IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Appln. Nos.13 and 14 of 2012

Present: Mr. Justice Aftab Ahmed Gorar.

Dates of hearing:	:	10.03.2014
Date of Announcement	:	.04.2014
Applicant	:	Through Mr. Abdul Hameed Khan Advocate
Respondents	:	Through Mr.Omer Soomro advocate

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O R D E R

AFTAB AHMED GORAR, J.- By this single order I propose to dispose of abovesaid two Civil Revision Applications as in both the revisions the parties are the same, besides the facts as well as the law involved in both the revisions are also same.

Through these Civil Revision Applications the applicant Aftab Munawar Mughal has challenged the Judgments both the dated 11.11.2011 passed in Civil Misc. Appeals No.03/2011 and 09/2011 by learned VIth Additional District Judge, Larkana whereby he dismissed both the appeals filed by the applicant and upheld the order dated 25.11.2010 passed by learned IVth Senior Civil Judge, Larkana in F.C. Suit No.76/2007 and the order dated 28.02.2011 passed by IIIrd Senior Civil Judge, Larkana in F.C. Suit No.56/2010 whereby in both the suits the plaint was ordered to be returned to the applicant for presentation before the court having territorial jurisdiction.

Precisely, the facts of the case, as stated in the revision applications, are that the applicant was working as Senior Zonal Sales Manager of respondent No.1 at Larkana when he was served with letter dated 26.6.2007 terminating his 26 years' service. The applicant filed F.C. No.76/2077 (new number 28 of 2009) for declaration that the termination of his service was illegal, arbitrary and caused mental as well as financial damage to him and prayed for damages and compensation etc. He also filed Suit No.56 of 2010 for recovery and mandatory injunction as his legal dues of provident fund, gratuity, one month pay in lieu of notice and disturbance allowances were not paid to him by respondent No.1.

On service of summons, the respondents contested the suits by filing written statement wherein they denied the averments made in the plaints and pleaded that no cause of action had accrued to the applicant for filing the suits. Besides, the respondents filed application in both the suits under Order VII Rule 10 CPC with the prayer to return the plaint. After hearing the parties, the trial court vide orders, as mentioned above, returned the plaint to the applicant for presentation before the court having territorial jurisdiction. Against the said orders the applicant preferred abovesaid Civil Misc. Appeals which were also dismissed, hence these civil revisions.

I have heard learned counsel for the parties and have gone through the material available on the record.

Learned counsel for the applicant contended that the impugned judgment/order passed by the two courts below are contrary to the facts and the law applicable in the present case; that the findings of the two courts below are not based on the documentary evidence placed on the record. He further contended that the trial court has not considered the case law cited before it on behalf of the applicant and without discussing

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the same, has observed that the same are on different facts. According to him, the courts below have not appreciated that the applicant was working as Senior Zonal Sales Manager of respondent No.1 at its office situated in Larkana and that he had received the termination letter at Larkana and have observed in a hasty and mechanical manner that the trial court at Larkana had no jurisdiction and that the suit should have been instituted at Karachi. He further argued that the order/judgment of the two courts below suffer from non-reading and misreading and the trial court had acted with material irregularity and the appellate court has also ignored such defects and irregularities and has affirmed findings of the trial court in a mechanical manner. He prayed for allowing the revision applications and setting aside of the order/judgment passed by the two courts below. In support of his contentions, he relied upon the case-law reported in 2006 SCMR 562, 1238 and 1304, PLJ 1991 SC 320, 1988 CLC 1398 and 1988 CLC 59.

Conversely, learned counsel for the respondents supported the impugned order/judgment and submitted that the findings of the two courts below are based on sound and cogent reasons. According to him, the Head Office/Principle Office of the respondents is at Karachi and all the respondents are residents of Karachi, therefore the competent court of law having territorial jurisdiction would be at Karachi. He further contended that the contract/agreement between the applicant and the respondents was executed at Karachi and all the articles of Novartis Pharma Pakistan are supplied to consumers through its employees at different cities, who are carrying on business there only to gain for the company. He further contended that the applicant has not produced a single document to establish that he had zonal office at Larkana or that he had received the termination letter at Larkana as he has failed to produce any receipt of postal authority or TCS in proof of such assertion. He

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stressed that the Court is duty bound to return the plaint at any stage of the suit if it arrives at a conclusion that the suit should have been instituted in any other court having jurisdiction. He also contended that the concurrent findings of the courts below cannot be interfered by this Court in exercise of its revisional jurisdiction under section 115 CPC. He relied upon the case-law reported in PLD 1994 SC 291, AIR 1937 Sind 17, 1956 TRA-CO 200 (V 43 73 Sept.), AIR 1941 Madras 270, 2011 CLC 1941, 2011 MLD 781, 2011 YLR 1204 and 2004 YLR 764.

