IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4533-2018 (O&M)
Date of decision: 16.08.2023

Saroj Kalia

...Petitioner(s)

Vs.

Lakhwinder Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Argued by:- Mr. Punit Jindal, Senior Advocate with
Mr. Raghav Kakkar, Advocate
for the petitioner.

Mr. Vijay Kumar Jindal, Senior Advocate with
Mr. Pankaj Gautam, Advocate
for the respondent.

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NIDHI GUPTA, J.

Present Revision Petition has been filed by the defendant seeking setting aside of impugned order dated 04.05.2018 (Annexure P1) passed by learned Additional Civil Judge (Senior Division), Patiala whereby application filed by the petitioner/defendant under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed.

2. Brief facts of the case are that the respondent/plaintiff filed Civil Suit No.1223 of 2017 titled as "Lakhwinder Singh Vs. Saroj Kalia" on 22.08.2017 (Annexure P8) against the petitioner/defendant seeking

specific performance of Agreement to sell dated 28.03.2005 (Annexure P8/A) regarding property measuring 420 square meters situated at House No.A-20/15, DLF Phase-I, Qutab Enclave Complex, Chakkarpur Tehsil, District Gurugram, Haryana (hereinafter referred to as "the suit property"). Respondent/plaintiff also sought a decree for permanent injunction. It is the plaintiff's case that the petitioner/defendant and her late husband Sh. Surender K. Kalia had entered into the above said Agreement to sell dated 28.03.2005 with the plaintiff/respondent. Accordingly, plaintiff/respondent sought the issuance of a direction to the petitioner/defendant to execute the sale deed and to get the same registered in favour of the plaintiff/respondent after receiving balance consideration amount and to hand over vacant possession of the subject property to the plaintiff/respondent; or alternatively sale deed may be registered in the name of the plaintiff/respondent. A decree of permanent injunction was also sought restraining the defendant from alienating, mortgaging, leasing, gifting, transferring, or disposing of the suit property to any other person except the plaintiff/respondent.

3. It is submitted by learned Senior Counsel for the petitioner that the learned trial Court was in patent error in dismissing the application of the petitioner as it failed to appreciate that the suit property is situated in Gurugram and therefore, the Courts in Gurugram alone would have exclusive jurisdiction. However, respondent/plaintiff has filed the present Civil Suit in Patiala. It is contended that the subject matter of the Suit, being the suit property, is situated outside the jurisdiction of the

District and Sessions Court, Patiala. It is submitted that as per Section 16 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), suits are to be instituted where the subject matter is situated.

4. Learned Senior Counsel for the petitioner further vehemently contends that the purported Agreement to sell dated 28.03.2005 has been categorically denied by the petitioner/defendant. It is submitted that the said agreement allegedly entered into between the respondent/plaintiff and the deceased husband of the petitioner/defendant on behalf of himself and the petitioner/defendant (the "Purported Agreement to Sell") is forged and fabricated. The petitioner/defendant and/or her late husband Mr. Surender Kumar Kalia have never executed the purported agreement to sell and/or conveyed any right, title or interest to the respondent/plaintiff in relation to the suit property or otherwise.

5. Learned Senior Counsel contends that the veracity of the said Agreement to Sell is dubious also for the reason that the said agreement is on plain paper without any affixation/payment of stamp duty and therefore, the same is a wholly unreliable document not admissible as evidence. Learned Senior Counsel relies upon the provision of Section 35 of Indian Stamps Act, 1899. The relevant extract of the Section 35 of the Indian Stamps Act is reproduced as under:

> *"35. Instruments not duly stamped inadmissible in evidence, etc.—No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by*

law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped."

6. It is further submitted that the said purported agreement is unreliable also because it does not even bear the signatures of late Mr. Surender Kumar Kalia. In this regard, reliance is placed upon reports/opinion dated 31.10.2017 given by handwriting expert Mr. Ashok Kashyap showing the comparison of admitted signatures of late Mr. Surender K. Kalia on his passport with his alleged signatures on the purported Agreement to Sell, to opine that signatures on the purported Agreement to Sell are forged.

