

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

RSA No.3094 of 2000 (O&M)

Date of Decision:17.12.2019

M/s Dhillon Kool Drinks and Beverages Ltd.

...Appellant

Vs

Rajinder Parshad

...Respondent

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vijay Pal, Advocate for
Ms. Swaranjit Kaur, Advocate
for the appellant.

Mr. Ishan Gupta, Advocate
for the respondent.

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JAISHREE THAKUR J. (ORAL)

1. This is a regular second appeal against the judgment and decree dated 06.06.2000 passed by the District Judge, Sangrur affirming the judgment and decree dated 12.08.1997 passed by the Civil Judge (Senior Division) Sangrur vide which suit of the plaintiff for recovery of ₹4,60,000/- along with future interest @6% per annum from the date of decree upto realization of the decretal amount to the plaintiff has been allowed.

2. Brief facts of the case are that respondent-plaintiff (hereinafter referred to as respondent) Rajinder Parshad, proprietor of M/s Jindal Brothers, Sangrur had applied for dealership of cold drinks and beverages for district Sangrur for the products of Pepsi Lehar and sent demand drafts of ₹3 lakhs drawn on Punjab National Bank to the appellant-defendant (hereinafter referred to as the appellant). Despite payment of advance amount of ₹3 lakhs neither the dealership was provided nor money was refunded. On 27.11.1992, respondent had sent a legal notice to the appellant

but the same was returned as undelivered. Another legal notice dated 13.03.1993 was sent, which though was received by the appellant but no response was given. It is in these circumstances, suit aforementioned was filed.

3. The appellant contested the suit tooth and nail by raising preliminary objection of jurisdiction on the ground that head office of the appellant company is located at Manimajra, Chandigarh and no transaction as alleged had taken place between the parties at Sangrur, therefore, the civil court at Sangrur had no territorial jurisdiction. It was further contended that the suit is an outcome of collusion between the respondent and one Subhash Chander, proprietor of M/s Usha Kool Drinks and Beverages Ltd. at Sangrur, who is a close relative of respondent with a mala fide intention to harass the appellant. Respondent had never applied for dealership nor had he made any payment, therefore, question of providing dealership or refund of money did not arise. It was further averred that the amount of ₹3 lakhs was deposited by M/s Usha Kool Drinks and Beverages Ltd. through two demand drafts and in lieu thereof, cold drinks were duly supplied. Thereafter a span of two years, dealership of M/s Usha Kool Drinks and Beverages Ltd. was terminated. The amount was credited in the account of M/s Usha Kool Drinks and Beverages Ltd., Sangrur and therefore, the suit of the respondent could not be founded on the basis of drafts which were already credited.

4. After framing of issues by the trial court, evidence was led by both the parties. On appreciation of evidence, trial Court came to hold that the amount of ₹3 lakhs was deposited by respondent-Rajinder Parshad in

favour of M/s Dhillon Kool Drinks and Beverages Ltd. and decreed the suit. The appeal filed against the judgment and decree of the trial Court was also dismissed by the lower Appellate Court.

5. Learned counsel for the appellant argues that on the issue of jurisdiction, both the Courts below have wrongly held that the court at Sangrur had jurisdiction. No contract was entered into between the parties at Sangrur, therefore, in the absence of any cause of action at Sangrur, the trial court had no jurisdiction.

6. It is further argued that the respondent never submitted any application for allotment of dealership and the alleged amount of ₹3 lakhs was credited by the appellant in the account of M/s Usha Kool Drinks, Sangrur. It was admitted by Subhash Chander proprietor of M/s Usha Kool Drinks that the amount was taken by him as loan from the respondent for obtaining agency in his name but failed to return the same. M/s Usha Kool Drinks was already a dealer of the appellant and in lieu of the amount of ₹3 lakhs so credited, appellant supplied the cold drinks to the dealer at Sangrur. If the respondent was at all interested in allotment of dealership of the appellant, he would have at least made any written request or submitted an application, which fact has been ignored by both the Courts below. Moreover, respondent had failed to produce any receipt against the demand drafts allegedly handed over by him personally. The account books of the appellant clearly show that amount of aforementioned two drafts were credited in the account of M/s Usha Kool Drinks. The demand drafts are dated 24.04.1990 and 11.05.1990 whereas the suit was filed on 26.04.1993. A person who had applied for dealership in 1990 but did not get the same,

would not wait for three years to approach the Court. This itself shows that the suit was filed only to harass the appellant for undue gain.

