

# Braj Bhushan vs Reverie Language Technologies Limited ... on 13 March, 2024

**Author: Dinesh Kumar Sharma**

**Bench: Dinesh Kumar Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
CS(OS) 46/2023  
BRAJ BHUSHAN

REVERIE LANGUAGE TECHNOLOGIES LIMITED &

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

% 13.03.2024 I.A. 6696/2023 (under Order VII 7 R 10 CPC)

1. The present application has been filed under Order VII Rule 10 CPC by the defendants for the return of the plaint. Learned counsel for the defendants submits that the present suit suffers from lack of territorial and pecuniary jurisdiction and it is liable to be returned. It has been submitted that the plaintiff has deliberately concealed and suppressed the material facts by failing to place on record the Non-disclosure Agreement dated 03rd February 2021 entered between the Plaintiff and Defendant No. 1. Learned counsel submits that the said agreement has a jurisdiction clause which exclusively limits the jurisdiction of the parties to take any action against This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 23:09:36 each other for any dispute between them, whether or not under the said agreement, on in the Courts at Bangalore exclusively. Learned counsel has further submitted that the present suit is also bad for misjoinder of cause of action. It has further been submitted that there are three separate causes of action in the present case and none of them individually came under the pecuniary jurisdiction of the Original Side of this court. Learned counsel submits that therefore the suit is liable to be returned.

2. Learned counsel for the defendants/applicant, in support of his contentions, relied upon Swastik Gases Private Limited vs. Indian Oil Corporation Limited (2013) 9 SCC 32, B.E.Simoese Von Staraburg Niedenthal and Another vs. Chhattisgarh Investment Limited (2015) 12 SCC 225 and EXL Careers and Another vs. Frankfinn Aviation Services Private Limited (2020) 12 SCC 667. Learned counsel submits that in view of the clear law laid down the present suit is liable to be returned for presentation before the proper court.

3. Learned counsel for the plaintiff has vehemently opposed the plea of the learned counsel for the defendants. Learned counsel submits that the non-disclosure agreement dated 03.02.2021 entered into between the parties has no relevance to the present case. Learned counsel submits that the defendants, after the plaintiff resigned from the company initiated a malicious campaign against him and even filed an FIR no. 265/2022 registered at Bangalore. Learned counsel submits that the FIR has already been closed. However, learned counsel submits that even as per the contract the place of posting of the plaintiff was at Delhi and therefore, the present suit has been filed before this court. Learned counsel further submits that the suit is not bad for misjoinder of the cause of action on the ground they are This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 23:09:36 intrinsic parts of the same transaction. Learned counsel submits that the commercial contracts and employment contracts have to be read differently. Learned counsel has relied upon Vishal Gupta vs. L&T Finance Limited 2009 SCC OnLine Del 2806 and HDFC Bank vs. Deepti Bhatia 2021 SCC OnLine Del 4973.

4. In EXL Careers and Another (supra) the judgment which has been relied upon by the learned counsel for the plaintiff, it has inter alia been held as under:

"12. It is no more res integra that in a dispute between parties where two or more courts may have jurisdiction, it is always open for them by agreement to confer exclusive jurisdiction by consent on one of the two courts. Clause 16-B of the agreement extracted above leaves us in no doubt that the parties clearly indicated that it was only the court at Delhi which shall have exclusive jurisdiction with regard to any dispute concerning the franchise agreement and no other court would have jurisdiction over the same. In that view of the matter, the presentation of the plaint at Gurgaon was certainly not before a court having jurisdiction in the matter. This Court considering a similar clause restricting jurisdiction by consent in Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd. [Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32 :

(2013) 4 SCC (Civ) 157] , observed as follows: (SCC pp. 47-

48, para 32) "32. ... It is a fact that whilst providing for jurisdiction clause in the agreement the words like "alone", "only", "exclusive" or "exclusive jurisdiction" have not been used but this, in our view, is not decisive and does not make any material difference. The intention of the parties--by

having Clause 18 in the agreement--is clear and unambiguous that the courts at Kolkata shall have jurisdiction which means that the courts at Kolkata alone shall have jurisdiction. It is so because for construction of This is a digitally signed order.