7. The purported Agreement to Sell is a sham document having no force or recognition in law and thus, the petitioner/defendant preferred the Application under Order 7 Rule 11 of the CPC, inter alia, on the ground that the Agreement to Sell is on Plain Paper without registration/payment of stamp duty and therefore, is not admissible as evidence in any Court proceedings. It is contended that thus, without going into merits of the case, the learned Additional Civil Judge, Patiala ought to have dismissed the Plaint, as the plaint does not disclose any cause of action in case the said agreement is eschewed, accordingly the Application under Order 7 Rule 11(a) and (d) of the CPC, ought to have been allowed.

8. It is also submitted that the learned ACJ has failed to appreciate that the respondent/plaintiff has not paid adequate Court fees

and therefore, the Civil Suit is grossly under-valued and deserved to be rejected on this short ground itself. Suit has been valued at Rs.15 lakh only (which is the so-called earnest money) for the purpose of calculation of Court fee of Rs.38,150/-. It is submitted that however, Court fees ought to have been paid as per the total sale consideration of Rs.1 crore 50 lakh contained in the purported Agreement to Sell and therefore, Court fees of Rs.87,24,551/- ought to have been paid. Accordingly, as per clause (b) and (c) of Order 7 Rule 11, the plaint was liable to be rejected. However, learned trial Court has failed to appreciate any or all of the above said facts.

9. It is submitted that the leaned ACJ has passed the impugned order only on the ground that in the purported Agreement to Sell dated 28.03.2005, there is a recital to the effect that the Agreement has been entered into at Patiala and therefore, Patiala Courts shall have jurisdiction to entertain the dispute arising out of or concerning the Deed. It is submitted that this assumption on the part of learned ACJ is incorrect as said observation would be applicable to only those cases where two or more Courts have jurisdiction.

10. It is further submitted that if the Agreement to Sell was assumed to be a legal and valid document, even then Courts at Patiala would not have jurisdiction. It is submitted that without admitting, even if it is assumed that the parties agreed to the jurisdiction of Patiala Courts, such an agreement being against law would be contrary to the principles laid under Sections 23 and 28 of the Indian Contract Act, 1872.

11. In support of his contentions, learned Senior Counsel for the petitioner relies upon judgment of Hon'ble Supreme Court in **"Harshad Chiman Lal Modi Vs. DLF Universal Ltd. & Another" (2005) 7 SCC 791.**

12. Per contra, it is submitted by learned Senior Counsel for the respondent that the Agreement to Sell dated 28.03.2005 was entered into in Patiala. Accordingly, residuary clause of Section 20 CPC would be applicable, to the effect that suit is to be filed where cause of action arises. It is submitted that even as per proviso to Section 16 CPC, respondent/plaintiff could have filed the Suit in Patiala.

13. It is submitted that it is for this Court to adjudicate whether Section 20(c) would be applicable or whether Section 16 overlapped Section 20. It is submitted that in Section 20, there is no distinction between movable and immovable property. It is a general clause and therefore, it is an exception to Section 16 also. It is submitted that if proviso to Section 16 be read with Section 20, then Section 20 will have an overriding effect. It is further submitted that in the judgment relied upon by the petitioner, this aspect has not been considered by the Hon'ble Supreme Court.

14. Learned Senior Counsel submits that in any event, ground of lack of territorial jurisdiction is not available to the petitioner as, as per clause 14 of the Agreement to Sell, it was decided between the parties that the Patiala Courts shall have exclusive jurisdiction to entertain any dispute arising out of or in anywhere objecting or concerning this Deed. It is stated that the petitioner is primarily disputing the territorial

jurisdiction of the Courts at Patiala. However, the parties themselves agreed for jurisdiction at Patiala in terms of agreement to sell, therefore, it does not lie in the mouth of the petitioner that the Courts at Patiala lack territorial jurisdiction.

15. It is further submitted that the petitioner's application under Order 7 Rule 11 CPC was not maintainable as the same deals with rejection of plaint for the grounds specified under order 7 rule 11 CPC itself. Lack of inherent territorial jurisdiction is not one of the grounds specified under order 7 rule 11 (a) to (f) CPC.

