

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Civil Revision No. 1264 of 2021(O&M)

Date of Decision: July 20 , 2021.

HDFC Bank Limited and others

..... PETITIONER (s)

Versus

Umashankar Singh

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Sitikanth Nayak, Advocate and
Mr. Prateek Rathee, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This revision petition has been filed for setting aside order dated 31.03.2021 passed by the learned Civil Judge (Junior Division), Gurugram whereby application under Order 7 Rule 10 read with Order 7 Rule 11 and Section 151 CPC filed by the petitioners/defendants was dismissed.

Brief facts necessary for adjudication of the matter are that, the plaintiff, arrayed as respondent in this revision petition, filed a suit for damages, declaration, recovery of salary and arrears alongwith *pendente lite* and future interest. Respondent/plaintiff claimed that his services were terminated

illegally and arbitrarily without due compliance of the terms and conditions of employment agreement executed between the parties. Present petitioners moved an application under Order 7 Rule 10 read with Order 7 Rule 11 and Section 151 CPC while admitting that plaintiff was an employee with the petitioners-Bank prior to his termination. It is stated that the terms and conditions of plaintiff's services were contained in employment contract dated 01.02.2011 executed between plaintiff and petitioners/defendants. As per clause XXIII (viii) of the employment contract, it was agreed that in case of any dispute arising between the parties regarding employment, it is the courts in Mumbai which would have exclusive jurisdiction to adjudicate upon the matter. It is further pleaded that the plaintiff sought recovery of ₹31,04,606/- but appropriate court fee has not been affixed. Therefore, the plaint should be returned. Plaintiff/respondent contested the application while submitting that entire cause of action arose at Gurugram, the regional registered office of the defendants was at Gurugram, petitioner had also served the defendants at Gurugram, received his payment there and his services were also terminated while serving at Gurugram.

Learned trial court on consideration of the matter dismissed the application filed by the present petitioners, while holding that entire cause of action arose at Gurugram. No part of the cause of action arose at Mumbai. It is observed in the impugned order that clause relating to jurisdiction contained in employment agreement and terms and conditions in the appointment letter cannot be relied upon by the defendants to oust the jurisdiction of the court at Gurugram. Aggrieved therefrom, this revision petition has been filed by the

defendants.

Learned counsel for the petitioners vehemently argued that in terms of Section 20 CPC, once the parties had agreed that all disputes relating to employment of the plaintiff would be subject to jurisdiction of the courts at Mumbai, the plaintiff had incorrectly instituted the suit at Gurugram. It is submitted that learned trial court should have allowed the application and returned the plaint, for parties to submit to the court of competent jurisdiction at Mumbai. Learned counsel argues that it is not the case of the petitioners that the court at Gurugram does not have jurisdiction to try the matter, but in view of specific clause of exclusion, jurisdiction of the court at Gurugram would be ousted as per Section 20 CPC. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in **M/s Hanil Era Textiles Ltd. v. M/s Puromatic Filters (P) Ltd., 2004(4) SCC 671**, to submit that parties can validly agree to submit to one court where two courts have jurisdiction. Learned counsel submits that services of the plaintiff were confirmed by the petitioners' head office at Mumbai as is apparent from letter dated 02.09.2011. Employment of the plaintiff was necessarily approved from the head office of the defendants at Mumbai. It is also argued that proper court fee has not been appended by the plaintiff. Therefore, the learned trial court has erred in dismissing the petitioners' application. It is thus prayed that the impugned order dated 31.03.2021 passed by the learned Civil Judge(Junior Division), Gurugram be set aside.

Heard learned counsel for the petitioners at length and have gone through the file with his able assistance.

Learned counsel for the petitioners is unable to deny that the respondent was appointed with the Bank on 14.12.2010 with the appointment letter being issued by the HDFC Bank Limited at Chandigarh (Annexure P3). Plaintiff admittedly worked initially at the Dharampur Branch, District Gurugram and thereafter his services were confirmed on 02.09.2011. At the time of alleged illegal termination of the plaintiff's services, he was admittedly working as a Branch Manager at regional office of petitioners' Bank at Vatika Atrium, A Block, Sector 53, Golf Course Road, Gurugram. Various allegations have been raised by the plaintiff regarding harassment and pressurization of the plaintiff to carry out certain unpalatable and illegal acts and his ultimate termination. Appointment letter was issued by the branch of the petitioners' Bank at Chandigarh. Plaintiff was working at Gurugram at the time of his alleged termination. Learned counsel for the petitioners is unable to point out anything on record to indicate that a part of cause of action arose at Mumbai, apart from the averment that termination of plaintiff's services was due to the decision taken at the head office or that letter dated 02.09.2011 confirming the services of the plaintiff was issued by the Head Office at Mumbai.

