(2018) 10 DEL CK 0525

In the Delhi High Court

Case No : Civil Suit(OS) 183 Of 2018

Rachit Malhotra APPELLANT

Vs

One 97 Communications Limited RESPONDENT

Date of Decision : 30-10-2018

Acts Referred:

Code of Civil Procedure, 1908 — Section 20, Order 2 Rule 2
Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 — Section 2(c), 2(c)(xii), 7
Companies (Share Capital and Debentures) Rules, 2014mdash; Section 12(10)

Citation : (2018) 10 DEL CK 0525

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Rakesh Kumar, Isha Khanna, Hetish Raj Singh, Anam Ahmad, Nakul Mohta, Gurtejpal Singh, Lalit Mohan

Final Decision : Dismissed

Judgement

IA No.12140/2018 (u/O VII R-11 CPC)

1. The counsel for the applicant/defendant and the counsel for the non-applicant/ plaintiff have been heard.

2. The plaintiff has instituted this suit for specific performance of the contract/ letter dated 1st December, 2008 for transfer of 4178 equity shares of

the applicant/defendant in favour of the plaintiff in reference to the Employees Stock Option (ESOP) Scheme, 2008 issued by the applicant/defendant

and in the alternative for recovery of compensation of Rs.4,38,69,000/-.

3. The counsel for the applicant/defendant has urged three grounds for rejection of the plaint. Firstly, it is contended that the plaintiff has invoked the

territorial jurisdiction of this Court by pleading in para 34 of the plaint that the registered office of the applicant/defendant company is situated within the jurisdiction of this Court. It is argued that though it is not disputed that the registered office of the plaintiff is situated within the territorial

jurisdiction of this Court, but the plaintiff was employed with the applicant/ defendant in the corporate office of the applicant/defendant at Noida, Uttar

Pradesh and the entire cause of action, if any accrued to the plaintiff against the applicant/defendant at Noida and this Court does not have territorial

jurisdiction to entertain the suit merely for the reason of the registered office of the applicant/defendant being situated within the jurisdiction of this

Court. Reliance in this regard is placed on Patel Roadways Limited, Bombay Vs. Prasad Trading Company (1991) 4 SCC 27 0reiterated in New

Moga Transport Co. Vs. United India Insurance Co. Ltd. (2004) 4 SCC 67 7to contend that if the cause of action has accrued at the place of

subordinate office and not at the place of principal office of the applicant/ defendant, the jurisdiction under Section 20 of the Code of Civil Procedure,

1908 (CPC) of the Court where the subordinate office is situated, only can be invoked.

4. The counsel for the plaintiff has in this regard drawn attention to the ESOP Scheme, 2008 filed by the applicant/defendant himself before this Court

and Clause 23.2 whereof provides that the Courts of New Delhi shall have jurisdiction in respect of any and all matters, disputes or differences arising

in relation to or out of that ESOP Scheme, 2008. He has thus argued that for the relief claimed, the Courts at Delhi only have territorial jurisdiction and

not the Courts at Noida.

5. I have also enquired from the counsel for the applicant/defendant, whether the plaintiff, anywhere in the plaint has admitted that he was employed

at Noida or that the entire cause of action had accrued at Noida.

6. The counsel for the applicant/defendant replies in the negative.

7. I have next enquired from the counsel for the applicant/defendant, whether the Letter of Appointment of the plaintiff by the applicant/defendant

provides for the plaintiff to be posted at Noida.

8. The answer is again in the negative.

9. A perusal of the Letter of Appointment and the Letter of Termination of the plaintiff shows the same to be giving the address of the registered

office as well as Noida office of the applicant/defendant and do not show as to from which office they have been issued. Moreover, they are addressed to the plaintiff at New Delhi.

10. For the aforesaid reason also, the plea of territorial jurisdiction cannot be a ground for rejection. A plaint can be rejected on the ground of the

Court lacking territorial jurisdiction, if from a reading of the averments in the plaint itself, it can be argued that a bare reading of the plaint does not

disclose this Court to be having any territorial jurisdiction to entertain the suit.

11. Moreover, the cause of action is also to be seen in the context of the facts of the case. It cannot be lost sight of that both Patel Roadways Limited,

Bombay and New Moga Transport Co. supra are with respect to suits filed against transport companies relating to bookings made from another place

and it was in the said factual situation that it came to be held that the claims with respect to the said bookings could be made only at the place where

the booking was taken from the client and not at the place where the head office of the transport company was situated. The present case is with

respect to specific performance of ESOP Scheme, 2008. A company, as the applicant/defendant is, is statutorily required to maintain all its records at

the address of its registered office and such records include the Register of Employee Stock Options as per Rule 12(10) of the Companies (Share

Capital and Debentures) Rules, 2014. It is for this reason only that the ESOP Scheme, 2008 filed by the applicant/defendant itself provides for

exclusive jurisdiction of the Courts at Delhi. It is thus not as if the Courts at Delhi have no jurisdiction for it to be said that the parties could not by

contract have vested jurisdiction in the Courts at Delhi. A suit against the defendant, in relation to the shares of the defendant company, can always be

maintained in a Court within whose jurisdiction the registered office is situated and the cause of action for such a suit would also arise at such a place

and the agreement qua territorial jurisdiction contained in ESOP Scheme, 2008 is merely limiting the territorial jurisdiction to one of the Courts out of

several which may have had jurisdiction to entertain the suit.