16. It is contended that the petitioner was required to file an application under Order 7 Rule 10 CPC read with order 7 Rule 10A of CPC. Order 7 Rule 10A of CPC was inserted vide Act 104 of 1976, which provides for the procedure to be followed by the Court in case the plaint is returned to the plaintiff for presentation before the Court of appropriate jurisdiction. In terms of order 7 rule 10A of CPC the Court is required to pass an appropriate order in the following terms: -

a. *Fix a date of appearance for the parties, in the Court, in which the plaint is proposed to be presented.*
b. *Give to the plaintiff and defendants, notice of such date of appearance.*

17. It is further submitted that in case this Court is not inclined to allow present Revision Petition and directs the respondent to file Civil Suit in Gurugram then Section 14 of the Limitation Act will not apply against the plaintiff and limitation will be deemed to be contained. In

terms of judgment in **Ramdutt Ramkissen Dass v. E.D. Sassoon & Co., Law Finder Doc ID # 285384/AIR 1929 Privy Council 103**, followed by the Hon'ble Supreme Court in **M/s. EXL Careers & Another v. Frankfinn Aviation Services Private Limited (SC) Law Finder Doc ID #1735371,** the plaintiff is entitled to exclude the period spent at the Court's at Patiala for the purpose of calculating limitation. In other words, the plaintiff would be entitled to benefit of section 14, for exclusion of time spent at Patiala.

18. It is further submitted that Court fee deposited by the plaintiff in the Courts at Patiala is also be liable to be adjusted. It is stated that in terms of judgment in **M/s EXL Career (Supra),** the plaintiff is entitled to adjust the court fee if any paid in the court of wrong jurisdiction.

19. Learned Senior Counsel for the respondent relies upon judgments of the Hon'ble Supreme Court in **M/s. EXL Careers & Another Vs. Frankfinn Aviation Services Private Limited Law Finder Doc ID # 1735371; Harshad Chiman Lal Modi Vs. DLF Universal & Another Law Finder Doc ID # 85851; M/s EXL Careers & Another Vs. Frankfinn Aviation Services Pvt. Ltd. Law Finder Doc ID # 1593118; Adcon Electronics Pvt. Ltd. Vs. Daulat Law Finder Doc ID # 5928; A.B.C. Laminart Pvt. Ltd. & Another Vs. A.P. Agencies, Salem Law Finder Doc ID # 89281; Laxman Prasad Vs. Prodigy Electronics Ltd. & Another Law Finder Doc ID # 135717** and **M/s Swastik Gases P. Ltd. Vs. Indian Oil Corp. Ltd. Law Finder Doc ID # 461329.**

20. I have heard learned Senior Counsel for the parties and with their very able assistance, perused the record, as well as gone through the extensive case law cited on behalf of the parties.

21. After hearing, learned senior counsel for the parties and on the basis of the submissions made before me, in my view the two main issues to be determined in the present case are as follows:

a) Whether the Court at Patiala lacked territorial jurisdiction?

b) Whether, in the facts and circumstances of the case, the petitioner's application under Order 7 Rule 11 was maintainable?

22. I shall consider, and deal with each issue/argument raised, as follows:

23. **Jurisdiction**:

23A. It is undisputed that the Petitioner-Defendant is the absolute owner of House No. A20/15, DLF, Phase-I, Qutub Enclave Complex, Chakkarpur Tehsil & District Gurgaon (now Gurugram), Haryana (described herein as the "Suit Property"). The Property is situated in Gurugram, Haryana, whereas, the Suit has been instituted by the plaintiff/respondent in Court of Patiala (Punjab).

23B. As per Section 16 of the CPC, Suits are to be instituted where the subject matter is situated. It is undisputed fact, that the immovable property in question is situated in Gurugram. The plaintiff/respondent in the present case is seeking specific performance for sale of the property situated at Gurugram (Haryana). Thus, the Courts of

Gurugram alone shall have exclusive jurisdiction on the property, which is situated in Gurugram, and the Courts at Patiala (Punjab) can have no jurisdiction.

