

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
05~03~2019	28~03~2019

CORAM :THE HONOURABLE **MR. JUSTICE N.SATHISH KUMAR****C.R.P.(PD).No.3726 of 2013 and**
M.P.No.1 of 2013

Sundaram Brake Linings Ltd.,
Represented by the Chairman and
Mandging Director,
Padi, Chennai 600050.

... Revision Petitioners/
Respondent/Defendant

Versus

M.S.Subramanian

... Respondent/Appellant/
Plaintiff

Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 08.07.2013 passed in I.A.No.16655 of 2012 in O.S.No.326 of 2012 by the learned XII Assistant City Civil Judge, Chennai, and allow the Revision.

For Revision Petitioner .. Mr. C. Seethapathy

For Respondents .. Mr.A. Govindasamy

ORDER

Aggrieved over the order passed in I.A.No.16655 of 2012 in O.S.No.326 of 2012 allowing the amendment by including the

defendant's registered office as one of the defendants in the suit, the present revision is filed.

2. The suit has been filed to declare the order of dismissal dated 8.8.2009 issued to the Plaintiff by the Defendant is null and void and grant mandatory injunction reinstating the Plaintiff with full back wages with attendant benefits.

3. It is the case of the Plaintiff that he was appointed as Assistant Manager (Secretariat & Finance) in the company of the Defendant viz., Sundaram Brake Linings Limited, Padi, Chennai. Serious allegation has been made against the dismissal.

4. In the written statement, it is the main contention of the Defendants that the factory of the defendants, since its incorporation 5.9.1974, has always been in Padi, Chennai. The factory continues to be in Padi even after change in name to Sundaram Brake Linings Limited. The cause of action for the termination of the Plaintiff had arisen only at the factory premises of the Defendant. The Show Cause Memo was issued by the Defendant to the Plaintiff at the factory premises. The disciplinary proceedings also took place only at the

factory premises. The Plaintiff was dismissed at the factory premises on 08.08.2009. No cause of action for the suit has been arisen within the jurisdiction of Chennai. Besides various defence set up by the Defendant, the Defendant has raised pecuniary jurisdiction in his written statement.

5. The plaintiff was examined. When cross examination was done partly, the Defendant raised territorial jurisdiction. At this stage, the application has been filed including the Defendant's principal office as one of the Defendants and the same was ordered by the court below, as against which, the present Revision has been filed.

6. The learned counsel for the Revision Petitioner vehemently contended that the trial Court has allowed the amendment after trial. Such amendment cannot be allowed. It is the further contention of the learned counsel that this amendment application has been filed to fill up the lacuna which exposed in cross examination as if the Registered office of the defendant is also to be added as one of the defendants. It is the contention of the learned counsel that the entire cause of action arose within the jurisdiction of factory which is situated in Padi. Therefore, the suit ought to have been filed only before the concerned

court which has territorial jurisdiction and not before the court situated at Chennai. Such amendment in fact takes away the valuable right of the Defendant. Merely because the principal office is situated in Chennai, it did not carry any business and the entire cause of action arose only in the factory premises, suit cannot be maintained in Chennai merely on the ground that the Registered office is situated in Chennai. Hence, it is the contention of the learned counsel for the revision petitioner that such amendment in fact takes away the right of the Defendant and further, limitation question also involved in the suit. The suit ought to have been filed before appropriate court. Therefore, amending the cause title and including the principal office of defendant certainly cause prejudice to the revision petitioner. In support of his contention, the learned counsel relied upon the judgment in ***Rajkumar Guruwara v. S.K.Sarwagi and Company Pvt. Ltd. [(2008) 14 Supreme Court Cases 364]***.

7. Learned counsel appearing for the Respondent submitted that the amendment will not change the cause of action. The principal office was just added as one of the Defendants. The Defendant being the company, carrying on business in the registered office. Merely because in factory premises which is situated outside jurisdiction, the

plaintiff was dismissed from service, it cannot be said that there was no cause of action arose within the jurisdiction of the Court where the principal office is situated. In fact, the appointment order itself clearly indicates that the principal office is situate in Chennai. When the principal office is situate in Chennai, it is deemed to be carrying of business. Therefore, submitted that the amendment will not change the nature of the suit and no new defendant has been added. Only the principal office of the 1st defendant has been added for proper adjudication. It is the further contention of the learned counsel that the defendant has filed 3 suits against bank and plaintiff before High Court in C.S.Nos.1072, 1073 and 1080 of 2007. That being the position now, they cannot contend that such amendment affects their rights.

8. It is the further contention that subsequently another application has been filed in the suit to amend the relief column in view of his superannuation. The above application was also allowed and the suit was amended and additional written statement was also filed by the defendant and now the matter is in the stage of the defendant side evidence. Hence, submitted that the order of the trial Court allowing the amendment does not require any interference. In support of his

contention he relied upon the following judgments:

1. Abdul Rehman and another v. Mohd. Ruldu and others [(2012) 11 Supreme Court Cases 341].

2. Usha Balashaheb Swamy and others v. Kiran Appaso Swamy and others [(2007) 5 Supreme Court Cases 602]

9. This revision has been filed against the order of the trial Court allowing the amendment. The main contention of the Revision Petitioner is that such amendment ought not to have been allowed after the trial has commenced and further the very nature of the amendment amounts to filling up the lacuna with regard to the territorial jurisdiction of the court. As the amendment sought to be made is only to implead the principal office of the company as one of the defendants, the trial Court has allowed the application. Though post trial amendment cannot be ordered mechanically without showing due diligence that could not be raised before the commencement of the trial. Absolutely there is no dispute with regard to the above position of law.