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13. This was reiterated in *State of W.B. v. Associated Contractors* [State of W.B. v. Associated Contractors, (2015) 1 SCC 32 : (2015) 1 SCC (Civ) 1], holding that presentation of the plaint in a court contrary to the exclusion clause could not be said to be proper presentation before the court having jurisdiction in the matter."

5. The plea of the learned counsel for the defendants is that by virtue of the non-disclosure agreement dated 03.02.2021 entered into between the parties, only the Bangalore Court will have the jurisdiction.

6. In respect of the misjoinder of cause of action, the reliance has been placed upon *Ramaniyam Real Estates Private Ltd. vs. Spencer's Retail Limited* rep. by its Authorised Signatory Mr.Murali 2022 SCC OnLine Mad 714. In this case, it was inter alia held as under:

"58. There is yet another reason as to why the plaintiff cannot claim compensation under this head. The compensation claimed under the other two heads arises out of the agreement and the compensation claimed under the head of defamation arises out of a civil wrong (tort). The cause of action for This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 23:09:38 defamation is entirely different and strictly speaking, it cannot be combined with the compensation claimed under the other two heads unless the plaintiff had obtained a specific leave for joinder of cause of action. Admittedly, the plaintiff did not obtain such a leave. Therefore the compensation claimed under this head is a misjoinder of cause of action. Accordingly, the plaintiff is not entitled to any compensation under this head."

7. Section 15 to Section 20 of the Code of Civil Procedure (CPC) provides about the jurisdiction. Section 21 of the CPC provides that objection to the jurisdiction can only be taken in the court of first instance at the earliest possible opportunity. The defendants/applicants have taken the court the objection at the court of first instance and therefore such objections have to be entertained and adjudicated.

8. Section 15 of the CPC provides that every suit shall be instituted in the court of the lowest grade competent to try it. The plaintiff has valued the suit for the purpose of jurisdiction which falls within the original jurisdiction.

9. Section 16 of the CPC provides that in the following cases the suit is to be instituted where the subject matter is situated:

- (a) for the recovery of immovable property with or without rent or profits,
- (b) for the partition of immovable property,
- (c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,
- (d) for the determination of any other right to or interest in immovable property,
- (e) for compensation for wrong to immovable property,
- (f) for the recovery of movable property actually under distraint or attachment, This is a digitally signed order.

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10. This provision is regarding the immovable property, hence, is not applicable to the present suit.

11. Section 17 of CPC also provides about the suits for immovable property situated within the jurisdiction of different courts. Section 18 provides about the place of institution of the suit where local limits of the jurisdiction of Courts are uncertain.

12. I consider that the relevant section in the present case is Section 19 of CPC. Section 19 of the CPC provides as under:

19. Suits for compensation for wrongs to person or movables.-

Where a suit is for compensation for wrong done to the person or to movable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court,

the suit may be instituted at the option of the plaintiff in either of the said Courts.

13. The perusal of Section 19 of CPC indicates that in the situations enumerated in the provision, the plaintiff can institute the suit either at the place where the wrong was done or the defendant resides, or carries on business, or personally works for gain. The option has been given to the plaintiff to institute the suit in either of the Courts.

14. Section 20 of CPC provides for other suits to be instituted where defendant resides or cause of action arises. However, it has been settled proposition that if a contract specifies the jurisdiction of the court at a particular place and such court has jurisdiction to deal with the matter, the parties are deemed to have intended to exclude all other courts. Such provisions have been held to be not hit by Section 23 of the Contract Act and nor can be held to be forbidden by law or against the public policy.

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 23:09:39. Thus, the parties by virtue of an agreement cannot confer the jurisdiction upon the court which does not have any jurisdiction. However, by way of agreement, the parties can choose one of the courts on which the law also confers jurisdiction.

15. In *Hakam Singh v. Gammon (India) Ltd.*, (1971) 1 SCC 286 it was inter alia held that where two courts have territorial jurisdiction to try the dispute between the parties and the parties have agreed that the dispute should be tried by only one of them, the court mentioned in the agreement shall have the jurisdiction. This proposition has been followed subsequently and remains to be a settled position of law. I consider that this point does not require a detailed consideration by this court anymore. However, the question that remains to be answered is whether the contracts in the commercial disputes or contracts in the employment disputes have to be read differently or with the same perspective. This question directly came up for consideration before this court in *Vishal Gupta* (supra) where the court inter alia held as under:

"24. In the considered view of this Court the decisions on the „ouster clause“ in the context of a commercial contract have to be held to be distinguishable in their application to a case of a contract of employment. In the employment contract, an employee would not be able to insist that the disputes, if any, are to be referred only to one court and not the other. The employee usually accepts the employment with all the attendant terms and conditions or not at all. In the present case, the letter of employment no doubt states that it is a transferable job. Still, the Plaintiff was to work primarily for the Delhi office of the Defendant. He, in fact, rendered services only in Delhi office. He submitted his resignation at Delhi. For an employee no longer in service to be asked to go to Mumbai for instituting and pursuing litigation would render This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 22/03/2024 at 23:09:39 the remedy expensive and inefficacious for such employee. It would work harshly against him. Moreover, in a situation like the present one where the prayer is essentially for a direction to the Defendant to issue a relieving letter, to direct the employee to go to a different city only because of the ouster clause seems to be unfair and unjust. Although in commercial contracts, it has been held that such an ouster clause would not be opposed to public policy (see the observations in para 18 of the decision in ABC Laminart), in a contract of employment such a clause could well be held to be opposed to public policy. To repeat, the courts have thus far had no occasion to examine how a strict application of the exclusion clause would work for an employee who is out of service. As regards the comparative hardship, the Defendant has an office in Delhi and there will be no difficulty for it to appear before this Court and defend itself."

16. It is an admitted case that during the course of employment, the plaintiff remained posted in Delhi. The contention of the defendants is that though they did not have any office here in Delhi but the plaintiff was working remotely for them from Delhi.

17. In HDFC Bank vs. Deepti Bhatia (supra) the termination letter was challenged by the employee. The objection was taken by the bank regarding the territorial jurisdiction. Clause 7 of the employment agreement entered into between the parties provided exclusive jurisdiction to the courts in Mumbai. However, the learned trial court rejected this objection by following the judgment of Vishal Gupta (supra).

18. It is pertinent to mention that in Vishal Gupta (supra) it was held that an employee who is no longer in service cannot be directed to go to Mumbai to institute and pursue the litigation as the same would be expensive and unfair qua the employee.

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19. In HDFC Bank vs. Deepti Bhatia (supra) also, the coordinate bench of this court took a view that though exclusive jurisdiction vested in the competent court situated in Mumbai as per the employment agreement, however, that would not be a sufficiently distinguishing factor for the present case in respect of the observation made in Vishal Gupta (supra). I consider that there is no reason to differ from the view taken by the coordinate bench of this court. This court is also of the considered view that the agreements in commercial matters and the employment contract have to be read differently. The law cannot be static, it has to be dynamic. The intention of the law is to ensure fairness and justice for the person. Hence, the plea of the respondent for return of plaint on the ground of territorial jurisdiction is rejected.

20. In regard to the objection as to the misjoinder of the cause of action, I consider that this issue can be left open and the court may frame an issue and can adjudicate as it is a mixed question of facts & law.

21. With the above observations, the application stands disposed of.

I.A. 1279/2023 (under Order XXXIX R 1 & 2 CPC)

22. The present application has been filed with the following prayers:

"a) Grant ex-parte ad interim injunction directing Defendant No.1 to provide the Plaintiff with the Relieving Letter, Experience Letter, Full and Final Settlement Sheet, and Confirmation on PF credits.

b) Pass an order of temporary injunction directing the Defendants till the pendency of the present suit to immediately cease and desist from publicly defaming the Plaintiff and from making defamatory allegations against the Plaintiff"

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23. Learned counsel for the plaintiff has fairly submitted that he does not press prayer (a) and that it may be decided finally at the time of decision of the suit.

24. In regard to prayer (b) learned counsel for the defendants submits that they have not publicly defamed the plaintiff and made any defamatory allegation against the plaintiff. Learned counsel for the defendants submits that they stand by the FIR lodged by them and have also filed a protest petition. I consider that the protest petition shall be decided in accordance with the law by the competent court. However, the defendants are refrained from publicly defaming the plaintiff and from making any defamatory allegation against the plaintiff.

25. With these observations, the application stands disposed of. CS(OS) 46/2023

26. List before the Joint Registrar (Judicial) on 01.04.2024 for filing of the joint schedule.

DINESH KUMAR SHARMA, J MARCH 13, 2024 rb/HT..

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