23C. Section 16 CPC specifically stipulates that any suit in relation to immovable property, including determination of any right or interest in relation to immovable property, is required to be instituted in the Court within the local limits of whose area jurisdiction the property is situate. In the instant case, the suit property is outside the local/territorial limits of the jurisdiction of learned ACJ, Patiala. Thus, the impugned order is prima facie erroneous as it is against the established principle that actions against res or property should be brought in the forum where the res is situated. In the present case, admittedly res is situated in Gurugram and therefore, the Patiala Courts can have no jurisdiction or power to deal with and decide the rights and interests in respect of such property.

23D. The learned Additional Civil Judge, Patiala, held that the Courts at Patiala have jurisdiction as the parties to the Agreement in question have conferred the jurisdiction to Courts at Patiala by way of Clause 14 of the said Agreement. However, in my view, this reasoning is fallacious and misguided as it is a settled proposition of law, that parties by the agreement or contract cannot confer jurisdiction upon the Court, which does not have jurisdiction as per the provisions of CPC. Such a clause would be contrary to Section 28 of the Contract Act and therefore, is liable to be ignored being void ab initio.

23E. Further, this aspect of the matter stands squarely covered by decision of the Hon'ble Supreme Court rendered in the case of **Harshad Chiman Lal Modi Vs. DLF Universal Ltd and Another (SC) Law Finder Doc ID # 85851/ (2005) 7 SCC 791**. The relevant extract is reproduced as under:

> *"14. Having heard learned counsel for the parties and having considered the relevant provisions of the Code as also the decisions cited before us, in our opinion, the order passed by the trial court and confirmed by the High Court deserves no interference. As stated above, it is an admitted fact that the suit relates to the recovery of immovable property, a plot admeasuring 264 sq. mtrs. in the Residential Colony DLF Qutub Enclave Complex, Gurgaon. It is not in dispute by and between the parties that the property is situate in Haryana. It is no doubt true that the defendants are having their Head Office at Delhi. It is also true that the agreement was entered into between the parties at Delhi. It also cannot be denied that the payment was to be made at Delhi and some instalments were also paid at Delhi. The pertinent and material question, however, is in which court a suit for specific performance of agreement relating to immovable property would lie?*
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> *15. Now, Sections 15 to 20 of the Code contain detailed provisions relating to jurisdiction of courts. They regulate forum for institution of suits. They deal with the matters of domestic concern and provide for the multitude of suits which can be brought in different courts. Section 15 requires the suitor to institute a suit in the court of the lowest grade competent to try it. Section 16 enacts that the suits for recovery of immovable property, or for partition of immovable property, or for foreclosure, sale or redemption of mortgage*

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property, or for determination of any other right or interest in immovable property, or for compensation for wrong to immovable property shall be instituted in the court within the local limits of whose jurisdiction the property is situate. Proviso to Section 16 declares that where the relief sought can be obtained through the personal obedience of the defendant, the suit can be instituted either in the court within whose jurisdiction the property is situate or in the court where the defendant actually or voluntarily resides, or carries on business, or personally works for gain. Section 17 supplements Section 16 and is virtually another proviso to that section. It deals with those cases where immovable property is situate within the jurisdiction of different courts. Section 18 applies where local limits of jurisdiction of different courts is uncertain. Section 19 is a special provision and applies to suits for compensation for wrongs to a person or to movable property. Section 20 is a residuary section and covers all those cases not dealt with or covered by Sections 15 to 19.

16. Section 16 thus recognises a well-established principle that actions against res or property should be brought in the forum where such res is situate. <u>A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property.</u> In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief in rem still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well-known maxim "equity acts in personam, recognized by Chancery Courts in England. Equity

Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process in personam, i.e. by arrest of defendant or by attachment of his property.

