

CASE NO.:
Appeal (civil) 4811 of 2007

PETITIONER:
Mohannakumaran Nair

RESPONDENT:
Vijayakumaran Nair

DATE OF JUDGMENT: 11/10/2007

BENCH:
S.B. Sinha & Harjit Singh Bedi

JUDGMENT:
J U D G M E N T
[Arising out of SLP(C) No. 12398 OF 2006]
S.B. SINHA, J

1. Leave granted.

2. Appellant is said to have borrowed a sum of Rs.6,02,000/- (Rupees Six Lacs Two Thousand Only) from the respondent. The said transaction was carried out at Saudi Arabia. Appellant executed a promissory note on 8.5.1999. Admittedly, the parties were residing at Saudi Arabia at the relevant time. No part of the cause of action arose within the jurisdiction of the Court of Subordinate Judge, Attingal. Respondent herein filed a suit for recovery of the aforementioned amount in the Subordinate Court at Attingal. Although both the parties were residing in Saudi Arabia, Plaintiff filed a suit in the Court of Subordinate Judge, Attingal for recovery of the said amount sometime in the year 2002. Appellant having been summoned, appeared in the suit. He, inter alia, raised an issue of lack of territorial jurisdiction on the part of the said court to entertain the suit. By an Order dated 15.3.2005, the application of the appellant was dismissed by the Ld. Trial Judge holding:

\023Admittedly the transaction took place at Riyadh in Soudi Arabia which is beyond the jurisdiction of this court. According to the defendant since the transaction took place beyond jurisdiction of this court it lacks territorial jurisdiction to entertain the suit. At the same time plaintiff would contend that this court has territorial jurisdiction since the defendant is a resident within the jurisdiction of this court. As per Section 20(a) C.P.C. every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides or carries on business or personally works for gain. From the address given in the plaint and from the averments in the plaint it can be seen that defendant is a resident of Kadinamkulam Village which is within the jurisdiction of this court. Defendant himself has no case that he is not a resident within the jurisdiction of this Court. That being so this court has territorial jurisdiction to entertain the suit. Contention to the contrary raised by the defendant is devoid of any merit and is liable to be rejected. Issue No. 1 is thus found in favour of the plaintiff.\024

3. Appellant filed a civil revision thereagainst before the High Court of Kerala which was marked as CRP No. 820 of 2005. By reason of the impugned judgment, a learned Single Judge of the said Court relying on the basis of Section 20 (c) of the Code of Civil Procedure and upon placing the legislative history of the said provision, opined :

\02320. Thus I agree with the learned counsel for the revision petitioner that strictly the court did not have territorial jurisdiction to entertain the suit on the date of the suit. The question of the nature of relief that has to be granted to the defendant arises for consideration now. Even if the suit were to be returned, on admitted facts that has to be represented to the same court now as admittedly after the filing the suit the petitioner/defendant is residing permanently, actually and voluntarily in India. Any and every error will not persuade the court to exercise its revisional jurisdiction. Such jurisdiction has to be invoked only in aid of justice. I take note that there is no serious dispute raised about liability or the execution of the promissory Note. There is also no serious contention that if the plaint were returned accepting the plea regarding jurisdiction, it has to be represented to the same court as by then the petitioner had started permanent, actual and voluntary residence in India. I am in these circumstances satisfied that the suit is liable to be considered and disposed of by the court of Subordinate Judge of Attingal and the same need not be directed to be returned.\024

4. Mr. P.S. Narasimha, learned counsel appearing on behalf of the appellant in support of this appeal submitted that the High Court itself having arrived at a finding that the suit was not maintainable, could not have refused to exercise its revisional jurisdiction. Although, no oral argument was advanced before us on behalf of the respondents, a Written Submission has been filed supporting the impugned judgment.

5. The Court undoubtedly, exercises a discretionary jurisdiction in terms of Section 115 of the Code of Civil Procedure. Discretion, however, as is well known must be exercised in accordance with law and not de-hors the same. See Reliance Airport Developers Pvt. Ltd. Vs. Airports Authority of India and Ors. [2006 (11) SCALE 208].

