

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

**CR-208-2021 (O&M)**

Date of decision : December 23 , 2021

**Anand Modgil**

.....Petitioner

Versus

**Orbit Aviation Pvt. Ltd. and another**

....Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Sumeet Mahajan, Senior Advocate with  
Mr. Amit Kohar Advocate and  
Mr. Saksham Mahajan, Advocate for the petitioner.

Mr. Puneet Bali, Senior Advocate with  
Mr. Sachin Jain, Advocate for respondent No. 1.

\*\*\*

**LISA GILL, J.**

Learned counsel for the parties were heard through video conferencing due to outbreak of the pandemic, COVID-19.

This revision petition has been filed by the petitioner arrayed as defendant No. 2 before learned trial Court, for setting aside order dated 16.10.2019 passed by learned Civil Judge (Senior Division), Ludhiana whereby application under Order 39 Rule 1 and 2 CPC filed by the plaintiff arrayed as respondent No. 1 in this petition was allowed, with a further prayer for setting aside order dated 18.01.2021 passed by the learned Additional District Judge, Ludhiana, whereby appeal filed by the petitioner, has been dismissed.

Brief facts necessary for adjudication of the case are that respondent No. 1 – plaintiff filed a suit for permanent injunction restraining defendants including petitioner from undertaking and running similar business of luxury travel coach AC/non-AC buses from any town/city of Punjab to Delhi Airport and

from Delhi Airport to any town/city of Punjab and from competing with existing business of the plaintiff and with business transferred by the defendants to the plaintiff on the basis of agreement dated 02.02.2017. It is pleaded that plaintiff – company M/s Orbit Aviation Private Limited was engaged in the business of plying AC/non-AC luxury travel coaches in the State of Punjab and from other towns and cities to Chandigarh and to Delhi Airport in the name and style of Indo Canadian Transport Company, a division of sister concern of M/s Orbit Resorts Ltd. Defendant No. 2 –present petitioner is stated to be the sole proprietor of defendant No. 1 - M/s Hermes International. Defendant No. 1 through its proprietor defendant No. 2, is stated to have approached the plaintiff for transfer of six integrated luxury coaches/buses alongwith insurance till October, 2017 in consideration of taking over of outstanding loan towards the defendants. Accordingly, agreement dated 02.02.2017 was executed between the parties and it is stated that the defendants transferred ownership of six luxury coaches as detailed therein to the plaintiff – company. Plaintiff – company through Indo Canadian Transport Company a division of its sister concern M/s Orbit Resorts Ltd. entered into an agreement for parking its vehicle with Delhi Airport Services Pvt. Ltd., subsequent to defendant No. 1 cancelling its agreement with Delhi Airport Parking services Pvt. Ltd. pursuant to agreement dated 02.02.2017. As per the said agreement, it was agreed that M/s Hermes International will not undertake similar business of running of luxury travel coach AC/non-AC buses from any town and city of Punjab to Delhi Airport and back and that it will not compete in any way with the existing business, transferred by it to M/s Orbit Aviation Private Limited. Further, in case of any breach of this term, petitioner would have to compensate M/s Orbit Aviation Private Limited through adequate damages. It is further pleaded that defendant in dereliction and breach of the specific clause of the agreement started running similar business inasmuch as

luxury coaches were being plied from towns and cities of Punjab to Delhi Airport. Legal notice dated 29.08.2019 it is stated was issued by the plaintiff but to no avail. Accordingly, civil suit was filed. Alongwith the suit, application under Order 39 Rules 1 and 2 CPC was also filed by the plaintiffs. Same was contested by the defendants. A categoric stand was taken by the defendants that agreement dated 02.02.2017 was limited to the transfer of assets correspondent to transfer of loan and there is no sale or purchase of any goodwill of any company or firm. Therefore, said clause, in any case, is hit by rigours of Section 27 of the Indian Contract Act (for short – ‘the Contract Act’). It is further pleaded that the plaintiff – company is owned by former Chief Minister of Punjab and it is a transport mafia, which never allowed any person to enter into this business. When the defendant tried to run his transport business in 2016, he could not continue and having no option entered into agreement dated 02.02.2017. It is further pleaded that defendant No. 1, firm stands dissolved w.e.f. 02.02.2017, therefore, agreement in any case is not binding upon defendant No. 2 i.e. the petitioner.

Learned trial on considering the facts and circumstances opined that a prima facie case is made out in favour of the plaintiff with balance of convenience being in its favour and that plaintiff would suffer irreparable loss in case interim injunction is not granted. Therefore, application under Order 39 Rules 1 and 2 CPC was allowed and defendants were restrained from undertaking and running similar business of plying luxury travel coach AC/non-AC buses from any town/city of Punjab to Delhi Airport and from Delhi Airport to any other town/city of Punjab and from competing with the said existing business of plaintiff. Appeal preferred by the present petitioner was dismissed by the learned Additional District Judge, Ludhiana vide order dated 18.01.2021. Aggrieved therefrom, this revision petition has been filed.