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19. In the instant case, the proviso has no application. The relief sought by the plaintiff is for specific performance of agreement respecting immovable property by directing the defendant No. 1 to execute sale-deed in favour of the plaintiff and to deliver possession to him. The trial court was, therefore, right in holding that the suit was covered by clause (d) of Section 16 of the Code and the proviso had no application.

20. <u>In our opinion, the submission of the learned counsel for the appellant that the parties had agreed that Delhi Court alone had jurisdiction in the matters arising out of the transaction has also no force. Such a provision, in our opinion, would apply to those cases where two or more courts have jurisdiction to entertain a suit and the parties have agreed to submit to the jurisdiction of one court.</u>

21. A Plain reading of <u>Section 20 of the Code</u> leaves no room of doubt that it is a residuary provision and covers those cases not falling within the limitations of Sections 15 to 19. The opening words of the section "Subject to the limitations aforesaid" are significant and make it abundantly clear that the section takes within its sweep all personal actions. A suit falling under Section 20 thus may be instituted in a court within whose jurisdiction the defendant resides, or carries on business, or *personally works for gain or cause of action wholly or partly arises.*

22. It is, no doubt true, as submitted by Ms. Malhotra that where two or more courts have jurisdiction to entertain a suit, parties may by agreement submit to the jurisdiction of one court to the exclusion of the other court or courts. Such agreement is not hit by *<u>Section 28</u>* *of the Contract Act, 1872, nor such a contract can be said to be against public policy. It is legal, valid and enforceable.*

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26. The question, however, is whether Delhi Court has jurisdiction in the matter. If the answer to that question is in the affirmative, the contention of the plaintiff must be upheld that since Delhi Court has also jurisdiction to entertain the suit and parties by an agreement had submitted to the jurisdiction of that court, the case is covered by Section 20 of the Code and in view of the choice of forum, the plaintiff can be compelled to approach that court as per the agreement even if other court has jurisdiction. If, on the other hand, the contention of the defendant is accepted and it is held that the case is covered by Section 16 of the Code and the proviso to *<u>Section 16</u>* *has no application, nor* *<u>Section 20</u>* *would apply as a residuary clause and Delhi Court has no jurisdiction in the matter, the order impugned in the present appeal cannot be said to be contrary to law.* *<u>As we have already indicated, the suit relates to specific performance of an agreement of immovable property and for possession of plot. It is, therefore, covered by the main part of Section 16. Neither proviso to Section 16 would get attracted nor Section 20 (residuary provision) would apply and hence Delhi Court lacks inherent jurisdiction to entertain, deal with and decide the cause.</u>*

XXX

29. Ms. Malhotra, then contended that Section 21 of the Code, requires that the objection to the jurisdiction must be taken by the party at the earliest possible opportunity and in any case where the issues are settled at or before settlement of such issues. In the instant case, the suit was filed by the plaintiff in 1988 and written statement was filed by the defendants in 1989 wherein jurisdiction of the court was 'admitted'. On the basis of the pleadings of the parties, issues were framed by the court in February, 1997. In view of the admission of jurisdiction of court, no issue as to jurisdiction of the court was framed. It was only in 1998 that an application for amendment of written statement was filed raising a plea as to absence of jurisdiction of the court. Both the courts were wholly wrong in allowing the amendment and in ignoring Section 21 of the Code. Our attention in this connection was invited by the learned counsel to Hira Lal v. Kali Nath, (1962) 2 SCR 747 and Bahrein Petroleum Co. v. Pappu, 1966 (1) SCR 461.

30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or *commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.*

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32. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non judice.

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34. The case on hand relates to specific performance of a contract and possession of immovable property. Section 16 deals with such cases and jurisdiction of competent court where such suits can be instituted. Under the said provision, a suit can be instituted where the property is situate. No court other than the court where the property is situate can entertain such suit.Hence, even if there is an agreement between the parties to the contract, it has no effect and cannot be enforced.

