

(2016) 03 CAL CK 0020
In the Calcutta High Court
Case No : C.O. 4290 of 2013

Apurba Kumar Saha and Others

APPELLANT

Vs

East India Spirits and Beer Private Limited

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Section 151, Section 20
Constitution of India, 1950 — Article 227
Contract Act, 1872 — Section 23, Section 28

Citation : (2016) 03 CAL CK 0020

Hon'ble Judges : Indrajit Chatterjee, J.

Bench : Single Bench

Advocate : Sargarmoy Ghosh, for the Appellant; Utpal Moitra, Kalyan Bhowmick and Sajid, for the Respondent

Final Decision : Dismissed

Judgement

Indrajit Chatterjee, J.—1. This is an application under Article 227 of the Constitution of India wherein the order dated 12th November, 2013 as passed by the learned 7th Civil Judge (Senior Division) at Alipore, South 24-Parganas has been assailed by the present applicants who were defendants in Money Suit No. 03336 of 2012.

2. The case of the petitioners/defendants is that the Alipore court had no jurisdiction over the matter. He took me to Section 20 and also to Order 7 Rule 10 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure to convince this court that actually the court of Alipore within the District of South 24-Parganas had no jurisdiction over the dispute raised by the present opposite party.

3. Learned Counsel appearing on behalf of the petitioners submits that the places of residence of both the parties are at Hooghly. The place of business of the defendants/petitioners is at Naihati. Goods were supplied at Naihati within the district of North 24-Parganas, payments have been received and accepted from

Naihati and the bankers of the present petitioners are at Naihati within the district of North 24-Parganas and at Chinsurah within the district of Hooghly. Thus, he tried to convince this court that the court of Alipore had no jurisdiction over the matter. It is his further submission that as regards the agreement between the parties in case of dispute suit will have to be filed before any court in Kolkata cannot have the sanction of law. Learned Counsel cited a decision of Allahabad High Court as reported in , AIR 1978 Allahabad 455 (Magni Lal v. Satyanarayan) wherein the Allahabad High Court held that no single party can impose in terms of the contract upon other unless it is agreed by the other parties expressly. Thus, he submitted that no written agreement was made on that score and as such, that plea as raised by the plaintiff cannot have application as regards the fixation of jurisdiction.

4. It was submitted by the learned Advocate appearing on behalf of the opposite party by taking me to the recital of the plaint (Annexure -P1 at page 12 of this petition) that the plaintiff's business is within the jurisdiction of Police Station - Mahestala, Budge Budge Trunk Road, South 24-Parganas, Kolkata - 700 013. Learned Counsel also submits that there was an agreement between the parties that if any dispute takes place, then it will be disposed of by any court of Kolkata. Learned Counsel placed greater stress regarding his claim that the place of business of the present plaintiff is at Maheshtala within the jurisdiction of the Civil Judge (Senior Division), 7th Court, Alipore, Calcutta - 700 027 and the learned Counsel further stressed that part of the cause of action took place with the jurisdiction of that court and as such, it cannot be said that the plaint was presented before the court which has no jurisdiction over the same. Regarding the agreement in the between the parties conferring jurisdiction on a particular court, it was the argument of the learned Advocate appearing on behalf of the opposite party/plaintiff that it is true that as per Section 23 of the Contract Act, such an agreement is forbidden but in view of Section 28 of the Contract Act, such an agreement conferring jurisdiction to a particular court is possible because that contract is not against the public policy. On this point he cited a decision of the Apex Court as passed in a Special Leave Petition (C) No. 10184 of 2008 (A.V.M. Sales Corporation v. M/s. Anuradha Chemicals (P) Ltd.) which was disposed of as per order dated 17-01-2012 wherein in paragraph 13, the Apex Court illustrated that such a mutual agreement to exclude the jurisdiction of Delhi Court to entertain the suit was not opposed to public policy and was valid. In that case, the Apex Court relied on decision of the Apex Court as reported in , AIR 2004 SC 2432 and thus, it was submitted by the learned Counsel appearing on behalf of the petitioners that in this case, part of the cause of action took place in the jurisdiction of Alipore Court as the place of business of the plaintiff is within that jurisdiction. He also cited the decision of the Apex Court as passed in Appeal (Civil) No. 7749 of 2004 (Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd. & Ors.) as decided on 20/07/2007 wherein the Apex Court took up the matters as regards the cause of action and discussed regarding the cause of action in paragraph Nos. 12, 13 etc. and wherein the Apex Court also decided that such

conferment of jurisdiction as agreed by the parties is acceptable provided it is not opposed to public policy. Thus, it was contended by the learned Advocate appearing on behalf of the plaintiff/opposite party that this application under Article 227 of the Constitution of India be dismissed.

5. In reply, it was submitted by the learned Counsel appearing on behalf of the petitioners that as per agreement between the parties, the jurisdiction as regards any dispute will have to be decided by the court at Calcutta and the court at Alipore cannot be treated as court of Calcutta. He further submitted that a per Section 20 of the Code, the jurisdiction has been fixed where the defendant, and each of the defendants actually and voluntarily resides or carries business or personally works for gain or any of the defendants at the time of the commencement of the suit actually and voluntarily resides or carries on business or the cause of action wholly or in part arises. His further argument is that the plaintiff of the suit tried to confer jurisdiction of the court of Alipore only on the basis of the fact that the plaintiff has a place of business in Maheshtala and that no cause of action arises within the jurisdiction of Alipore Court at Maheshtala.

6. I have gone through Section 20, Order 7 Rule 10 of the Code of Civil Procedure and also the copy of the plaint as filed along with this application. The plaintiff tries to establish his jurisdiction by taking me to paragraph Nos. 1 and 8 to show that the defendants placed the contract at the plaintiff's office at Gopalpur, P.S. Maheshtala, District South 24 Parganas (vide paragraph No. 1 of the plaint) and he has illustrated regarding the jurisdiction of Alipore Court by taking me to paragraph 8 of the plaint wherein it has been stated that the cause of action for this suit arose at Gopalpur, P.S. Maheshtala within the district of Alipore Court on the date appended in that paragraph.

7. Conferment of jurisdiction of a particular court will depend upon the question of fact as well as law. It is true that the other side has every right to file an application under Order 7 Rule 10 of the Code at the initial stage of the suit but in such a case, the plaintiff may illustrate at the time of recording evidence how the jurisdiction of Alipore court can be attracted. It is true that in view of the decision of the Apex Court referred to above (*Sandeep Polymers (P) Ltd. Supra*), the parties can fix the particular jurisdiction of a court if that agreement is not hit by public policy. In this case, the plaintiff/opposite party has, however, not claimed regarding conferment of jurisdiction to Court of Kolkata.

8. Thus, in view of the discussion so long made and the legal position involved, this court is satisfied that without recording evidence, the trial court cannot be satisfied as to in whose jurisdiction the cause of action arose, that is at Chinsurah within the district of Hooghly or Naihati within the district of North 24 Parganas or at Alipore as claimed by the plaintiff through the averments in paragraph Nos. 1 and 8. Thus, this matter is left to the learned trial court to decide, the matter, if it is agitated hereinafter, without being influenced by any portion of this order.

9. Thus, the application under Article 227 of the Constitution of India is dismissed on contest but without any cost.

10. Learned Advocates for the parties are requested to communicate this order to the learned trial court forthwith.

11. Learned Advocates for the parties are at liberty to communicate the gist of the order to the learned trial court considering the fact that the next date of hearing has been fixed before the learned trial court on 14-03-2016.

12. Photostat certified copy of this order, if applied for, be supplied to the parties as per rules.