

**(1998) 01 P&H CK 0011**

**In the Punjab And Haryana At Chandigarh**

**Case No : Letters Patent Appeal No. 334 of 1991**

Rattan Cloth House

APPELLANT

Vs

Anoop Udai Works and Another

RESPONDENT

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**Date of Decision : 08-01-1998**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 21

**Citation :** (1998) 118 PLR 407 : (1998) 2 RCR(Civil) 316

**Hon'ble Judges :** N.C. Khichi, J;Jawahar Lal Gupta, J

**Bench :** Division Bench

**Advocate :** Arun Jain, for the Appellant; Nemo, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Jawahar Lal Gupta, J.—The appellant filed a suit for the recovery of Rs. 6,23,602/-. Notice of the suit was given to the respondents who appeared and filed a written statement. On the pleadings of the parties, the following issues were framed :-

1. Whether the plaintiff is registered partnership and Ranjit Singh is one of its registered partners. OPP.
2. Whether the plaintiff entered into an agreement dated 13.11.1978 with the Controller of Stores, Punjab, Chandigarh, as alleged in para No. 2 of the plaintiff. If so, its effect? OPP.
3. Whether the plaintiff entered into contract No. 1598 of 3.2.1979 at Ludhiana as alleged in para No.3 of the plaint? OPP.
4. Whether the defendants have committed breach of contract? OPP.
5. Whether the plaintiffs are entitled to damages. If so, at what rate? OPP.
6. Whether the plaintiff is entitled to interest. If so, at what rate and from what date? OPP.

7. Whether the suit is not maintainable in the present form? OPP.
8. Whether the civil court Ludhiana has got no jurisdiction to try the present suit? OPD.
9. Whether the suit is bad for mis-joinder of necessary parties ?. OPD.
10. Whether the plaintiff has got no cause of action to file the present suit ? OPD
11. Whether the suit is speculative and hit by the doctrine of remoteness of damages? OPD.
12. Whether the plaintiff is estopped for filing the present suit by his act and conduct ? OPD.
13. Relief.

After consideration of the matter, the learned trial Court decreed the suit and held the plaintiff-appellant entitled to recover Rs. 6,23,602/- with interest at the rate of 6 per cent from the date of filing of the suit till realisation of the decretal amount.

2. Aggrieved by the judgment, the defendants filed an appeal. This appeal was accepted on the ground that according to the agreement between the parties, the suit could be tried only at Jodhpur. Relying upon the decision in Globe Transport Corporation Vs. Triveni Engineering Works and Another, , the learned Single Judge accepted the appeal with costs throughout and set aside the judgment and decree passed by the trial Court. The plaintiff has, thus, filed the present letters patent appeal.

3. Mr. Arun Jain, learned counsel for the appellant, has contended that the view taken by the learned Single Judge cannot be sustained in the circumstances of this case. Learned counsel has pointed out that after framing of the issues both sides had led evidence. No prejudice whatsoever has been caused to the defendant-respondents by the trial of the suit at Ludhiana. Consequently, the judgment and decree passed by the learned Single Judge should be reversed.

4. It is the admitted position that the contract had to be performed at Ludhiana. Thus, the Civil Court at Ludhiana had the jurisdiction to try the suit. There was no inherent lack of jurisdiction. It is also indisputable that the suit was actually tried and nothing had been pointed out by any one to show that the defendant-respondents had even claimed or urged before the Court that issue No. 8, which related to jurisdiction, should be tried as a preliminary issue or that a decision thereon be given before proceeding to record evidence regarding the other issues. In fact, a perusal of the judgment of the learned trial Court shows that the entire case was considered together and finding on different issues was recorded.

5. The short question that arises is - was there enough justification for annulling the entire trial on the basis of an objection regarding the territorial jurisdiction?

6. Admittedly, the litigation is an expensive affair. Both parties had litigated." They had produced the evidence. The trial had been completed. The matter had remained pending before the trial Court from the year 1982 to 1988. In this situation, unless any failure of justice was proved, the entire proceedings could not have been annulled. The rule in this behalf was settled by their Lordships .of the Supreme court in *Koopilan Uneen's daughter Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others*, . On consideration of the provisions of Section 21 of the Code of Civil Procedure, the three essential conditions laid down by the Bench were - (1) The objection was taken in the Court of first instance. (2) It was taken at the earliest possible opportunity and in cases where is sued are settled, at or before such settlement. (3) There has been a consequent failure of justice. It was further laid down that "all these three conditions must co exist." In the present case, even if it is assumed that the first two conditions are fulfilled inasmuch as that an objection had been taken and even an issue had been framed, there is not even a suggestion that a failure of justice had occurred. The learned Single Judge has not recorded any finding that the respondents had suffered any prejudice by the trial of the suit at Ludhiana.

7. The learned Single Judge has placed strong reliance on the observations on a two Judge Bench judgment in *Globe Transport Corporation's case* (supra). In this case, it was undoubtedly held by their Lordships that the parties can by agreement confer exclusive jurisdiction on a Court and exclude the jurisdiction of another Court. There is no quarrel with this proposition. This view is not contrary to the rule laid down in *Koopilan Uneen's daughter Pathumma's case* (supra). However, the only issue is as to whether or not the decree could be set aside without a finding that prejudice has been caused. The rule in this behalf has been clearly enunciated. There is no finding.

8. In view of the above, the judgment and decree passed by the learned Single Judge is liable to set aside. It is ordered accordingly. The appeal is allowed. However, since there is no decision on merits, it appears to be appropriate to remand the case to the Single Judge for decision on merits.

9. It has been pointed out by Mr. Arun Jain that the litigation has been pending since the year 1982. It is undoubtedly true. In this situation, we consider it appropriate to direct that Regular First Appeal No. 1839 of 1988 shall now be listed for hearing before a learned Single Judge on February 2, 1998.

10. Since no one has appeared on behalf of the respondents, there will be no order as to costs.