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37. In the instant case, Delhi Court has no jurisdiction since the property is not situate within the jurisdiction of that court. The trial court was, therefore, right in passing an order returning the plaint to the plaintiff for presentation to the proper court. Hence, even though the plaintiff is right in submitting that the defendants had agreed to the jurisdiction of Delhi Court and in the original written statement, they had admitted that Delhi

Court had jurisdiction and even after the amendment in the written statement, the paragraph relating to jurisdiction had remained as it was, i.e. Delhi Court had jurisdiction, it cannot take away the right of the defendants to challenge the jurisdiction of the court nor it can confer jurisdiction on Delhi Court, which it did not possess. Since the suit was for specific performance of agreement and possession of immovable property situated outside the jurisdiction of Delhi Court, the trial court was right in holding that it had no jurisdiction."

(Emphasis supplied)

23F. In my view, a bare reading of the above extract makes it abundantly clear that in the present case, the Courts at Patiala did not have jurisdiction to entertain the suit of the respondent as, the suit property/ res is situated in Gurugram. Hon'ble Supreme Court in the above pronouncement has made it crystal clear that a Court within whose territorial jurisdiction the property is not situate, has no power to deal with or decide the rights or interests in respect of such property.

23G. As regards argument of learned Senior Counsel for the respondent-plaintiff that the present case would fall under proviso to Section 16 CPC and/or Section 20 CPC the same being a residuary clause, the said aspect of the matter has also been dealt with by the Apex Court in the above said judgment; and Their Lordships have categorically held that where the suit relates to specific performance of an agreement of immovable property, and for possession of the said property, it would be covered by the main part of Section 16. It has been held that neither the proviso to section 16 would get attracted, nor section 20 residuary provision would apply.

Relevant provisions of CPC read thus:-

> ***"Section 16 CPC: Suits to be instituted where subject-matter situate.***
> *Subject to the pecuniary or other limitations prescribed by any law, suits*
> *(a) for the recovery of immovable property with or without rent or profits,*
> *(b) for the partition of immovable property,*
> *(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,*
> *(d) or the determination of any other right to or interest in immovable property,*
> *(e) for compensation for wrong to immovable property,*
> *(f) for the recovery of movable property actually under distraint or attachment,*
> *shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:*
> *Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.*
>
> ***Section 20 CPC: Other suits to be instituted where defendants reside or cause of action arises.***
> *Subject to the limitations aforesaid, every suit shall be instituted in a 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 works for gain, as aforesaid, acquiesce in such institution; or

(c)The cause of action, wholly or in part, arises.

2[Explanation].-- A corporation shall be deemed to carry on business at its sole or principal office in 3[India] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

23H Thus, even otherwise, the institution of the suit in the Patiala Court would have been justified as per proviso to Section 16, only if the petitioner/defendant actually and voluntarily resided or carried on business or personally worked for gain in Patiala, which is not the case in the present matter.

23I. Learned Senior Counsel appearing for the respondent has placed much emphasis and reliance upon Clause 14 of the Agreement in question. It has been stated that it was agreed between the parties that the agreement having been executed at Patiala, the Courts at Patiala would have exclusive jurisdiction to try and entertain any dispute. Relevant clause 14 of Agreement is reproduced hereunder:

"14.That the parties hereto have entered into this agreement to sell at Patiala, Punjab, India; as such, Patiala Courts shall have exclusive jurisdiction to entertain any dispute arising out of or in any way touching or concerning this deed."

23J. However, the said contention on behalf of the respondent is liable to be outrightly rejected in view of the above unequivocal pronouncement of the Hon'ble Supreme Court whereby it has been clearly laid down that neither consent, nor waiver, nor acquiescence can confer jurisdiction upon a court otherwise not competent to try the matter.

23K. Accordingly, in view of the above discussion, the issue regarding jurisdiction stands decided in favour of the petitioner.

