

Subodh Kumar Gupta vs Shrikant Gupta And Ors. on 19 August, 1993

Equivalent citations: 1993(3)ALT59(SC), II(1993)BC215(SC), JT1993(4)SC601, (1994)1MLJ8(SC), (1993)104PLR729, 1993(3)SCALE482, (1993)4SCC1, [1993]SUPP1SCR660

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Bench: A.M. Ahmadi, N. Venkatachala

JUDGMENT

A.M. Ahmadi, J.

1. The petitioner is the original plaintiff. He filed a suit in the Court of the learned Senior Judge, Chandigarh, for dissolution of the firm carrying on business in the name and style of M/s. Rajaram & Brothers of which he claimed to be a partner alongwith his father, brothers and one K.K. Jindal. Each partner had 20% share in the profits and losses of the firm and the partnership was one at will. The head office of the form was situate at Bombay where it was registered with the Registrar of Firms. Its factory was situate at Mandsaur where the father Rajaram Gupta lived with his sons and attended to the partnership business. The plaintiff also was residing at Mandsaur till 1974 when he shifted to Chandigarh. After he shifted to Chandigarh he visited Mandsaur oft and on in connection with the business of the firm. His case is that after he shifted to Chandigarh he used to call for and receive statements of accounts of the business carried on at Marulsaur and he also received and booked orders for the firm at Chandigarh which he forwarded to Mandsaur for execution. According to him, the branch office of the firm was at Chandigarh as is evident from the stationery of the firm. According to him, his father shifted from Mandsaur to Rajnandgaon sometime in the year 1980 and thereafter his brothers Shrikant Gupta and Suryakant Gupta were virtually in-charge of the business at Mandsaur. Certain disputes a rose as regards the management of the partnership business and consequently the correctness of the accounts maintained by Shrikant Gupta and Suryakant Gupta at Mandsaur became suspect. The plaintiff further contended that he had sent his representative to Mandsaur to check the accounts but his two brothers did not permit him to do so. He also personally went to Mandsaur and it appears from the averment in the plaint that his brothers were not cooperative and in fact some criminal complaints came to he lodged in regard to certain incidents which happened at Mandsaur while he was there. In the end the father Rajaram Gupta went to Mandsaur and later a meeting took place at Bhilai on 26th November, 1992. At the said meeting an agreement was drawn up for the dissolution of the partnership firm and for distribution of its assets amongst the partners. It was mentioned in the agreement that it will enure for one month meaning

thereby that the accounts of the partnership would be settled within that time. The plaintiff now contends that the said agreement is void since material facts were suppressed by his two brothers and in any case the accounts were not settled within the period of one month. He also contends that certain assets owned by the firm were not included in the agreement and that also rendered the agreement void and the agreement had to be ignored and the firm was required to be dissolved and accounts to be settled by the appointment of a Commissioner. He also claimed certain other incidental reliefs.

2. The first defendant Shrikant Gupta entered an appearance and raised a preliminary contention that on the averments in the plaint the Court at Chandigarh had no jurisdiction to entertain and decide the suit. He contended that from the averments in the plaint it is manifest that the head office of the firm was situated at Bombay, that none of the defendants was residing or carrying on business within the territorial jurisdiction of the Chandigarh Court and that no part of the cause of action had arisen therein. The learned Trial Judge dismissed the application holding that a part of the cause of action had arisen within the territorial limits of the Chandigarh Court. However, on revision, a learned Single Judge of the High Court after carefully analysing the averments in the plaint came to the conclusion that on the mere allegation that the firm had a branch office at Chandigarh the Court at Chandigarh could not be invested with jurisdiction since no part of the cause of action had arisen within its jurisdiction. The learned Judge in the High Court observes:

With regard to the allegation made by the plaintiff that the firm has its branch office at Chandigarh, suffice it to say that apart from the bald allegation made in the plaint, there is nothing on record to prove that the firm had any regular branch office at Chandigarh. Moreover, the fact that the firm has a branch office at Chandigarh is also not sufficient enough to confer jurisdiction on a Court at Chandigarh unless it is established that cause of action, on the basis of which relief is being claimed, has arisen within the territorial jurisdiction of that Court. In the present case, apart from other, the factory of the firm as well as the assets of the firm are also situated outside the territorial jurisdiction of Court at Chandigarh. The relief sought in the suit is the dissolution of the firm and rendition of accounts of a firm which has its factory at Mandsaur and Head Office at Bombay. In this view of the matter, I am of the considered view that the Court at Chandigarh has no jurisdiction to entertain the suit.

