

D/L.33.
April 30, 2025.
MNS.

FMA No. 1242 of 2024

+

CAN 1 of 2025

PRATIM CHAKRABORTY

Vs.

SBI CAP SECURITIES LIMITED
AND OTHERS

Mr. Soumya Majumder,
Mr. Soumalya Ganguly

... for the appellant.

Mr. Satadeep Bhattacharya,
Mr. Yogesh Kr. Sharma,
Ms. Sriparna Mitra,
Mr. Atul Sureka,
Ms. Priyanka Rajak

...for the respondent nos. 1, 2, 5 and 6.

1. The affidavit-of-service filed in Court today be kept on record.
2. The present appeal has been preferred against an order whereby the plaint of the appellant was returned under Order VII Rule 10 of the Code of Civil Procedure (in short, "the Code") on the ground that Mumbai Courts have jurisdiction in the matter.
3. Learned senior counsel appearing for the plaintiff/appellant argues that the adjudication of an application under Order VII Rule 10 of the Code primarily has to be on the premise of the averments made in the plaint.
4. Learned senior counsel takes the court through the averments made in paragraph 30 of the plaint,

which state that the cause of action of the suit firstly arose on the date of receipt of the impugned notice of termination dated July 5, 2023 at the residential address of the plaintiff, which is situated within the territorial jurisdiction of the Trial Court.

5. Learned senior counsel for the appellant argues that although the letter of employment issued to the appellant includes a clause as to the dispute being subject to Mumbai jurisdiction, such clause contemplates disputes of “whatsoever nature” regarding the employment. It is, thus, doubtful as to whether the conspectus of the present suit, pertaining to dismissal from service, would be covered by such clause.
6. Learned senior counsel takes the court through the reliefs sought in the plaint, which are, inter alia, for declaration that the defendant nos. 2 to 5 and their men and agents in office and even otherwise planned and conspired against the plaintiff to get his service with the defendant no. 1 illegally, unlawfully and arbitrarily terminated, for declaration that the defendant nos. 2 to 5 have falsely implicated and victimized the plaintiff to get the service of the plaintiff with the defendant no. 1 terminated and for a decree of declaration that the alleged POSH Committee of the defendant no.1 illegally recommended disciplinary action against the plaintiff and the like.

7. However, upon going through averments made in the plaint and the cause title thereof, we find that apart from the plaintiff/appellant having his residence in Kolkata, where he allegedly received the letter of termination, all the addresses of the defendants, including the defendant no. 1-company, are of Mumbai. Even the termination letter, which is the very premise of the challenge in the suit, was issued from Mumbai, as is apparent from the letter-head on which it was authored.
8. The question which arises for consideration is whether even a part of the cause of action arose within the territorial jurisdiction of Mumbai Courts, since it is well-settled that the parties, under normal circumstances, cannot contract out of the jurisdiction of Courts; however, they can agree to subject themselves to the jurisdiction of one of the several Courts which otherwise have jurisdiction.
9. Thus, we are to *prima facie* look at whether even a part of the cause of action, as per the plaint, arose within the territorial jurisdiction of Mumbai. Even if Kolkata Courts have jurisdiction, the test for consideration under Order VII Rule 10 of the Code in the present case is whether the clause specifying Mumbai Courts to have exclusive jurisdiction is valid in law, for which we are to ascertain whether a part of the cause of action arose within Mumbai.

10. It is an undisputed position that the employment agreement between the parties exists even as per the plaint, since nowhere in the four corners of the plaint has the plaintiff challenged the existence of the letter of employment. Rather, the plaintiff relies on the letter of employment to assert his employment with the defendant no. 1-company.

11. Hence, the plaintiff is also bound by the jurisdiction clause therein, which confers exclusive jurisdiction to decide disputes pertaining to the employment of the plaintiff with the defendant no. 1 on the courts at Mumbai.

12. Although the termination letter might have been received by the plaintiff/appellant at his Kolkata residence, the termination letter relied on in the plaint itself shows that the same was issued from Mumbai.

