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Court : Patna

Decided On : Apr-13-2006

Judge : Navaniti Pd. Singh, J.

Acts : [Companies Act, 1956](#); Code of Civil Procedure (CPC) - Order 7, Rule 11

Appeal No. : Civil Revision No. 1641/2005

Appellant : Sri M.M. Thapar and anr.

Respondent : Ramesh Kumar Singh and ors.

Disposition : Application allowed

Judgement :

Navaniti Pd. Singh, J.

1. Heard counsel for defendant-petitioner and counsel for the plaintiff-opposite party.

2. The plaintiff has instituted the present suit in the year 2002 at Patna claiming that pursuant to advertisement, the plaintiff was selected and employed as Manager, Industrial Engineering in JCT Limited, a public limited company under the provision of [Companies Act, 1956](#) at Phagwara, State of Punjab. The other parties i.e. defendant-petitioner and defendant-opposite party are Directors/Officers of the said company. The company which was an employer and

had the liability to make payment has not been made party though at the bar it is stated by the plaintiff-opposite party that an amendment petition is pending before the trial court for impleading the company as a defendant.

3. In the suit it is alleged that pursuant to his selection and appointment he worked in the company for a short time and then he was forced to resign. His resignation letter given at Phagwara is dated 25.5.1995. In the suit his first relief is for setting aside the resignation and deeming petitioner to be continuing in service allegedly as the resignation was wrongly obtained. The second relief which he claimed is that as consequence of his wrongful removal , he remained unemployed for a considerable period and therefore for a period of one/ one and a half years he was entitled to full remuneration, meaning thereby, for a period upto August, 1996 he would be deemed in employment and as such entitled to remuneration. As indicated above, the said suit was filed on 15.11.2002 at Patna. The cause of action is shown to be the resignation . then wrongly denial of remuneration and lastly payment, of provident fund which amount had been deducted in course of his service, which payment was received at Patna.

4. On notice being issued, the defendants filed their written statement and raised a preliminary objection by way of an application under Order VII, Rule 11 C.P.C. praying that the plaint be rejected in terms of Order VII, Rule 11(a) and (d) of the Code of Civil Procedure. It was the defendants' specific case that no part of cause of action arose within the jurisdiction of Patna Civil Court. Secondly, the cause of action if any, related to resignation tendered and accepted at Phagwara in 1995 and non payment of salary for a period of one and a half years after that when he remained unemployed. Both these claims in law as well as on facts were clearly barred by limitation on the face of plaint itself. Lastly it was contended that the suit was malacious and vexatious and the plaintiff has no enforceable legal right on the face of the plaint itself, This application of the defendants has been rejected by the trial court by the impugned order dated 14.3.2005. The learned court while considering the aforesaid, he as in substance merely relied on certain communications made after the year 2000. Even in the communication of the company nothing was admitted even partially. No claim was admitted to any extent. I may point out that this communication started 4 more than five years after

the said resignation.

5. Learned Counsel for the defendant-opposite party has submitted that mere communication of the company received at Patna in the year 2000, if any, would not give a fresh cause of action and the territorial jurisdiction of Patna Civil Court to entertain the suit.

6. Having heard learned Counsel for the parties. I am afraid that the order impugned cannot be sustained in the eye of law. Firstly before entertaining the Plaint the court has to satisfy prima facie that cause of action is disclosed. In the present case, no doubt cause of action is disclosed being wrongfully forced to tender resignation which event was completed in the year 1995 itself. There is no other lawful cause of action.

7. What is cause of action has now been discussed in detail by the apex court in the judgment of Y. Abraham Ajith and Ors. v Inspector of Police, Chennai and Anr. : 2004 CriLJ4180 . The apex court has clearly held that cause of action is a bundle of facts which the party has to prove, the infringement of which fact based right gives right to a cause for being ventilated for redressal before a court of law. In the present case, so far as the first relief is concerned it did give valid cause of action. So far second relief with regard to payment of salary for a period of one/ one and a half year after resignation is concerned no law has been brought to my notice which gives any such enforceable right to a litigant authorising such a fantastic claim. There, being no law in this regard entitling the claim there is no right and if there is no right there is no cause of action much less giving right to institute a proceeding. Thus it would be seen that only cause of action was that of resignation and that too of the year 1995 which was clearly barred by law of limitation. Now the next enquiry that the court has to make is whether cause of action or any part thereof had occurred within the jurisdiction of Patna Civil Court. Here again it is abundantly clear that the act was completed at Phagwara itself. Petitioner has not disputed that he had tendered his resignation and left the job at Phagwara. Admittedly the said claim is in the State of Punjab and much beyond jurisdiction of Patna Civil Court. All defendants reside outside the jurisdiction of Patna Civil Court. The jurisdiction of Patna does not extend to Phagwara. Even otherwise the

nature of grievance as apparent from the plaint could clearly show that , it was only malacious, vexacious and had no legal basis or legal foundation (AIR 1977 SC 2421). Lastly, on the basis of pleadings in the plaint itself the cause of action if any, was the resignation tendered in 1995, as stated above the suit was filed in 2002 which was hopelessly barred by limitation. The plaintiff tried to extend the cause of action through letter and communication sent by the company in the year 2000-01. I am afraid, this cannot be accepted for the simple reason that cause of action was the resignation and its acceptance. Mere communication or discovering of the consequences or the effect thereof being at Patna is not the cause of action. Cause of action as stated above is a breach of a legal right Another reason being that none of the defendants reside at Patna

8. They are all admittedly and undisputed residing outside Bihar.

9. In view of the aforesaid I am of clear opinion that the trial court failed to exercise its jurisdiction by not rejecting the plaint in terms of Order VII, Rule 11 CPC.

10. The order dated 14.3.05 passed by Sub Judge IVth Patna, in T.S. No. 495 of 2002 is set aside and the trial court is directed to reject the plaint in terms of Order VII, Rule 11 CPC.

11. The application is allowed. There will be no order as to costs.

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