioner at its registered office at Mapusa and the salary invoices were generated and salary cheques were issued at Mapusa. However, in the submission of the learned Counsel for the petitioner, the Trial Court has jurisdiction in the matter. Mr. Nadkarni, the learned Counsel for the petitioner has placed reliance on two circumstances, (i) that the respondent was required to deposit the amount, which was collected by him, in the Bank Account of the petitioner at Mapusa and (ii) the meeting dated 08.04.2014 was held in Mapusa, where the respondent has admitted his liability. It is submitted that on

the basis of the aforesaid circumstances, the part of the cause of action can be said to have accrued at Mapusa within the territorial jurisdiction of the learned Trial Court.

8. A bare perusal of the order shows that the aspect of holding of the meeting at Mapusa was not considered by the Trial Court. That apart, Section 19 of the Code, on which reliance is placed, pertains to suits for compensation for wrongs to person or movables, which will not be applicable in this case. The question essentially is whether, the Trial Court has jurisdiction to entertain the suit under Section 20(c) of the Code.

9. A perusal of the impugned order does not show that this aspect has been considered by the learned Trial Court. I also find that the suit has been marked ex-parte against the respondent and the petitioner has also led its evidence. It would thus be appropriate that the Trial Court decides the suit finally on its own merits, including the issue of territorial jurisdiction, which is specifically left open.

10. In the result, the following order is passed:

ORDER

- (i) The Petition is partly allowed.
- (ii) Both the impugned orders are hereby set aside.
- (iii) The learned Trial Court shall decide the suit finally on its own merits and in accordance with law, including the issue of territorial jurisdiction, which is left open.
- (iv) In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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