7. Per contra, learned counsel appearing on behalf of the respondent would contend that the respondent applied for dealership at Sangrur and admittedly, the appellant company engaged in business at village Channo, Sangrur. The performance of the contract was to be done at Sangrur and therefore, the Civil Court at Sangrur had jurisdiction. PW1 Devinder Singh, Clerk of Punjab National Bank, Longowal deposed that demand draft of ₹2 lakhs prepared in favour of M/s Dhillon Kool Drinks was deposited by Rajinder Parshad. It is admitted case of the appellant that amount of ₹3 lakhs was deposited with M/S Dhillon Kool Drinks, thus, urges this Court for dismissal of the appeal.

8. I have heard learned counsel for the parties and have perused the pleadings and judgments of both the Courts below. As regards issue of jurisdiction, though there is no written contract entered into between the parties having an ouster clause with regard to jurisdiction of other courts but there is definitely an implied contract. The intention or offer on the part of respondent for allotment of dealership and acceptance of an amount of ₹3 lakhs on the part of appellant in lieu thereof completes the two basic ingredients of contract i.e. offer and acceptance. However, in the absence of any specific clause with regard to exclusion of jurisdiction, it has to be seen from the facts and circumstances of the case whether the civil court at Sangrur had jurisdiction or not. Section 20 of Code of Civil Procedure talks about jurisdiction where the cause of action or part of the cause of action has arisen. For the sake of brevity, Section 20 of CPC reads as under:-

“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 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.

Explanation.-A corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Sub-clause (a) of Section 20 explains that a suit can be instituted in a court within the local limits of whose jurisdiction the defendant at the time of commencement of the suit actually or voluntarily resides or carries on business or personally works for gain. Explanation attached to Section 20 consists of two parts. The first part applies only to such corporation, which has its sole or principal office at a particular place, however, the latter part takes care of a case where it has subordinate office. The expression 'at such place' appearing in the explanation suggests that if the case falls within the latter part of the explanation, it is not the court within whose jurisdiction the principal office of the defendant is situated but the court within whose jurisdiction it has a subordinate office will also have

the jurisdiction. In the present case, admittedly, the appellant has a subordinate office at village Channo, Sangrur and therefore, the Civil Court at Sangrur had jurisdiction to try the suit.

9. Now the second issue is whether the respondent was rightly held entitled to recovery for an amount of ₹4,60,000/- i.e. ₹3 lakhs as principal and ₹1,60,000/- as interest along with future interest or not. It is quite interesting to note from pleadings that the alleged amount of ₹3 lakhs originally received by the appellant was deposited in the account of its dealer-M/s Usha Kool Drinks and further the appellant supplied cold drinks as well in lieu of aforementioned amount to the said dealer. The reason for doing such benevolent and kind act is incomprehensible whereby while supplying cold drinks to a dealer, an amount of ₹3 lakhs was also credited in his favour. Be that as it may, PW1 Devinder Singh, clerk of Punjab National Bank and PW4 Ravinder Kumar clerk-cum-cashier of State Bank of Patiala, Sector 7, Chandigarh duly proved that the amount of ₹3 lakhs was credited in the account of M/s Dhillon Kool Drinks and Beverages Ltd. i.e. the appellant on 17.05.1990. This evidence is further supported by Mr. Arwinder Verma, Clerk-cum-Godown Keeper, Punjab National Bank, Main Bazar Dhuri, who brought the original voucher regarding draft and deposed that the same was prepared by Rajinder Parshad of Longowal i.e. the respondent and the Bank charged ₹100/- as commission. Admittedly, Subhash Chander, proprietor of M/s Usha Kool Drinks appeared as DW2 and admitted that he had obtained the said drafts from the respondent for obtaining agency in his name. He also admitted that he had accompanied respondent when the drafts were deposited with the appellant company. It is

a classic case where star witness of the appellant demolished its own case. Even one Major Singh from Income Tax Office, Ward No.2, Sangrur brought profit and loss account, capital account and balance sheet of the respondent and deposed that in this account, respondent was found to have deposited ₹3 lakhs in favour of the appellant company. The legal notice issued by the respondent was also not responded to by the appellant.

10. In view of judgment rendered by Constitution Bench of Hon'ble Supreme Court in *Pankajakshi (dead) through LRs and others Vs. Chandrika and others (2016) 6 SCC 157* reiterated in *Kirodi (since deceased) through his LR Vs. Ram Parkash and others 2019 (3) RCR (Civil) 168*, in State of Punjab and Haryana, a second appeal being filed under Section 41 of Punjab Courts Act does not require formulation of a substantial question of law.

11. As an upshot of my finding, I do not find any illegality or perversity in the concurrent finding rendered by both the Courts below. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(JAISHREE THAKUR)
JUDGE

December 17, 2019

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No