Learned counsel for the petitioner has vehemently argued that both the learned courts below have grossly erred on facts and in law in allowing this application under Order 39 Rule 1 and 2 CPC filed by the plaintiff. In fact, by allowing this application, final relief has been afforded, which is totally unjustified. It is contended that first and foremost agreement in question was entered into with defendant No. 2 – firm which is no longer in existence. Present petitioner cannot be restrained from carrying on his business in this manner which is a clear cut infringement of his right to carry on his livelihood. It is further submitted that bare perusal of agreement dated 02.02.2017 reveals that there is no sale or transfer of any goodwill to the plaintiff. It is a case of transfer of the assets simplicitor. Furthermore, even if clause 10 of the agreement is accepted, same is hit by rigours of Section 27 of the Act. Furthermore, plaintiff can very well be compensated monetarily, therefore, occasion for injunctive relief being granted to it does not arise. Learned counsel for the petitioner has also argued that plaintiff itself is not running the business of plying buses, same is being run by Indo Candian Company, therefore, in any case it is for said company to come forward. Thus, the very basis of the suit filed by the plaintiff, it is submitted, collapses like a house of cards. Learned counsel for the petitioner relies upon judgment of the Hon'ble Supreme Court in **Percept D'Mark (India) (P) Ltd. vs. Zaheer Khan and another (2006) 4 SCC 227**. It is also urged that restrictive covenant in any case cannot extend beyond term contract. It is, thus, prayed that this revision petition be allowed, impugned order dated 16.10.2019 passed by learned Civil Judge (Senior Division), Ludhiana as well as order dated 18.01.2021 passed by the learned Additional District Judge, Ludhiana be set aside and application under Order 39 Rule 1 and 2 CPC be dismissed.

Learned counsel for the respondents per contra while refuting the arguments as addressed on behalf of the petitioner submits that both the learned

courts below have passed well reasoned logical orders after considering the facts and circumstances of the case and there is no ground whatsoever for any interference by this Court in exercise of revisional jurisdiction. It is contended that in the matter of trade in case injunctive relief is not granted, it would indeed lead to irreparable loss to the plaintiff. Learned counsel for the respondents submits that execution of agreement dated 02.02.2017 is not disputed by defendants neither is it disputed that the consideration amount was duly received. It is contended that amount in question is definitely not the cost of luxury coaches i.e. the assets which are being stated to be the only thing allegedly transferred. It is vociferously argued that apart from the case falling under exception to Section 27 of the Act, restriction imposed is a reasonable restriction inasmuch as restriction is only qua running of luxury coaches from any town/city in Punjab to Delhi Airport and back. It is urged that the defendants are not restrained from running any other activities from any town/city for any other destination except Delhi Airport. All other destinations, it is submitted, are open to the petitioner. While referring to the judgment of the Hon'ble supreme Court in **Gujarat Bottling Company Limited and others versus Coca Cola Co. and others (1995) 5 SCC 545**, learned counsel submits that non-compete clauses do not always fall foul of Section 27 of the Contract Act and it is to be seen as to whether the restriction imposed is reasonable or not. In the present case, restriction imposed, it is stated, is neither absolute, nor unreasonable, therefore, is sustainable. It is, thus, prayed that this revision petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

Execution of agreement dated 02.02.2017 is not in dispute. The dispute revolves around clause 10 of the agreement which reads as under:-

“ It has also been admitted and agreed by the party of the First Part that it will not undertake the similar business, running of luxurious travel couch (sic coach), AC/Non AC buses from any town/city of Punjab to Delhi Airport and back. Party of the First Part will not in any way compete with the existing business and business transferred by it to party of the second part. In case of any breach of this term party of the First Part will have to compensate the party of second part through adequate damages. Party of First Part has already made an application for cancellation of agreement which it has with Delhi Airport Parking Services Private Limited. Party of the first part will submit the acceptance of cancellation from Delhi Airport Parking Services Private Limited as a proof of cancellation of agreement within 15 days of this agreement. Party of First part will also wind up his propriety Firm- Hermes International, Ludhiana.”

It is relevant to note at this stage that as per clause 9 of the agreement, it is mentioned that the agreement is neither a joint venture nor a partnership between two parties and would be limited to the transfer of assets corresponding to transfer of loan of SREI alongwith balance payment. However, the said clause is immediately succeeded by clause 10 as reproduced above wherein it is also agreed that application for cancellation of agreement by M/s Hermes International represented through its sole proprietor (present petitioner) with Delhi Airport Parking Services Private Limited will be submitted and that ‘party of the first part will also wind up his propriety firm - M/s Hermes International Ludhiana’. It is well known that negative covenants in trading activities have assumed significance in the fast increasing competitive world and that confidentiality non-compete, non-disclosure and non-solicitation clauses have become increasingly popular. The Hon’ble Supreme Court in **Gujarat Bottling Company Limited’s** case (surpa), while dealing with the question of interim

injunction for enforcement of negative stipulation in a contract observed as under:-

