

(2016) 06 SHI CK 0147

In the High Court Of Himachal Pradesh

Case No : Civil Revision No. 139 of 2009.

Parmod Sood - Petitioner @HASH The Municipal Council, Solan

Date of Decision : 21-06-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Section 20

Citation : (2016) 3 HimLR 1868 : (2016) ILRHP 2091

Hon'ble Judges : Chander Bhusan Barowalia, J.

Bench : Single Bench

Advocate : Mr. J.S. Bhogal, Senior Advocate with Mr. Parmod Negi, Advocate, for the Petitioner; Mr. Anil God, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Chander Bhusan Barowalia, J. - The present Civil Revision is maintained by the petitioner/plaintiff (hereinafter called the plaintiff) assailing the order dated 22.10.2009, passed by learned Civil Judge (Senior Division), Shimla, in RBT No. 70-1 of 05/2000 titled Pramod Sood v. Municipal Council, Solan, whereby plaint has been ordered to be returned for presentation before the Competent Court at Solan, to quash and set aside the impugned order.

2. The facts giving rise to this Civil Revision are that petitioner filed a suit for recovery of Rs. 4,62,152/-, on account of the works executed relating to the renewal of different roads of the respondent/defendant (hereinafter called the defendant). Plaintiff had been issued several work orders for the execution of such works and had executed works worth Rs. 9,00,000/- till June, 1998 and an amount of Rs. 5,76,000/- had been paid to the plaintiff by the defendant whereas the balance amount of Rs. 3,24,000/- had been withheld by the defendant on which plaintiff claimed interest @ 24% per annum from 1.7.1998 to the date of suit along with costs. It is averred that suit had initially been filed before the learned District Judge, Shimla, and an application under Order 7, Rule 10 of the Civil Procedure Code had been filed by the defendant for return of the plaint, which was dismissed, vide order dated 12.8.2002. It is further averred that after filing of the written statement by the defendant an objection with

regard to the jurisdiction of the Court had been raised by the defendant and a specific issue was framed on 21.5.2004. The learned trial Court while passing the impugned order dated 22.10.2009, has returned the plaint for its proper presentation to a Court at Solan.

3. In replication, contents of the written statement were denied and that of the plaint were reaffirmed. Also averred that the plaintiff is residing and carrying on business within the jurisdiction of this Court, therefore, this Court has jurisdiction to try and determine the suit.

4. The learned Court below has framed the following issues:

1. To what amount the plaintiff is entitled to for executing the work for the defendant ? OPP.

2. Whether the plaintiff is entitled to balance amount for payment after the execution of the work of the defendant, if so, how much ? OPP.

3. Whether the plaintiff is entitled to the interest on the balance amount, if any and if so to what rate ? OPP.

4. Whether the suit is not maintainable ? OPD.

5. Whether the plaintiff has no locus standi to file the suit ? OPD.

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

7. Whether the plaintiff is estopped to file the suit by his act and conduct as alleged ? OPD.

8. Relief.

5. After giving findings only on Issue No. 6 in favour of the defendant, the learned trial Court has ordered the plaint to be returned to the plaintiff for presentation in a Court having jurisdiction at Solan.

6. Feeling aggrieved by the judgment of learned trial Court, the petitioner maintained the appeal on the ground that the judgment is based on conjectures and surmises and, therefore, the same is liable to be quashed and set aside.

7. I have heard the learned counsel for the parties and have also gone through the record of this case carefully.

8. The order passed on 12.8.2002 by the learned trial Court on the application of the defendant is reproduced as under :

"In view of the factual position noticed above and the fact that written statement is yet to be filed by the defendant, I think that the principle that debtor must seek credit is applicable. Hence, the application moved by the defendant under Order 7, Rule 10 of the Civil Procedure Code is hereby rejected. Be it clarified that this order shall have no bearing whatsoever on the merits of the controversy between the parties regarding the question of territorial jurisdiction. Let the

written statement be filed on August 26, 2002, copy of which be supplied, in advance, to the learned counsel for the plaintiff, who may also file replication, if any, on the date fixed. Documents to be relied on by the parties be also filed which may be admitted and denied on the date fixed and also for settlement of issues."