On this line of reasoning, the learned Judge in the High Court set aside the order of the Trial Court and directed that the plaint be returned to the plaintiff for presentation in a competent court. It is this order of the learned Single Judge which is assailed before us.

3. Section 15 to 20 of the Code of Civil Procedure indicate the place where a suit can be instituted. Section 15 states that every suit shall be instituted in the court of the lowest grade competent to try it. Section 16 then proceeds to state that the suit shall be instituted where the subject-matter is situate. Then comes Section 20 which is relevant for our purposes. It reads 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 there are more then 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.

It will thus be seen that Clauses (a) and (b) are not attracted in the facts of this case. None of defendants at the time of the commencement of the suit actually and voluntarily resides or carried on business or personally worked for gain within the territorial jurisdiction of the Chandigarh Court. Clause (b) can apply only if atleast one of the defendants actually and voluntarily resided or carried on business or personally worked for gain while the others did not. But that is not the case here. The case must, therefore, be governed by Clause (c) which requires that the whole or part of the cause of action must be shown to have arisen within the territorial limits of the Chandigarh Court. Now as is evident from the averments in the plaint no part of the cause of action arose within the territorial jurisdiction of the Chandigarh Court. On the averments in the plaint taken at their face value the case set up by the plaintiff is that after his father left Mandsaur his two brothers joined hands, manipulated the accounts and siphoned away the funds belonging to the partnership firm. The entire dispute is in relation to what happened at Mandsaur. Secondly, it must also be remembered that even according to the plaintiff after his father returned to Mandsaur there was some talk of settlement of the dispute and consequently an agreement was executed on 26th November, 1992 at Bhilai by which the partnership was dissolved and it was agreed that the liabilities would be settled within one month. Now this agreement was executed outside the territorial jurisdiction of the Chandigarh Court. Unless this agreement is set aside there is no question of the Chandigarh Court entertaining a suit for dissolution of the partnership and rendition of accounts. The plaintiff cannot wish away the agreement by merely suiting that it is a void document. He cannot rest content by alleging that the document has no efficacy in law and must, therefore, be ignored. If it is the case of the plaintiff that this document was obtained by fraud or misrepresentation by suppression of material facts or for any other like reason he must have the agreement set aside through Court and unless he does that he cannot go behind the agreement, ignore it as a void document and proceed to sue for dissolution of the partnership and rendition of accounts. It is not a matter of the volition of

the plaintiff to disregard the document as void and proceed to ignore it altogether without having it declared void by a competent Court. It, therefore, appears clear to us that no part of the cause of action arose within the territorial jurisdiction of the Chandigarh Court.

4. The next question is whether the averment in paragraph 7 of the plaint without anything more can confer jurisdiction on the Chandigarh Court? Paragraph 7 reads as under:

7. That the plaintiff himself was doing business of the firm from Chandigarh and in that connection had been engaged in all operations necessary for conduct of business. In fact, the Head Office of the firm was at Bombay where the firm was registered. The factory/plant was located at Mandsaur. Chandigarh was one of the Branch Office of the firm M/s. Rajaram and Brothers. Not only this, the stationery printed by the firm also showed that Chandigarh is the Branch Office of the firm. The stationery has been in continuously use since the year 1974.

The averment does not say that any of the defendants were involved in carrying on business at Chandigarh. The plaintiff is quite vague as to the type of business activity as was carrying on. He also does not say whether it was with the consent of the other partners or his own. There is no averment that intimation of the opening of the branch at Chandigarh was given to the Registrar of Firms as required by Section 61 of the Partnership Act. Printing of stationery is neither here nor there. It is not the plaintiffs say that accounts were maintained in respect of business at Chandigarh. Mere bald allegation that he WHS having a branch office of the firm at Chandigarh will not confer jurisdiction unless it is shown that a part of the cause of action arose within the territorial jurisdiction of that Court. None of the defendants was ever residing in Chandigarh or did any business whatsoever in Chandigarh and, therefore, we think that the learned Single Judge was right in the view that he took.

5. In the result, we see no merit in this petition and dismiss the same with costs. Costs quantified at Rs. 10,000/- to be paid in one set.