IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2175-2023
Date of Decision :04.05.2023

M/s Consolidated Engineering Company and another **....Petitioners**

Versus

Shashi Bala Gupta and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sahil Bhalaik, Advocate for
Mr. Tushar Sharma, Advocate for petitioners.

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Harsimran Singh Sethi, J. (Oral)

1. Present civil revision petition has been filed challenging order dated 04.11.2022 passed by learned Civil Judge (Junior Division), Nuh, District Mewat by which, the application filed by the petitioners-defendants under Order 7 Rule 10 of the CPC read with Section 151 of the CPC for return of the plaint to be filed at Delhi, has been dismissed.

2. Certain facts need to be noticed for the correct appreciation of the issue in hand.

3. The respondents-plaintiffs filed a suit against the petitioners-defendants seeking possession of the industrial premises situated at Nuh by way of eviction and mandatory injunction. After the service, the petitioners-defendants appeared in the suit and filed an application under Order 7 Rule 10 of the CPC read with Section 151 of the CPC for return of the plaint to be filed at Court within the jurisdiction of Delhi. The said application was filed

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on the ground that the lease deed dated 26.10.2003 was executed between the parties at New Delhi as well as the fact that as per the said lease deed, the only jurisdiction to try any suit arising out of the said lease deed will be filed at Court in New Delhi.

4. The application filed by the petitioners-defendants has been dismissed by the Court below vide impugned order dated 04.11.2022 ,which order is under challenge in the present revision petition.

5. Learned counsel for the petitioners-defendants argues that in the present case, keeping in view the agreement between the parties, the Court at Nuh does not have jurisdiction to try the suit for eviction even though, the property in question is situated within the jurisdiction of the said Court. Learned counsel for the petitioners-defendants submits that as the parties have already agreed that jurisdiction to try the suit arising out of the said lease deed will be at Court in New Delhi hence, the Court at Delhi can only try the suit in question therefore, the trial Court should have allowed the application filed by the petitioners-defendants under Order 7 Rule 10 of the CPC read with Section 151 of the CPC for return of the plaint to be filed at a Court within the jurisdiction of Delhi.

6. Second argument which has been raised by the learned counsel for the petitioners-defendants is that in the facts and circumstances of the present case, the case of the petitioners-defendants is covered by the proviso to Section 16 of the CPC so as to grant the jurisdiction to the Court at Delhi to try the said suit especially, when the petitioners-defendants are residing at Delhi.

7. I have heard learned counsel for the petitioners-defendants and

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have gone through the record with his able assistance.

8. The first question to be adjudicated is whether the jurisdiction upon either Court to try a suit is conferred keeping in view the provisions of the CPC or by the agreement between the parties.

9. Learned counsel for the petitioners-defendants very fairly conceded that agreement between the parties cannot override the procedure laid down under CPC but submits that wherever two Courts have concurrent jurisdiction to try the suit, agreement between the parties to oust the jurisdiction of one of the Court to try a suit is valid, hence as in the present case, two Courts have concurrent jurisdiction to try the suit filed by the respondents-plaintiffs, jurisdiction of Court at Nuh will be ousted keeping in view the agreement between the parties concerned.

10. For the purpose of deciding the said question, whether in the facts, two Courts i.e. Court at Nuh, Haryana and Court at Delhi have concurrent jurisdiction to try a suit seeking exclusive possession of a property situated at Nuh, Haryana, Section 16 of the CPC is very material and the same is reproduced as under:-

> **Section-16.** 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:

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> 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.
>
> *Explanation*.-- In this section "property" means property situate in 1[India].

11. A bare perusal of Section 16 of the CPC would show that with regard to the jurisdiction to try the suit for recovery of the immovable property with or without rent or profits is defined under Section 16(a) and the jurisdiction qua the said claim is with the Court wherein the property in question is situated.

12. Concededly, in the present case, the property is situated at Nuh. It is conceded position that keeping in view Section 16(a) of the CPC, the Court at Nuh has the jurisdiction to try the suit.

13. Argument which is being raised by the learned counsel for the petitioners-defendants that keeping in view proviso to Section 16 of the CPC relief can be sought through personal obedience of the defendants, hence Court at Delhi will also have concurrent jurisdiction as the petitioners-defendants are residing in Delhi.

14. Though, it is being agitated before this Court that in the present case, the relief can be sought by the plaintiffs-respondents through the personal obedience of the petitioners-defendants but learned counsel for the petitioners-defendants has not been able to substantiate the said contention especially, in view of the fact that property in question, eviction of which is being sought is situated at Nuh then how, the Court at Delhi can try the suit

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through the personal obedience. Learned counsel for the petitioners-defendants has not been able to answer that in case eviction is ordered whether Court at Delhi can execute the said decree through personal obedience.

15. Learned counsel for the petitioners-defendants submits that keeping in view the findings recorded by Hon'ble Supreme Court of India in ***Civil Appeal No.2726-2000*** titled as ***Harshad Chiman Lal Modi. Vs. DLF Universal Ltd and another*** decided on 26.09.2005 though, proviso is an exception to the main part of the Section but the same cannot be interpreted or construed to enlarge the scope of the principal provision but the same will only apply if the suit falls within one of the categories specified in the main part of the section and the relief sought could entirely be obtained by personal obedience of the defendant hence, proviso will be applicable in the present case keeping in view said settled principle of law as recorded in paragraph 18 of the judgment.

16. Interpretation being given to para-18 of the judgment in Harshad Chiman Lal Modi's Case (supra) is not correct. In the present case, relief sought cannot be entirely obtained by personal obedience of the defendant. Interpretation being given to para 18 of the judgment in Harshad Chiman Lal Modi's Case (supra) so as to make applicable the same in the present case is by misreading the said paragraph in isolation and by isolating the said paragraph from the remaining part of the judgment and also by ignoring the ratio of the judgment. For applicability of a judgment, facts of the case as well as total judgment is to be read so as to adjudge the applicability of the same and not by reading a paragraph of the judgment and

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that too in isolation of rest of the findings recorded in the judgment.

19. Keeping in view the facts and circumstances noticed hereinbefore, no ground for interference by this Court is made out and the present revision petition is accordingly dismissed.

May 04, 2023 **(HARSIMRAN SINGH SETHI)**
aarti **JUDGE**

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

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