

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.23 of 2020

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HDFC Bank Ltd. through Jayanta Banerjee, Age about 46 years, Gender- Male, Son of Ajit Banerjee, presently posted as State Head West Bengal, Whole Sale Banking Operation, H.D.F.C. Bank Ltd., Authorized representative (signatory) of H.D.F.C. Bank Ltd., 3A, Gurusaday Road, Kolkata.

... .. Defendant/Petitioner

Versus

Rakesh Kumar Verma Son of Late Mithilesh Prasad R/o- 117 E, Swawblambi Residency, Daud Bigha, Kankarbagh, Distt.- Patna.

... .. Plaintiff/Opposite Party

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Appearance :

For the Petitioner/s : Mr. Girijish Kumar, Adv.
For the O.P. : Mr. Bibhakar Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 25-01-2022

Heard learned counsel for the petitioner and learned counsel for the opposite party through video conference.

I.A. No. 1 of 2020

2. I.A. No. 1 of 2020 has been filed for condonation of delay in filing the present civil revision application. It is submitted that as a matter of fact, the main reason for delay is that the petitioner was pursuing its remedy before this Court in Civil Misc. Jurisdiction No. 256 of 2019 filed on 30.01.2019 and disposed of on 25.02.2020.

3. Learned counsel for the opposite party appears and states that he has no serious objection if the delay is condoned and the matter is disposed of on merits.

4. Having regard to the reasons stated in the limitation petition, the same stands allowed and the delay in filing the present civil revision application is hereby condoned.



C.R. No. 23 of 2020

5. The present civil revision petition has been filed “for setting aside the order dated 14.12.2018, passed by the court of Subordinate Judge-XII, Patna, in Title Suit No. 212 of 2017, whereby the petition filed on behalf of the petitioner under Order 7 Rule 11 read with the Section 9 of the Code of Civil Procedure, 1908 (for the brevity “the Code”) was rejected, wherein, the prayer made by the petitioner that the plaint of the Opposite party may be rejected because it suffer from the Jurisdiction error; and further pray to set aside the entire further proceeding of this Title Suit No. 212 of 2017”.

6. The short facts of the case according to the petitioner Bank are that the opposite party was appointed in terms of its letter dated 24.07.2002 on the post of Executive-Transaction Banking Group (Operation) in the HDFC Bank Ltd., Wholesale Banking Operations, pursuant to which, the opposite party joined Wholesale Banking, Exhibition Road, Patna. In due course, the opposite party came to be terminated from his service by letter dated 28.06.2016 issued by the petitioner HDFC Bank Ltd., Human Resources, Mumbai, which was the subject matter of Title Suit No. 212 of 2017 filed by the Opposite Party at Patna. Admittedly, the letter of appointment and the letter of termination were issued by the Mumbai office of the petitioner Bank which were served on the opposite party at Patna. In the appointment letter dated 24.07.2002 (Annexure-1), there were clear stipulations, inter alia, as follows-



“Probationary Period:

You will be on probation for a period of six months from the date of your employment. Subject to satisfactory performance during the probationary period you will be confirmed in the services of the Bank. During probationary period either party may terminate the services by giving one month's notice or salary in lieu thereof at the bank's discretion. However, after confirmation either party will be required to give three months notice or salary in lieu of notice at the bank's discretion.

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The terms and conditions set out in this letter of appointment constitute service conditions applicable to your employment in the Bank and with regard to any dispute arising thereof, the Bombay Courts will have exclusive jurisdiction.”

7. Mr. Girijish Kumar, learned counsel appearing on behalf of the petitioner Bank submits that the learned court below has erred in law in rejecting its petition under Order VII Rule 11 of the C.P.C. filed in Title Suit No. 212 of 2017 on the ground that a part of the cause of action arose within its territorial jurisdiction. In so doing, the learned court below has failed to appreciate that its jurisdiction was barred in view of the mutually agreed covenant restricting the jurisdiction exclusively to the Courts at Bombay (now Mumbai). In this regard, reliance is placed on a decision of the Hon'ble Supreme Court in the case of *Swastik Gases Private Limited Vs. Indian Oil Corporation Limited*, (2013) 9 SCC 32.