6. A suit can be filed only when there exists a cause of action and which have arisen within the jurisdiction of the Court.

7. Sections 15 and 20 of the Code of Civil Procedure provides for the place where a suit can be filed. Section 15 mandates that suit shall be instituted in the Court which is competent to try.

8. The question in regard to the jurisdiction is required to be determined with reference to the date on which the suit is filed and entertained and not with reference to a future date. Sections 15 and 19 regulates the filing of the suit at the places where cause of action has arisen. Section 20 operates subject to the limitation contained in Sections 15 to 19. Place of residence of the defendant being one of the exceptions thereto. Plaintiff is the dominus litis, but he can file a suit only at one or the other places specified in the Code of Civil Procedure and not at any place where he desires.

9. In New Moga Transport Company Vs. United India Insurance Co. Ltd. and Ors. [AIR 2004 SC 2154], this Court held; \02319. The intention of the parties can be culled out from use of the expressions \023only\024, \023alone\024, \023exclusive\024 and the like with reference to a particular Court. But the intention to exclude a Court\022s jurisdiction should be reflected in clear, unambiguous, explicit and specific terms. In such case only the accepted notions of contract would bind the parties. The first appellate Court was justified in holding that it is only the Court at Udaipur which had jurisdiction to try the suit.

10. A distinction must be borne in mind between exercise of jurisdiction

by a Civil Court and a Writ Court in this behalf. See M/s. Kusum Ingots and Alloys Ltd. Vs. Union of India and Another [AIR 2004 SC 2321]. See also Ambika Industries Vs. Commissioner of Central Excise [2007 (8) SCALE 488].

11. Ordinarily, the rights and obligations of the parties are to be worked out with reference to the date of institution of the suit. See Jindal Vijayanagar Steel (JSW Steel Ltd.) Vs Jindal Praxair Oxygen Company Ltd. [2006(8)SCALE668] Determination in regard to maintainability of the suit, it is trite, must be made with reference to the date of the institution of the suit. If a cause of action arises at a later date, a fresh suit may lie but that would not mean that the suit which was not maintainable on the date of its institution, unless an exceptional case is made out therefor can be held to have been validly instituted. Discretion, as is well known, cannot be exercised, arbitrarily or capriciously. It must be exercised in accordance with law. When there exists a statute, the question of exercise of jurisdiction which would be contrary to the provisions of the statute would not arise.

12. Application of doctrine of dominus litus is confined only to the cause of action which would fall within Sections 15 to 18 of the Code of Civil Procedure. It will have no application in a case where the provision of Section 20 thereof is sought to be invoked.

13. It is one thing to say that the parties had their residences in India but the same would not mean that a suit could be filed at any of the places where the defendant resides. At all material times, the parties were at Saudi Arabia. They were residing there only. They had been working for gain in that country. It is also not a case where under the promissory note the amount was to be paid in India. There is nothing on record to show that any demand was made within the State of Kerala and the defendant was under any contractual obligation to pay the said amount in Kerala where the demand has been communicated.

14. The High Court itself has held that no part of cause of action arose in the State of Kerala. Respondent has not questioned that part of the order before this Court questioning the said finding.

15. Respondent, therefore, in our opinion cannot be permitted to raise the said plea before us for the first time.

16. The contention raised on behalf of the respondent that a part of cause of action not arise within the jurisdiction of the trial court as the appellant made a commitment of payment of the amount within the jurisdiction thereof, cannot be accepted for more than one reason. Firstly, because no such contention had been raised before the High Court. Secondly, because the High Court itself has arrived at a finding that the learned Trial Judge had no territorial jurisdiction to entertain the suit. It is also not a case where the petitioner had been residing within the local limits of the jurisdiction of the court where the defendant at the time of commencement of the suit was actually or voluntarily residing or carried on business or personally worked for gain.

17. He, at the material time, had been residing in Saudi Arabia.

18. The material date for the purpose invoking Section 20 of the Code of Civil Procedure is the one of institution of the suit and not the subsequent change of residence. Change of residence subsequent to decision of the Court would not confer territorial jurisdiction in the Court which it did not have.

19. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. But, in the facts and circumstances of the case, there shall be no order as to costs.