“ Under the common law in England a man is entitled to exercise any lawful trade or calling as and where he wills. The law has always regarded zealously any interference with trade, even at the risk of interference with freedom of contract, as it is public policy to oppose all restraints upon liberty of individual action which are injurious to the interests of the State. A person may be restrained from carrying on his trade by reason of an agreement voluntarily entered into by him with that object and in such a case the general principle of freedom of trade must be applied with due regard to the principles that public policy requires for persons of full age and understanding the utmost freedom to contract. Traditionally the doctrine of restraint of trade applied to covenants whereby an employee undertakes not to compete with his employer after leaving the employer's service and covenants by which a trader who has sold his business agrees not thereafter to compete with the purchaser of the business. The doctrine is, however, not confined in its application to these two categories but covenants falling in these two categories are always subjected to the test of reasonableness. Since the doctrine of restraint of trade is based on public policy its application has been influenced by changing views of what is desirable in the public interest. The decisions on public policy are subject to change and development with the change and development of trade and the means of communications and the evolution of economic thought. The general principle once applicable to agreements in restraint of trade has consequently been considerably modified by later decisions in England. In the earliest times all contracts in restraint of trade, whether general or partial, were void. The severity of this principle was gradually relaxed, and it became the rule that a partial restraint might be good if reasonable, although a general restraint was of necessity void. The distinction between general and partial restraint was subsequently repudiated and the rule now is that the restraints, whether general or partial, may be good if they are reasonable and any restraint on the freedom of contact must be shown to be

reasonably necessary for the purpose of freedom of trade. A covenant in restraint of trade must be reasonable with reference to the public policy and it must also be reasonably necessary for the protection of the interest of the covenantee and regard must be had to the interests of the covenantor. Contracts in restraint of trade are prima facie void and the onus of proof is on the party supporting the contract to show that the restraint goes no further than is reasonably necessary to protect the interest of the covenantee and if this onus is discharged the onus of showing that the restraint is nevertheless injurious to the public is on the party attacking the contract. The court has to decide, as a matter of law, (i) whether a contract is or is not in restraint of trade, and (ii) whether, if in restraint of trade, it is reasonable. The court takes a far stricter and less favourable view of covenants entered into between employer and employee than it does of similar covenants between vendor and purchaser or in partnership agreements, and accordingly a restraint may be unreasonable as between employer and employee which would be reasonable as between the vendor and purchaser of a business. [See : Halsbury's Laws of England, 4th Edn., Vol. 47, paragraphs 9 to 26; Niranjan Shankar Golikari V. Century Spinning and Mfg. Co. Ltd., (SCR 378 at PP. 384-85). Instead of segregating two questions, (i) whether the contract is in restraint of trade, (ii) whether, if so, it is "reasonable," the courts have often fused the two by asking whether the contract is in "undue restraint of trade" or by a compound finding that it is not satisfied that this contract is really in restraint of trade at all but, if it is, it is reasonable. [See: Esso Petroleum Co. Ltd. V. Harper's Garage (Stourport)Ltd., (AC at p.331) Lord Wilberforce.].”

Learned counsel for the parties have raised arguments on the question as to whether clause 10 of the agreement is hit by rigours of Section 27 of the Contract Act and whether the term goodwill not being specifically used in the agreement, can be presumed to have been transferred or sold. Furthermore, the question of applicability of a negative covenant for an unspecified term has

been raised. It is relevant to note at this juncture that both the learned courts below i.e. learned trial Court and learned Additional District Judge have correctly observed that these are aspects, which can be decided only after appreciation of evidence to be led by the parties and cannot be decided while adjudicating on the application under Order 39 Rule 1 and 2 CPC. Plaintiff at this stage clearly made out a prima facie case for injunctive relief inasmuch as restraint as per clause 10 is only qua running a luxury coach AC/Non-AC from a town/city in Punjab to Delhi Airport and vice versa and not on any other route. It is further evident that a sum of Rs.60 lakhs over and above was received by the defendants at the time of execution of agreement which is admitted by the petitioner. Whether petitioner was forced to enter into this agreement cannot be adjudicated upon at this stage, especially in view of the fact that this agreement was never subjected to any challenge by the petitioner. Plaintiff has been able to make out a prima facie case in its favour with balance of convenience on its side and an irreparable loss being caused to it in case interim injunction is not afforded.

Hon'ble Supreme Court in **Hindustan Petroleum Corporation Limited v. Dilbahar Singh, (2014) 9 SCC 378** while delineating the scope of revisional jurisdiction of the High Court, where two courts have returned concurrent findings of fact, has observed that the High Court would normally not interfere in concurrent findings of fact until and unless it is shown that there is gross misreading of evidence or ignoring of material evidence on record which renders the finding of the courts below to be perverse. Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity which calls for interference by this Court in exercise of revisional jurisdiction. ‘

Revision Petition is accordingly dismissed.

However, keeping in view the nature of the dispute, learned trial

Court is directed to conclude the proceedings expeditiously and preferably within

six months from the date of receipt of certified copy of this order. It is clarified that there is no expression of opinion on the merits of the controversy and observations are confined for decision of this petition.

**December 23, 2021**  
rts

**(Lisa Gill)**  
**Judge**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No