12. Thus, no merit is found in the ground taken of lack of territorial jurisdiction for rejection of the plaint.

13. The second ground urged for rejection of the plaint is, of the suit being barred by Order II Rule 2 of the CPC. It is argued by the counsel for the

applicant/defendant that the plaintiff, prior to institution of the present suit, filed a suit in the District Court at Saket, New Delhi for declaration of termination of his employment as null and void. It is argued that the plaintiff, in the plaint in the present suit has admitted that the outcome of the

present suit is dependent upon the outcome of the earlier suit filed by him inasmuch as if the termination of employment is valid, then the plaintiff is not

entitled to specific performance and if the termination of employment of the plaintiff is null and void, then the plaintiff is entitled to specific

performance. It is further informed that though the plaintiff along with the earlier suit also filed an application under Order II Rule 2 of the CPC, but

has not pressed the same and the same is pending for the last one year.

14. I have asked the counsel for the applicant/defendant to show the paragraph of the plaint where the plaintiff has so admitted that the outcome of

the present suit is dependent upon the outcome of the earlier suit.

15. The counsel for the applicant/defendant now states that there is no such plea.

16. Attention of the counsel for the applicant/defendant is drawn to the dicta of the Supreme Court in Sucha Singh Sodhi Vs. Baldev Raj Walia (2018)

6 SCC 733 though in relation to suits for specific performance of agreement of sale of immoveable property but unequivocally holding that the causes

of action for a suit for permanent injunction and a suit for specific performance are distinct and institution of a suit for permanent injunction does not

bar a subsequent suit for specific performance. In view of the same, the need to go into the other issues, on account whereof also no merit is found in

the said ground viz. of the earlier suit still pending, the application under Order II Rule 2 of the CPC still pending, etc., is not felt.

17. There is thus no merit in the second ground urged also for rejection of the plaint.

18. The last contention of the counsel for the applicant/defendant is, that though the present suit qualified as a commercial suit, but the plaintiff has

filed as an ordinary suit and the suit has been registered as such and is liable to be rejected. Attention in this regard is drawn to Section 7 of the

Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Commercial Courts Act). However, on

enquiry, as to which is the Commercial Division of this Court, the counsel for the applicant/defendant admits that the suit is pending in this Court which

is a Court of Ordinary Civil Jurisdiction as well as Commercial Division of the High Court.

19. I have also enquired from the counsel for the applicant/defendant, whether not it is only a case of nomenclature and even if this suit were to be a

commercial suit, the same can always be registered as a commercial suit.

20. The counsel for the applicant/defendant states that the plaint does not contain the declaration as a plaint in a commercial suit is required to contain.

21. Even if that be so, it has been held in Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh (2006) 1 SCC 7,5 Union of India Vs. Shanti Gurung

2014 SCC OnLine Del 989, Haldiram (India) Pvt. Ltd. Vs. Haldiram Bhujiawala 2009 (109) DRJ 647 (SLP(Civil) No.11587/2009 preferred

whereagainst has been dismissed vide order dated 14th May, 2009) that non-compliance with procedural requirements should not entail automatic

dismissal or rejection if the defect or irregularity is curable.

22. Be that as it may, it has further been enquired from the counsel for the applicant/defendant as to under which clause of Section 2(c) defining

â??commercial disputeâ?? of the Commercial Courts Act, the present suit falls.

23. The counsel for the applicant/defendant draws attention to clause (xii) of Section 2(c) of the Commercial Courts Act which makes a dispute

arising out of a shareholders agreement, a commercial dispute. It is argued that an agreement for purchase of shares qualifies as a shareholder

agreement.

24. I am unable to agree. A shareholder agreement denotes an agreement whereunder all shareholders or a shareholder of the company agree on the

management of the company. ESOP Scheme, 2008 is merely an option available to the employees of the applicant/defendant to acquire shares of the

applicant/defendant and would not qualify as a shareholders agreement.

25. There is thus no merit in the last contention also urged for rejection of the plaint.

26. The counsel for the applicant/defendant was interrupting in between and was asked to wait. He now states that the plaintiff, in the plaint in the

earlier suit stated that he was not including the relief under the ESOP Scheme, 2008 because the scheme was not available with him. It is further

argued that the present suit also was filed without the scheme.

27. The aforesaid argument does not change the opinion already expressed and does not constitute a ground for rejection of the plaint.

28. There is no merit in the application.

29. Dismissed.

IA No.7128/2018 (of plaintiff for condonation of appeal in complying with Order XXXIX R-3 CPC)

30. For the reasons stated, the application is allowed and disposed of.

IA No.5579/2018 (of plaintiff u/O XXXIX R-1&2 CPC) & IA No.12139/2018 (of defendant u/O XXXIX R-4 CPC)

31. The counsel for the defendant seeks a passover for the senior counsel engaged to argue.

32. Passover is not possible. Even otherwise, since the Advocate-on-Record is present, he ought to have argued.

33. List on 25th February, 2019.

CS(OS) 183/2018

34. Replication be filed within four weeks.

35. The Â partiesÂ toÂ fileÂ affidavitsÂ ofÂ admission/denialÂ ofÂ eachÂ otherâ??s documents before the next date of hearing.

36. List for framing of issues, if any on 25th February, 2019.