8. Learned counsel for the opposite party appears and has been heard. It is submitted that the impugned order does not suffer from any error or illegality, inasmuch as a part of the cause of action arose within the territorial jurisdiction of the learned court below, and as such, it is competent to decide the suit. For this proposition, reliance has been placed on *Dashrath Rupsingh Rathod Vs. State of Maharashtra & Anr.*, 2014 (3) PLJR 509 (SC), in paragraph 10 whereof, it has been observed as follows:-

“10. ... This Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts’ endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. ... ”

9. Having heard the parties and on a consideration of materials on record, I find merit in the revision petition. It is not the contention of the petitioner that the cause of action arose at Mumbai alone and to the exclusion of Patna, rather it is admitted that the cause of action may have arisen in part at both places. The core of the contention of the petitioner is that, notwithstanding the cause of action having arisen at both places, the suit would be maintainable exclusively at Mumbai in view of the agreement between the parties in terms of letter of appointment dated 24.07.2002. It is further submitted that such exclusion clause will apply also in respect of termination, inasmuch as termination is contemplated as one of the terms discussed in the appointment letter itself, as extracted above.



10. In Swastik's case (supra), the Hon'ble Supreme Court took note of a plethora of decisions in the context of an ouster clause in an agreement and observed, inter alia, as follows:-

"11. Hakam Singh [(1971)1 SCC 286] is one of the earlier cases of this Court wherein this Court highlighted that where two Courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that dispute should be tried by only one of them, the court mentioned in the agreement shall have jurisdiction. This principle has been followed in many subsequent decisions.

12. In Globe Transport [(1983)4 SCC 707] while dealing with the jurisdiction clause which read "the Court in Jaipur City alone shall have jurisdiction in respect of all claims and matters arising (sic) under the consignment or of the goods entrusted for transportation", this Court held that the jurisdiction clause in the agreement was valid and effective and the courts at Jaipur only had jurisdiction and not the courts at Allahabad which had jurisdiction over Naini where goods were to be delivered and were in fact delivered.

32. For answer to the above question, we have to see the effect of the jurisdiction clause in the agreement which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata. It is a fact that whilst providing for jurisdiction clause in the agreement the words like 'alone', 'only', 'exclusive' or 'exclusive jurisdiction' have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties - by having clause 18 in the agreement - is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. ... "



11. No doubt Swastik's case was decided in the context of an application for appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996, but the principles laid down would be of equal application in the context of an ouster clause in an agreement of the present nature between the parties with regard to the courts' jurisdiction. The Hon'ble Supreme Court has unequivocally laid down that even if the cause of action arises at more places than one, the jurisdiction will lie with the court at the place which has been expressly agreed to between the parties. In other words, the general principle that the suit may be filed at any place where a substantial part of the cause of action arises would stand eclipsed in a case where parties have agreed to the exclusive jurisdiction at a place of express agreement.

12. For the above reasons, it must be held that the decision in Dashrath Rupsingh Rathod's case (supra) which reiterates the principle with regard to place of suing based on cause of action but does not decide the issue in the context of exclusive jurisdiction as agreed to by the parties, does not come to the aid of the opposite party.

13. In the above view of the matter, I have no hesitation in holding that the learned court below has erred in dismissing the petition under Order VII Rule 11 of the Code of Civil Procedure filed by the petitioner merely on the ground that a substantial part of the cause of action had arisen within the town and district of Patna, but in oversight of the principles laid down in Swastik's case (supra) as discussed above.



14. Accordingly, the impugned order dated 14.12.2018 passed in Title Suit No. 212 of 2017 stands quashed. The civil revision stands allowed.

(Vikash Jain, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2022
Transmission Date	

