

(2009) 08 P&H CK 0150
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 2684 of 2004

Kakkar Steel Forgings & Ors.

APPELLANT

Vs

Messrs Bawa Industries Limited.

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Penal Code, 1860 (IPC) — Section 34, 406, 420, 506

Citation : (2010) 1 Law Herald 255

Hon'ble Judges : Sham Sunder, J

Advocate : Mr. Sudhir Mittal, Advocate.; For the Respondent: None., Advocates for appearing Parties

Judgement

Sham Sunder, J.—This revision petition is directed against the order dated 19.03.2004, rendered by the Court of Civil Judge (Junior Division), Phagwara, vide which it decided issue no.2 that the Civil Court at Phagwara, had jurisdiction to try and entertain the matter, in dispute, as the agreement between the parties could not exclude the territorial jurisdiction of that Court.

2. In a suit, filed for recovery, at Phagwara, an objection was taken by the defendants, in the written statement that only the Civil Courts at Ropar had jurisdiction to entertain and try the suit as the parties, by way of an agreement, excluded the jurisdiction of Phagwara Courts and conferred the same on Civil Courts at Ropar. It was further stated that defendant nos. 1 and 2 were working for gain at Mohali and defendant no. 1 was resident of Chandigarh. It was further stated that no cause of action accrued at Phagwara.

3. On the pleadings of the parties, the following issue, was framed, by the trial Court at Phagwara:

?Whether this Court has no jurisdiction to try the suit ?OPD?

4. The trial Court, after hearing the Counsel for the parties, and, on going through, the record of the case, vide order dated 19.03.04 came to the

conclusion, that since the cause of action accrued at Phagwara, the Civil Court at Phagwara had jurisdiction to entertain and try the suit and the parties, by way of an agreement, could not exclude the jurisdiction of a Civil Court at Phagwara and confer the same on a Court at Ropar.

5. Feeling aggrieved against the order impugned, the instant revision petition, has been filed by the revisionpetitioners.

6. I have heard the Counsel for the revisionpetitioners, and have gone through the documents, on record, carefully.

7. The Counsel for the revisionpetitioners, submitted that, no doubt, the order was placed at Phagwara. He further submitted that on the bill, Ex.PW3/DXI, at the footnote, it was mentioned that the disputes between the parties were subject to Ropar jurisdiction only. He further submitted that when two Courts have jurisdiction to entertain and try the suit, then the parties, by way of an agreement, can confer the jurisdiction on one Court by excluding the jurisdiction of the other Court. He also referred to Section 20 of the Code of Civil Procedure, in this regard. He further submitted that, under these circumstances, the order impugned, rendered by the Civil Judge (Junior Division), Phagwara that despite the agreement, between the parties, the Civil Court at Phagwara, had jurisdiction, being illegal, was liable to be set aside.

8. After giving my thoughtful consideration, to the contentions, advanced by the Counsel for the revision petitioners, in my considered opinion, the revision petition deserves to be accepted, for the reasons to be recorded hereinafter. Admittedly, the purchase order was placed by the plaintiff (now respondent) with defendant nos.1 and 2 (now revisionpetitioners) at Phagwara, and advance payment of Rs. 75,000/ by way of cheque dated 06.09.1995 was also made to them (defendants) at Phagwara. However, it is evident from the condition recorded at the foot note of bill Ex.PW3/DXI, that all disputes were subject to Ropar jurisdiction only. Section 20 of the Code of Civil Procedure reads as under:

?20. Other suits to be instituted where defendants reside or cause of action arises:

Subject to the limitation 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 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 work for gain, as aforesaid, acquiesce in such institution, or

c) the cause of action wholly or in part, arises.?

The bare perusal of the provisions of Section 20 of the Code of Civil Procedure shows that the plaintiff had an option to file the suit either at the place where the cause of action accrued or at the place where the defendants were residing or working for gain. However, in the instant case, one of the defendants was residing at Ropar. Both the defendants were working at Mohali, at that time falling within the Revenue district of Ropar. However, the question arises, as to whether the parties by way of an agreement, could confer exclusive jurisdiction on one of the Courts only i.e. where the cause of action accrued or where the defendants were residing or working for gain and if such an agreement was arrived at, then whether the same could be said to be legal and valid or not. In *ABC Laminart Pvt. Ltd. And another v. A.P. Agencies, Solem*, AIR 1989 Supreme Court 1239 and *Musa Ji Luxman Ji v. Durga Dass*, AIR (33) 1946 Lahore 57, relied upon by the Counsel for the revision petitioners, the principle of law, laid down, was to the effect, that if more than one Court has jurisdiction, to entertain and try the suit, contract to vest jurisdiction in one of them, is not against public policy. As per the provisions of Section 20 CPC, both the civil Courts at Phagwara and at Ropar had jurisdiction to entertain and try the suit. Since the parties entered into an agreement, referred to above, and vested the exclusive jurisdiction on Civil Courts at Ropar, such an agreement could not, by any stretch of imagination, be said to be invalid or illegal. In view of the said agreement, only the Civil Courts at Ropar had got jurisdiction to entertain and try the suit. The trial Court, no doubt, held that the parties by entering into an agreement, could not exclude the jurisdiction of the Courts at Phagwara where the cause of action accrued. It placed reliance on *M/s Hindustan Metals v. M/s Vishal Goods Transport*, 1992 (RCR) Civil 627 for coming to such a conclusion. In view of the principle of law, laid down, by the Apex Court in *ABC Laminart Pvt. Ltd.'s* and by a full bench of Lahore High Court in *Musa Ji Luxman Ji's* cases (supra) the principle of law, laid down, in *M/s Hindustan Metals's* case (supra) shall not hold the field. In this view of the matter, the order impugned suffers from illegality, and perversity, warranting interference of this Court, in its revisional jurisdiction, under Article 227 of the Constitution of India. Consequently, the order impugned, is liable to be set aside.

9. For the reasons recorded above, the revision petition is accepted. The order impugned is set aside. The parties are directed to appear in the Court of Additional Civil Judge (Senior Division), at Phagwara, on 10.09.2009, which shall send the file of the Civil Suit, to the District Judge, Ropar, for entrustment of the same to a Court of Civil Judge at Ropar with a direction to the parties to appear in the Court of District Judge on a particular date.