10. The nature of amendment sought for is only to include principal office as one of the defendants. The suit itself is filed against

company for removing the plaintiff. The removal itself is challenged on various grounds. The Defendants pleaded in the written statement that entire cause of action arose only within the jurisdiction of the first Defendant, Padi, where the plaintiff was originally appointed and dismissed from the same place. It is curious to note that admittedly the principal office of the company is registered within the jurisdiction of this Court. Though the plaintiff has not taken any application immediately after the defence raised in the written statement, he filed such application only when the P.W.1 was examined. It is to be noted that only when the parties are compelled to travel to the place where the Corporation and its subordinate office where the cause of action arose and hardship is caused to parties, the territorial jurisdiction assumes relevance. Only when there is complete failure of justice in suing the company in principal office, the defendant can contend that they are forced to travel to the place where the principal office is very much situated and there is a failure of justice. Admittedly, the principal office is very much situated in the city of chennai and its branch office is situate at Padi which is just one hour travel.

11. It is curious to note that the defendants have already filed 3 suits. One in C.S.No.1072 of 2007 in the name of principal office as

a plaintiff. The above suit filed for declaration that the Master Agreement dated 05.01.2007 executed by the 2nd Defendant, purportedly on behalf of the Plaintiff is null and void on the ground of fraud. The plaint pleadings in the above suit in para 23 clearly indicate that they obtained contracts said to have been entered by their officials including the respondent. The other suits in C.S.No.1073 and 1080 of 2007 are for the alleged contract executed by the officers who were working at Padi. The Revision Petitioner have themselves invoked the jurisdiction at Chennai, though the contracts entered by their staff working at Padi. That being the position, merely because the principal office of the company is added as one of the defendants, no prejudice whatsoever would be caused to the Revision Petitioner. Therefore, the Revision Petitioner cannot now contend that complete failure of justice merely they added one of the defendants in the suit. Admittedly, the newly added company is the principal office of the company situate in Chennai. Therefore, this court is of the view that for advancement of substantial justice, when the amendment of mere including of the principal office will not lead to complete failure of justice and all along, the principal office has invoked jurisdiction of this court for the alleged contracts signed by the staff in three other different suits. The order of the trial Court allowing the amendment does not require any

interference. It is not the case that due to territorial jurisdiction, the principal office or others put into irreparable loss, who were compelled to travel proper place as there was no cause of action arose. Admittedly, the distance between the branch office and principal office is just one hour travel within the jurisdiction of Greater Chennai City. Therefore, I am of the view that since the matter is pending for defendant side evidence and further, amendment has also been taken out and additional written statement also filed by the Revision Petitioner and the matter is in the stage of completion of trial, at this stage, this court is of the view that the order of trial court does not require any interference. Accordingly the Revision is dismissed.

12. In the result, the Civil Revision Petition is dismissed. Consequently, connected M.P. is closed. No costs.

सत्यमेव जयते

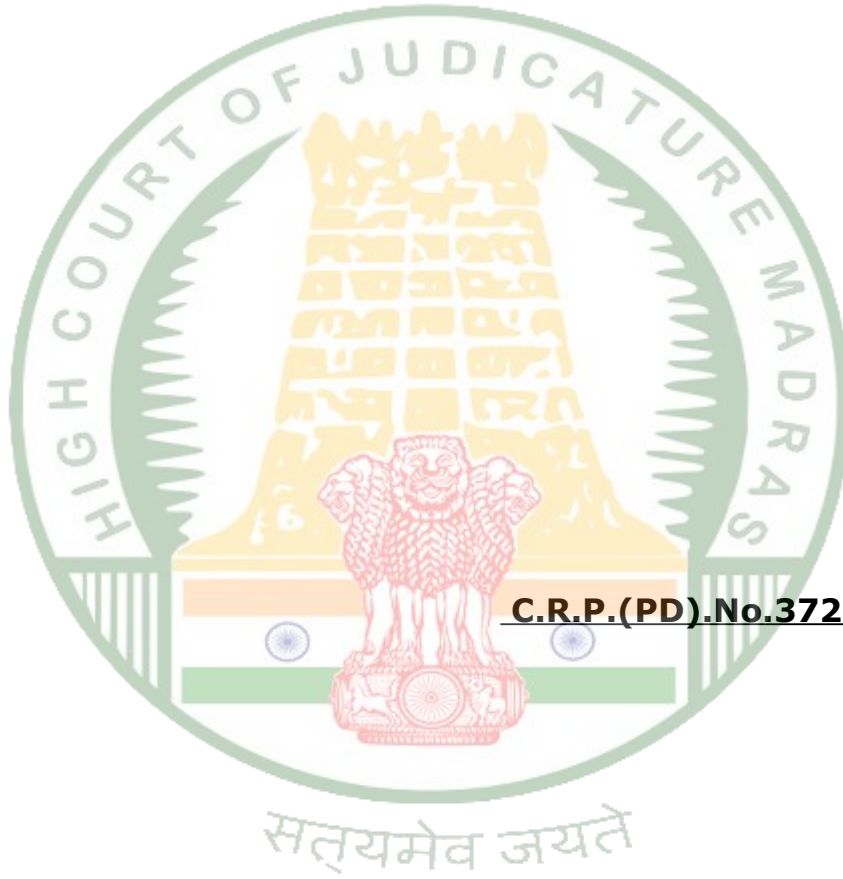
28.03.2019

Index:Yes/No
Internet:Yes/No
Speaking order/Non-speaking order
ggs.

To
The XII Assistant City Civil Judge,
City Civil Court, Chennai.

WEB COPY

N. SATHISH KUMAR, J.
ggs.



order in:
C.R.P.(PD).No.3726 of 2013

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