At this stage, it is relevant to refer to the judgment of the Hon'ble Supreme Court in **M/s Patel Roadways Limited, Bombay v. Prasad Trading Company, 1992 AIR (SC) 1514**. The Hon'ble Supreme Court was considering a matter where question of jurisdiction of the courts to entertain a suit was involved in respect to an agreement wherein defendant had its head/principal office at Mumbai. The defendant, a trading company having its Head/Principal office at Mumbai, had entrusted a consignment of goods to the plaintiff therein

at its branch/subordinate office in Tamil Nadu, to be delivered at Delhi. After the goods were transported by the plaintiff therein and kept in a godown at Delhi, said goods were destroyed and damaged in a fire due to which the consignee refused to take the delivery. The plaintiff instituted a suit in Tamil Nadu within whose territorial jurisdiction, subordinate office of the defendant trading company was situated. Defendant in the said case took a plea that as per the contract entered into between the parties, it was agreed that jurisdiction to decide the dispute would exclusively be with the courts at Mumbai, therefore, the court at Madras had no jurisdiction. Learned trial court as well as the High Court dismissed the applications. The matter came before the Hon'ble Supreme Court. The Hon'ble Supreme Court referred to its earlier judgments in **Hakam Singh v. M/s Gammon (India) Ltd., (1971) 3 SCR 314** and **Globe Transport Corporation v. Triveni Engineering Works, (1983) 4 SCC 707** and held that the courts at Mumbai did not have jurisdiction at all. Consequently, the agreement between the parties conferring exclusive jurisdiction upon courts at Mumbai, is of no avail. It has been observed by the Hon'ble Supreme Court as under:-

“9. Clauses (a) and (b) of Section 20 inter alia refer to a court within the local limits of whose jurisdiction the defendant inter alia "carries on business". Clause (c) on the other hand refers to a court within the local limits of whose jurisdiction the cause of action wholly or in part arises. It has not been urged before us on behalf of the appellant that the cause of action wholly or in part arose in Bombay. Consequently Clause (c) is not attracted to the facts of these cases. What has been urged with the aid of the Explanation to Section 20 of the Code is that since the appellant has its principal office in Bombay it shall be deemed to carry on business at

Bombay and consequently the courts at Bombay will also have jurisdiction. On a plain reading of the Explanation to Section 20 of the Code we find an apparent fallacy in the aforesaid argument. The Explanation is in two parts, one before the word "or" occurring between the words "office in India" and the words "in respect of" and the other thereafter. The Explanation applies to a defendant which is a corporation which term, as seen above, would include even a company such as the appellant in the instant case. The first part of the Explanation applied only to such a corporation which has its sole or principal office at a particular place. In that event the courts within whose jurisdiction the sole or principal office of the defendant is situate will also have jurisdiction inasmuch as even if the defendant may not be actually carrying on business at that place it will "be deemed to carry on business" at that place because of the fiction created by the Explanation. The latter part of the Explanation takes care of a case where the defendant does not have a sole office but has a principal office at one place and has also a subordinate office at another place. The words "at such place" occurring at the end of the Explanation and the word "or" referred to above which is disjunctive clearly suggest 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 situate but the Court within whose jurisdiction it has a subordinate office which alone shall have jurisdiction "in respect of any cause of action arising at any place where it has also a subordinate office."

Hon'ble Supreme Court then referred to Section 20 CPC before its amendment in 1976 when two Explanations were appended thereto. Explanation I was omitted and Explanation II renumbered as Explanation I. It is observed as hereunder:-

“11. This Explanation dealt with the case of place of residence of

the defendant and provided with regard to a person having a permanent dwelling at one place and also temporary at another place that such person shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence. The language used in Explanation II on the other hand which is the present Explanation was entirely different. Had the intention been that if a corporation had its principal office at one place and a subordinate office at another place and the cause of action arose at the place where it had its subordinate office it shall be deemed to be carrying on business at both places the language used in Explanation II would have been identical to that of Explanation I which was dealing with a case of a person having a permanent dwelling at one place and also temporary residence at another place. The marked difference in the language of the two Explanations clearly supports the view which we have taken with regard to the interpretation of the present Explanation to Section 20 of the Code which was Explanation II earlier as indicated above.