13. Undisputedly, the plaintiff is an employee of the defendant no. 1-Company which has its office and all its operations in Mumbai. Moreover, the plaintiff/appellant has all along worked with the defendant no. 1 in Mumbai and almost no part of the cause of action arose within the territorial jurisdiction of Kolkata Courts.

14. The receipt of the termination letter by the plaintiff/appellant in Kolkata may not be so germane, since the cause of action of the suit is not such receipt but the act of termination itself, which

took place in the Mumbai office of the defendant no.1-employer.

15. Learned senior counsel appearing for the appellant seeks to rely on an unreported judgment of a co-ordinate Bench of this Court in *FMA 284 of 2020 (M/s. Alembic Limited Vs. State of West Bengal and others)*.

16. However, we find that the ratio laid down therein was in the context of the peculiar facts of the case and is not binding in the present circumstances.

17. Paragraph 15 of the said judgment, relied on by the appellant, contains the crux of the ratio laid down therein. In no uncertain terms, the co-ordinate Bench observed after referring to the finding recorded in the decision which was challenged therein, as regards the manner in which the terms and conditions of the letter of appointment was drafted and from the evidence of OPW1 therein, that the terms and conditions were drawn exclusively by the appellant management and the employees whose services were drawn from the other company were not provided with any draft before it was offered to them for acceptance. Furthermore, it had been brought on record in the said case by way of documentary evidence that a substantial number of employees had received letters of appointment without prejudice. A few of them might have accepted it by affixing their

signatures, that by itself cannot be held to be estoppel for the respondent union to seek for a reference to the tribunal to adjudicate the issue as to whether the change of service conditions was justified or not.

18. In such circumstances, Clause 18 of the letter of appointment, it was held, cannot be put against the employees/union so as to prevent them from raising the dispute in West Bengal. The Court further went on to observe that under normal circumstances, the jurisdictional clause is incorporated in commercial contracts when goods are sold and delivered.

19. The co-ordinate Bench went to hold that even assuming that there was such a condition, the evidence on the side of the management clearly showed that a full-fledged establishment of the appellant functions in the State of West Bengal. Though there may not be a zonal office, there is a Regional Manager and the Area Manager, the duty chart is prepared by them and they exercised administrative control over the employees working in West Bengal. It was further held that all those aspects were sufficient to hold that the respondent union was justified in raising the dispute in the State of West Bengal where the dispute was "felt". It was further held that more importantly, alteration of the service condition is the plea raised by union

and such a plea would be felt by the employees where they function, which undoubtedly was within the State of West Bengal.

20. The facts of the present case, even as evident from the plaint itself and the annexures thereto, as well as the documents relied on therein, are diametrically opposite to the facts of the cited judgment.

21. As opposed to the said case, where the employees were functioning for the concerned company within the State of West Bengal, in the present case, as per the employment letter and the pleadings of the plaint, the plaintiff has all along worked for defendant no.1-company in Mumbai. The defendant no. 1 has its office in Mumbai and it is not even the plaint case that any of the part of the operations of the defendant no. 1 or any of the defendants, for that matter, come within the territorial jurisdiction of Kolkata.

22. Further, in the said case, a finding was rendered by the Division Bench that although substantial number of employees had received the letter of appointment, those were without prejudice and affixing their signatures therein could not be held to be estoppel for the respondent union to seek for a reference for the purpose of determining the territorial jurisdiction.

23. In the present case, there is no iota of doubt, even on a plain reading of the plaint, as to the existence and veracity of the employment letter, on which the plaintiff/appellant himself relies, hence, rendering the facts of the cited judgment entirely irrelevant in the present context.

24. Also, the addresses of all the defendants in the present case, as per the plaint itself, are in Mumbai.

25. Thus, considering from all possible perspectives, we find that the learned Trial Judge was perfectly justified in returning the plaint under Order VII Rule 10 of the Code for being presented before the appropriate court in Mumbai and there is no scope of interference with the said decision.

26. Hence, FMA No. 1242 of 2024 is dismissed under Order XLI Rule 11 of the Code.

27. Consequentially, CAN 1 of 2025 is disposed of.

28. There will be no order as to costs.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)