24. **Order 7 Rule 11:**

24A. The second main contention raised on behalf of the respondent pertains to the objection that the application of the petitioner was mistakenly filed under Order 7 Rule 11 CPC. It has been argued that the petitioner's application under Order 7 Rule11 CPC was not maintainable as the same deals with rejection of plaint for the grounds specified under order 7 rule 11 CPC itself and, lack of inherent territorial jurisdiction is not one of the grounds specified under Order 7 Rule 11 (a) to (f) CPC. Order 7 Rule 11 CPC is reproduced hereunder: -

> "11. Rejection of plaint.- The plaint shall be rejected in the following cases:—
>
> (a) where it does not disclose a cause of action;
>
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law;
>
> (e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.“

24B. However, I am not enticed by the said argument on behalf of the plaintiff which though persuasive, yet, fails to convince as a perusal of the pleadings shows beyond doubt that the petitioner had sought the rejection of the plaint, not just on grounds of lack of inherent territorial jurisdiction, but also on numerous other grounds including inadequate court fees, and the ground that since the agreement in question is a forged and fabricated document, no cause of action arose to the plaintiff etc. – which admittedly, fall within the domain of Order 7 Rule 11. No doubt the Plaint was liable to be returned under Rule 10 of the same Order 7 for lack of territorial jurisdiction, however, in such a situation as the present one a comprehensive/joint Application was maintainable. Further, it is also to be borne in mind that the learned Trial Court has itself embarked upon adjudication of the issue in respect of jurisdiction and rightly did not insist that the title of the Application is merely under Rule 11 and not under Rule 10 of the Order 7 CPC.

24C. For the above said reasons, even the second issue stands decided in favour of the petitioner.

25. After having considered the matter in great detail, I am also of the opinion that the impugned order deserves to be set aside in view of the fact that the learned ACJ failed to decide the other material issues raised by the petitioner/defendant in respect of lack of cause of action/barred by law and also for wrong valuation/insufficient court fees, as noted above.

26. Perusal of the pleadings reveals that the plaintiff has valued the suit to be for Rs. 15,00,000/-, whereas the agreement discloses sale consideration to be Rs. 1.5 Crores. In this situation, it would appear that the Plaintiff has affixed insufficient court fees at the rate of Rs. 15 lakhs, rather than 1.5 Crores; and therefore, the plaint was liable to have been summarily rejected under Order 7 Rule 11, CPC for being insufficiently valued.

27. It has also been averred on part of the petitioner that the agreement in question is a forged and fabricated document, and was never executed by the petitioner or her husband, and does not bear the signatures of the husband of the petitioner, and that the Agreement is on plain paper without any affixation/payment of stamp duty. However, the learned Court below has not dealt with any of the above said issues.

28. To my mind, another important aspect which has been ignored by the learned Court below is that the present Suit for specific performance dated 22.08.2017 has been filed by the respondent/plaintiff in respect of an agreement to sell dated 28.03.2005, i.e. after a gap of more than 12 years of the alleged agreement to sell. There is nothing whatsoever

on file to suggest as to why the plaintiff deemed it fit to seek execution of the agreement after such a long gap.

29. Accordingly, in view of the discussion above, the present revision petition is **allowed**.

30. Before parting, reference needs be made to judgment of the Hon'ble Supreme Court in **M/s EXL Career (Supra),**wherein it has been held as follows:

> *"16. Modern Construction (supra), referred to the consistent position in law by reference to* ***Ramdutt Ramkissen Dass v. E.D. Sassoon &Co., Amar Chand Inani v. The Union of India, Hanamanthappa v. Chandrashekharappa, (1997) 9 SCC 688, Harshad Chimanlal Modi (II) (supra)*** *and after also noticing* ***Joginder Tuli (supra),*** *arrived at the conclusion as follows:*
>
> > *"17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7, Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.""*

31. Thus, in consonance with the above directions of the Hon'ble Apex Court, it is directed that in case the respondent-plaintiff is so

advised to file a Civil Suit before the Courts at Gurugram in respect of the suit property herein, in view of the provision of Section 14 of the Limitation Act the plaintiff shall be entitled to exclude the period during which he prosecuted the case before the learned ACJ, Patiala. In terms of the above judgment, the respondent/plaintiff is also entitled to seek the adjustment of the court fee paid by him before the learned ACJ, Patiala.

32. **Allowed,** as above.

33. Pending application(s) if any also stand(s) disposed of.

16.08.2023 **(Nidhi Gupta)**
Sunena **Judge**

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