12. We would also like to add that the interpretation sought to be placed by the appellant on the provision in question renders the explanation totally redundant. If the intention of the legislature was, as is said on their behalf, that a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the Explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c)

(irrespective of whether the corporation had a subordinate office in such place or not). This was, therefore, not the purpose of the Explanation. The Explanation is really an explanation to clause (a). It is in the nature of a clarification on the scope of clause (a) viz. as to where the corporation can be said to carry on business. This, it is clarified, will be the place where the principal office is situated (whether or not any business actually is carried on there) or the place where a business is carried on giving rise to a cause of action (even though the principal office of the corporation is not located there) ***so long as there is a subordinate office of the corporation situated at such place.*** The linking together of the place where the cause of action arises with the place where a subordinate office is located clearly shows that the intention of the legislature was that, in the case of a corporation, for the purposes of clause (a), the location of the subordinate office, within the local limits of which a cause of action arises, is to be the relevant place for the filing of a suit and not the principal place of business. If the intention was that the location of the sole or principal office as well as the location of the subordinate officer (within the limits of which a cause of action arises) are to be deemed to be placed where the corporation is deemed to be carrying on business, the disjunctive "or" will not be there. Instead, the second part of the Explanation would have read "and, in respect of any cause of action arising at any place where it has a subordinate office, also at such place."

13. As far as we can see the interpretation which we have placed on this section does not create any practical or undue difficulties or disadvantage either to the plaintiff or a defendant corporation. It is true that, normally, under clauses (a) to (c), the plaintiff has a choice of forum and cannot be compelled to go to the place of residence or business of the corporation and can file a suit at a place where the cause of action arises. If a corporation desires to be protected from being dragged into litigation at some place merely

because a cause of action arises there it can save itself from such a situation by an exclusion clause as has been done in the present case. The clear intendment of the Explanation, however, is that, where the corporation has a subordinate office in the place where the cause of action arises, it cannot be heard to say that it cannot be sued there because it does not carry on business at that place. It would be a great hardship if, in spite of the corporation having a subordinate office at the place where the cause of action arises (with which in all probability the plaintiff has had dealings), such plaintiff is to be compelled to travel to the place where the corporation has its principal place. That place should be convenient to the plaintiff; and since the corporation has an office at such place, it will also be under no disadvantage. Thus the Explanation provides an alternative locus standi for the corporation's place of business, not an additional one.”

The Hon'ble Supreme Court further observed that it would cause a great hardship if a plaintiff is to be compelled to travel to a place where the corporation has its principal office, despite the corporation having a subordinate office at a place where the cause of action arises. Explanation to Section 20 CPC was, thus, held to be providing an alternate *locus standi* for the corporation's place of business and not an additional one. Reference can also be gainfully be made a decision of this High Court in **Cement Corporation of India Limited v. Haryana Cement, Gurgaon and another, 1991(1) PLR 58.**

Thus, learned trial court has rightly rejected the application.

Insofar as the question of court fee is concerned, learned trial court has again correctly observed that the amount of damages shall be determined after adducing of evidence and liberty would be afforded to the plaintiff to affix

judgment of the Hon'ble Supreme Court in **Shiv Kumar Sharma v. Santosh Kumari, 2007(4) CCC 333 (SC)** wherein it is held that even in case of specific amount claimed by the plaintiff, the determination would be made in respect of the amount awarded at a subsequent stage on the basis of evidence to be led by the parties.

Learned counsel for the petitioners is unable to point out any illegality, perversity or infirmity in the impugned order dated 31.03.2021 passed by the learned Civil Judge (Junior Division), Gurugram, which calls for any interference by this Court in exercise of revisional jurisdiction.

No other argument has been raised.

Revision petition is accordingly dismissed with no order as to cost.

July 20, 2021.
'om'

(**LISA GILL**)
JUDGE

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