

(1965) 02 AHC CK 0020
In the Allahabad High Court
Case No : Civil Revision No. 278 of 1963

The State of Uttar Pradesh and Others	APPELLANT
Vs	
Raja Ram Lal	RESPONDENT

Date of Decision : 05-02-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 19, 20, 80

Citation : AIR 1966 All 159 : (1966) 2 LLJ 365

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Advocate : Gopi Nath, for the Appellant; Kesheo Prasad Singh, for the Respondent

Final Decision : Partly Allowed

Judgement

D.S. Mathur, J.—This is a revision u/s 115, C. P. C. by the State of Uttar Pradesh and the Chief Engineer, Irrigation Department, U. P. Lucknow, defendants, against the order, dated 3-12-1962 of the Civil Judge of Varanasi, allowing the appeal of Raja Ram Lal, plaintiff, and thereby holding that the present suit was cognizable by the Courts at Varanasi.

2. The plaintiff was employed as an Overseer in the Irrigation Department of the State of Uttar Pradesh. He was first of all appointed to this post on October 18, 1945, but his services were terminated on October 21, 1950. He was re-employed on 12-10-1951, and his services were again terminated with effect from 5-7-1958. The plaintiff is a resident of Varanasi, and during his two terms of service was not employed there. The plaintiff filed the present suit for the recovery of arrears of salary and the arrears of travelling allowances and also for the refund of the security of Rs. 500 furnished by him.

3. Prior to the institution of the suit the plaintiff served a notice u/s 80, C. P. C. on the Collector of Varanasi, apparently, to give jurisdiction to the Courts at that place. It was for this reason that the State of Uttar Pradesh was impleaded

through the Collector of Varanasi.

4. The defendants raised an objection to the jurisdiction of the City Munsif of Varanasi, and the Munsif recorded the finding that the suit was not cognizable by the Courts at Varanasi, and, therefore, directed the return of the plaint for presentation to a proper Court. The plaintiff went up in appeal against the order and the Civil Judge hearing the appeal recorded the finding that the suit for the recovery of the security money was maintainable at Varanasi on the application of the general rule that a debtor must seek his creditor, and that the total claim was cognizable by the Courts at Varanasi for the reason that the notice u/s 80, C. P. C. was given to the Collector of Varanasi and it was a part of the contract that the plaintiff could be employed by the Government at any place within the State of Uttar Pradesh, and consequently, the place of performance of the contract was at Varanasi also.

5. On the first point it was contended by the learned Standing Counsel that the general rule that a debtor must seek his creditor cannot be made applicable to Government and hence the suit could not be instituted at the place of residence of the plaintiff. The Courts of law can make a departure from the general rule only in a case where there was an agreement, oral or in writing, that the security money shall be refunded at a particular place; but if there was no contract as to the place of payment, the general rule can be made applicable, namely, that the amount would be refundable to the creditor at the place of his residence. The security money is, under certain circumstances, refundable to the person who furnished the security and when there exists a dispute and the security amount is not refunded, it becomes an amount payable and converts the parties into debtor and creditor. A similar view was taken in *Champaklal Mohanlal Vs. The Nectar Tea Company*, .

6. At present there is nothing on the re-cord to show that under the contract, oral or in writing, or by implication, the security money was refundable at Lucknow or at a place other than Varanasi. Consequently, the suit for this amount could be taken cognizance of by the Courts at Varanasi it being a different thing that after the recording of evidence it may be found that the security money was not refundable at Varanasi, and this part of the claim could also not be taken cognizance of by the Varanasi Courts.

7. For purposes of this revision, it is not necessary to enter into the controversy whether the giving of the notice u/s 80, C. P. C. forms part of the cause of action within the meaning of Section 20, C. P. C. It is not discretionary with the party to give the notice u/s 80, C. P. C. to any Collector. Clause (c) of Section 80, C. P. C. makes it clear that the prescribed notice shall, in the case of a suit against the State Government, be delivered to or left at the office of the Secretary to the Government or the Collector of the district. The word "the" has significance of its own and "collector of the district" cannot be any Collector of the numerous districts of the State of Uttar Pradesh. "The district" shall mean the district where the cause of action or a part of the cause of action had arisen. The notice u/s 80,

C. P. C. must, therefore, be given to the Collector of the district where the cause of action in whole or in part had accrued. In the circumstances, it shall be the cause of action prior to the giving of the notice which shall be the determining factor, and not the Collector to which the plaintiff decided to deliver the notice u/s 80, C. P. C.

8. In the instant case, no part of the cause of action except for non-refund of security had accrued within the jurisdiction of the Courts at Varanasi, and, consequently, the giving of the notice to the Collector of Varanasi could not give jurisdiction to the Varanasi Courts to entertain the suit.

9. The jurisdiction of the Court is to be determined by the provisions of the CPC or of any special law, and not by any supposition that the breach of the contract can be assumed to have taken place at any place within the territorial limits of the State of Uttar Pradesh. Sections 19 and 20 of the CPC are material on this point. The present suit is for compensation for wrong done to a person or it can be said to relate to his movable property also. Section 19, C. P. C. clearly lays down that such a suit can be instituted in the Court within whose jurisdiction the wrong was done, or in the Court within whose jurisdiction the defendant resides, or carries on business, or personally works for gain. 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. This has been clarified in Explanation II to Section 20, C. P. C. though it is not laid down that the Explanation shall apply to other sections also. The provisions thereof can usefully be applied while interpreting similar words used in Section 19, C. P. C. It is thus in respect of the cause of action arising at a place that the corporation shall be deemed to carry on business at a place where it has a subordinate office; but if the cause of action did not arise there, the existence of a subordinate office shall not entitle the plaintiff to institute a suit at any place of his choice. The office of the Collector of Varanasi could be deemed to be a subordinate office of the State Government, and the suit could be filed at Varanasi, if any cause of action had arisen within the district of Varanasi. To put it differently, the State Government could be deemed to carry on business at Varanasi only in respect of any cause of action arising at Varanasi or within the jurisdiction of the Collector of Varanasi.

10. No wrong except for refusal to refund the security was done to the plaintiff within the jurisdiction of the City Munsif of Varanasi, nor within the district of Varanasi, and when the defendant did not reside, nor carry on business within the jurisdiction of the Varanasi Courts, the suit except for recovery of the security money could not, in view of Section 19, C. P. C. be instituted there.

11. Section 20, C. P. C. consists of three parts. Clauses (a) and (b) make reference to the residence of the defendant or his carrying on business, or personally working for gain, while Clause (c) to the accrual of the cause of action in whole or in part. In view of Explanation II to Section 20, C. P. C. the State Government cannot for purposes of this suit, be deemed to be carrying on

business at Varanasi, and none of the defendants reside at Varanasi. No part of the cause of action (except in respect of security) had arisen there. Consequently Section 20, C. P. C. could not give jurisdiction to the Courts at Varanasi to entertain the claim for arrears of salary and for travelling allowances.

12. The revision is partly allowed and partly dismissed, and the orders of both the subordinate Courts are partly maintained and partly set aside. It is hereby ordered that on the basis of the material on record the suit for the refund of the security money was cognizable by the Varanasi Courts, but not the claim for the recovery of the arrears of salary and the arrears of travelling allowances. Costs of this revision shall abide the final result of the suit. Stay order is vacated.