In both the revisions, the moot point to be decided is; as to whether the trial court at Larkana had jurisdiction to try the suits instituted by the applicant or not. The relevant provision of law in this matter is section 20 CPC which, for the sake of convenience, is reproduced 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—
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> (a) the defendant, or each of the defendants where there are morel than 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 leave of the Court is given, or the defendants who do not reside or carryon business, or personally work for gain, as aforesaid, acquiesce in such institution, or
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> (c) the cause of action, wholly or in part, arises.
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> *Explanation I.* – Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.
>
> *Explanation II.* --- A corporation shall be deemed to carry on business at its sole or principle office in [Pakistan] or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

Learned counsel for the applicant has put emphasis on Explanation II to above-quoted section contending that the respondent No.1 had its zonal/subordinate office at Larkana, therefore, in view of Explanation II, the applicant was entitled to institute the suit at Larkana. In rebuttal learned counsel for the respondents has submitted that the applicant has not produced a single document to establish that there was any subordinate office of respondent No.1 at Larkana. According to him, the head office of Novartis Pharma Pakistan Company was at Karachi and the applicant was appointed at Zone Larkana only to gain for the company under its control and authority.

In the case of Mohammad Kashim Haji Ahmed Kanju Vs. Sree Hanuman Industries reported in 1956 TRA-CO 200 (AIR V 43 C 73 Sept) it was held as under :

> "There is plenty of authority for the position that a Firm cannot be said to carry on business where it has only canvassers or agents for the purpose of obtaining offers of business and attending to matters ancillary to its business and that the business of the Firm will be taken to be as being carried on where the contracts relating to the business are entered into or wherefrom effective control is exercised." ..... "even authority to receive money by an agent not authorized to make or vary or enter into contracts is not a material circumstance to decide whether the principal 'carries on business' at any place through an agent."

In another case reported as Pachaiammal and another vs. Hinustan Co-operative Insurance Society Ltd. (AIR 19 41 Madras 270) it was held as under :-

> "A company only carries on business where it enters into contracts relating to its business, not at places where it may have canvassers or agents for the purpose of obtaining offers of business and attending to matters ancillary to its business.

Similar view was also taken in the case of Hasi Vs. The Industrial & Prudential Assurance Co. reported in A.I.R. 1937 Sind 17. In the case of Waqas Hameed vs. Islamabad Electric Supply Company Limited and 2 others (2004 Y L R 764) invitation of tenders, submission of tenders and

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acceptance of plaintiff's bid took place at place "R", defendant corporation was also situated at "R" where construction work was carried out, while notice to terminate contract and blacklist plaintiff's firm was received at place "G". In such circumstances, the plaint in suit instituted at "G" was returned by the trial court which order was upheld by the Appellate Court. In the present case also, though denied by the respondents, the applicant's plea is that the notice of termination of his services was received at Larkana, therefore the trial court at Larkana had got the territorial jurisdiction.

In view of the decisions referred to above, the applicant's plea that as he was working as Senior Zonal Sales Manager of respondent No.1 at its office situated in Larkana and that he had received the termination letter at Larkana, therefore, he was entitled to institute the suit at Larakan, is devoid of force.

There is yet another legal point in the instant case. The applicant has challenged the concurrent findings of the two courts below by way of filing civil revision application. According to the learned counsel for the respondents, this Court in exercise of its revisional jurisdiction under section 115 CPC, cannot interfere with the concurrent findings of the courts below. In the case of Ahmed and 3 others vs. Allah Ditta reported in 2011 Y L R 1204 [Lahore] it was held as under :

> "The upshot of the matter is that in the given circumstances and as per settled law, the concurrent findings of the facts, neither can be gone into nor re appraised, nor can the High Court re-substitute its judgment in place of concurrent findings already given by the courts below except in presence of some legal defect or error which has not been pointed out."

In the case of Haji Mohammad Din Vs. Malik Mohammad Abdullah reported in 1994 Supreme Court 291, Honourable Supreme Court observed as under :

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In the case of Haji Mohammad Din Vs. Malik Mohammad Abdullah reported in 1994 Supreme Court 291, Honourable Supreme Court observed as under :

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"It is well settled law that a concurrent finding of fact by two courts below cannot be disturbed by the High Court in second Civil Appeal much less in exercise of revisional jurisdiction under section 115 C.P.C.....The jurisdiction of the High Court to interfere with the concurrent finding of fact in revisional jurisdiction under section 115, C.P.C. is still narrower. The High Court in exercise of its jurisdiction under section 115, C.P.C. can only interfere with the orders of the subordinate Courts on the grounds, that the Court below has assumed jurisdiction which did not vest in it, or has failed to exercise the jurisdiction vested in it by law or that the Court below has acted with material irregularity effecting its jurisdiction in the case.

Similar view was taken by the Lahore High Court in the case of Shahbaz Rasool and 4 others vs. Aamir Imran and 7 others (2011 C L C 1941).

I have also not been able to find out any such defect/flaw in the present case, as pointed out in the above-quoted decisions. In view of the dictum laid down by the superior courts, I am of the considered view that that the instant civil revisions against the concurrent findings of the two courts below fail being not maintainable, so also on merits. Consequently, both the revision applications are dismissed in *limine* alongwith pending Misc. Applications.

JUDGE

SJ

Announced by me today.

21.4.2014.

J. NAIMATULLAH.
PHULPOTO.