

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 3102 of 2012

Date _____ Order with signature of Judge _____

For Katcha Peshi:

Date of hearing : 09.04.2013

Petitioner : Fahad Jawed through
Mr. G. M. Saleem, Advocate

Respondents : Syed Asif Hussain, Munawar
Hussain and Vth Addl. District Judge,
Karachi (East).
(Respondent No.2 Munawar
Hussain present in person)

ORDER

Nadeem Akhtar, J.- This Constitutional Petition has been filed by the petitioner against the order dated 21.07.2011, passed by the IVth Senior Civil Judge, Karachi (East) in Suit No.12/2011, whereby the plaint in the said suit filed by the petitioner was returned to him for presentation before the civil court having jurisdiction in District Malir, Karachi, and also against the judgment delivered on 10.08.2012 by the Vth Additional District Judge, Karachi (East) in Civil Revision No.127/2011, maintaining the said order.

2. Briefly stated, the facts of this case are that an application under Section 20 of the Arbitration Act, 1940, was filed by the petitioner against respondents No.1 and 2 before the Senior Civil Judge in the District of Karachi East, which was registered as Suit No.12/2011. The case of the petitioner was that there was a partnership between him and respondents No.1 and 2 by virtue of a Partnership Deed dated 29.09.2007, which provided resolution of all the disputes in relation to the partnership business through arbitration. Through the impugned order dated 21.07.2011, the IVth Senior Civil Judge, Karachi (East), returned the petitioner's application for presenting the same before the civil court in the

District of Malir, Karachi, on the ground that the place of business of the partnership was situated within the territorial jurisdiction of District Malir and not District East. The Civil Revision Application filed by the petitioner against the said order was dismissed by the revisional court through the impugned judgment dated 10.08.2012.

3. The learned counsel for the petitioner, relying mainly on Sections 19 and 20 CPC, submitted that the courts in District East as well as in District Malir had / have the jurisdiction to adjudicate upon the application filed by the petitioner in view of the fact that the firm was carrying on business within the limits of District Malir, but the partners / respondents No.2 and 3 are admittedly residing in District East. He further submitted that the petitioner was legally entitled to file the application before the court of his own choice in any of the two Districts. Respondent No.2, who appeared in person, supported the impugned order and judgment by submitting that only the court in District Malir had / has the jurisdiction in the matter as the subject matter of the dispute was the partnership business in District Malir.

4. Sections 16, 17 and 18 CPC relate to suits in respect of immovable properties, therefore, the said Sections are not applicable in the instant case. Section 19 CPC provides that 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. Further, Section 20(a) CPC provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the defendant, or each of the defendants where there are more than one, at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain. For the purposes of this petition, it is important to note that under Section 41(a) of the Arbitration Act, 1940, the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the court and to all appeals under the said Act. Therefore, by virtue of the said Section 41(a), all the provisions of Sections 19 and 20 CPC were applicable before both the courts below.

5. It is admitted position that the partners / respondents 1 and 2 are residing in District East, which fact can further be ascertained from their addresses shown in the Partnership Deed and given in the petitioner's application under Section 20 of the Arbitration Act. Therefore, under Sections 19 and 20(a) CPC, both the courts in Districts East and Malir had the jurisdiction to adjudicate upon the said application, and the same could be instituted at the option of the petitioner in either of the courts in Districts East or Malir. Both the courts below failed in exercising the jurisdiction vested in them and erred by holding that only the court in District Malir had the jurisdiction in the matter. Such finding of the lower courts, being contrary to law, is liable to be set aside.

6. We, therefore, allow this petition and set aside the impugned order and the judgment. Accordingly, the application filed by the petitioner under Section 20 of the Arbitration Act, 1940, bearing Suit No.12/2011, shall be deemed to be pending before the Senior Civil Judge, Karachi (East). The District Judge, Karachi (East) is directed to transfer the matter to any Senior Civil Judge in his District other than the IVth Senior Civil Judge.

Chief Justice

Judge