9. Now as far as the territorial jurisdiction is concerned, this question was decided by the Court at the stage of final disposal of the suit holding that the Court at Solan has got the jurisdiction. As per the plaintiff, the work order pertaining to the work at Solan and contract was also executed at Solan. There is nothing on record brought by the plaintiff or otherwise on record to conclude that the payment was to be made by the defendant to the plaintiff at Shimla.

10. Section 20 Civil Procedure Code provides for place of suing and jurisdiction of this Court. Section 20 CPC is being reproduced as under :-

20" Other suits to be instituted where defendants reside or cause of action arises-

Subject to the limitations 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 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; 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

(Explanation)-A corporation shall be deemed to carry on business at its sole or principal office in (India) or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

11. It is apparent from the aforesaid that the suit shall be instituted in a Court where the defendant at the time of the commencement of the suit, actually and voluntarily resides or carries on business or personally works for gain or where cause of action wholly or in part arises. Regarding Corporation, Order 29 provides that a suit can be instituted at any place where Corporation carries on business or at a place where it has subordinate office.

12. There is nothing on record to conclude that the defendant has any office within the jurisdiction of the Courts at Shimla. There is also nothing on record to conclude that any cause of action has accrued to the plaintiff within the jurisdiction of Courts at Shimla. No office of the defendant is within the jurisdiction of the Shimla Courts. The record shows that no cause of action, even

in part, has arisen within the jurisdiction of the Shimla Courts. The defendant also doesn't carry any business within the territorial jurisdiction of Shimla Courts.

13. In so far as the principle that debtor must seek the creditor is concerned, the same is not applicable to the facts and circumstances to the present case because the plaintiff has concealed the vital detail by not producing even a single document much less the alleged contract.

14. It is held in *Firm Hira Lal Girdhari Lal and another v. Baij Nath Hardial Khatri*, AIR 1960, Punjab 450 (Full Bench) as under :

"Where territorial jurisdiction of the Court is to be determined on the ground that the price of goods was payable within its jurisdiction, the Court should find as a fact whether the money was agreed expressly or impliedly to be paid within the territorial jurisdiction. To find this fact the Court is entitled to take into consideration the contract, its attending circumstances, the creditor's ordinary place of residence or business and the course of dealings between the parties including all the other factors relevant in a given case. If the Court comes to the conclusion that on the facts and circumstances established in the case the amount sought to be recovered was payable within the jurisdiction of the Court, then it should proceed to entertain the suit, otherwise it has no jurisdiction to do so on the basis of this ground.

The English Common Law rule that, where there is no express agreement that payment is to be made at a particular place, a debtor must seek his creditor is not applicable in India, as a matter of law, to determine the forum where the suit is to be instituted. The creditor's place of residence or business is only one of the circumstances attending the contract which may be taken into consideration in finding as a fact the place where the money was agreed to be paid: (S) AIR 1955 Punj. 128, Approved; AIR 1927 P.C 156, Explained; Case Law discussed."

15. The plaintiff has failed to lead any evidence as to where the amount of Rs. 5,76,000/- was delivered to him. He has not confronted DW-1 Krishan Dutt that the payment was made at Shimla by the officials of the defendant Corporation. In these circumstances, the ratio of law laid down aforesaid is not applicable to the facts of the present case.

16. In view of the discussion made herein above, this Court finds that the impugned judgment suffers from no infirmity and the same has been passed in accordance with law.

17. Accordingly, Civil Revision is devoid of any merit and the same is dismissed. No order as to costs. The record of learned trial Court be returned forthwith. Pending application (s), if any shall also stand disposed of.