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Court : Kerala

Decided On : Mar-26-2012

Judge : V. Ramkumar &Amp; K. Harilal

Appeal No. : FAO. No. 114 of 2012

Appellant : Reshmi Devi

Respondent : The University of Kerala, Represented by the Registrar, Palayam

Judgement :

1. In this appeal filed under order XLIII Rule 1 (a) C.P.C. the appellant who was the petitioner/plaintiff in O.P. (Indigent) No. 5 of 2010 on the file of the Subordinate Judge's Court, Mavelikkara challenges the order dated 23-01-2012 returning the said O.P. under Order VII Rule 10 C.P.C. for presentation before the proper Court having jurisdiction .

2. The proposed suit is against the University of Kerala represented by its Registrar, Palayam, Thiruvananthapuram seeking damages to the tune of Rs. 10,00,000/- (Rupees ten lakhs only) for the alleged negligence by way of irretrievable loss of the answer book of the appellant with regard to the paper in Management Science for the first year (previous) M.Com examination for which the appellant appeared from the S.D. College, Alappuzha during September-

October, 2005.

3. According to the appellant she approached the Taluk Legal Services Committee, Mavelikkara, for legal aid and the said Committee appointed an advocate for conducting her case and that is how the case happened to be instituted before the Court below.

4. The learned counsel for the appellant submitted that the defendant University has got a centre at Kattanam located within the territorial limits of the court below and the said centre also collects examination fees etc. and, therefore, the defendant university can be said to be carrying on its business within the limits of the Mavelikkara Court. He also relied on the decision of the Supreme Court in Union of India and Another v. Ladulal Jain - AIR 1963 SC 1681.

5. We are afraid that we find ourselves unable to agree with the learned counsel for the appellant. In the first place, there is no averment in the plaint about the existence of any such university centre at Kattanam or about the nature of the services rendered by such centre. Secondly, Ladulal Jain's case (supra) relied on by the appellant's counsel is clearly distinguishable. That was a suit for money being the value for the non-delivery of the consignment of 134 bags of rice booked by rail from Kallyanganj railway station in the State of West Bengal to Kanki Railway Station in the State of Bihar. The suit was instituted before the Subordinate Judge's Court, Gauhati in the State of Assam. The first defendant in that suit was the Union of India and the second defendant was the Northern Frontier Railway having its headquarters at Pandu within the territorial limits of the Gauhati Court. The argument of the defendants in that case that the consignment never traveled within any part of the State of Assam so as to clothe the Gauhati Court with territorial jurisdiction, did not find favour with the High Court of Assam as well as the Apex Court. The Supreme Court held that the Union of India running the Northern Frontier Railway was carrying on the said business within the meaning of Sec. 20 C.P.C. and could be sued in the Court within whose territorial jurisdiction the headquarters of the railways run by the Union of India was situated. But that is not the position here. Without even a whisper in the plaint about the existence of any university centre within the limits of the Court below and without

pleading the nature of the services rendered by such centre, it cannot be straightaway held that the sole defendant University should be presumed to be carrying on its business within the territorial limits of the Court below. Moreover, if the submission now made is upheld it will be doing violence to the legislative intent behind Section 20 C.P.C. Supposing the defendant in a suit is a company having its registered office in the State of Maharashtra and branches in three other States namely, Karnataka, Tamil Nadu and Kerala. If the cause of action in a case were to arise within the area of operation of a branch office at Karnataka, a logical extension of the appellant's argument could mean that the suit could be instituted in a court in the State of Kerala for the sole reason that the defendant company has a branch office in Kerala. That is certainly not the intendment behind the above provision. (See Soinc Surgical v. National Insurance Company Ltd. - (2010) 1 SCC 135).

6. Except for the fact that the appellant is a resident of Pothappally, Kumarapuram in Karthikappally Taluk within the territorial limits of the Court below, neither the office of the respondent nor any part of the cause of action had taken place within the territorial limits of the court below. There was no averment also in the indigent O.P. (which by virtue of Order XXXIII Rule 2 C.P.C. should contain all particulars required in regard to plaints in suits) to indicate that the matter could be entertained by the Court below either under Sec. 19 or under Sec. 20 C.P.C. The fact that the Taluk Legal Services Committee, Mavelikkara (which was approached by the appellant for legal aid) is located within the limits of the Court below, cannot cloth the court below with the territorial jurisdiction to entertain or try the suit. Even the college where the appellant sat for the university examination is not situated within the local limits of the court below (assuming that the said fact, by itself, could confer jurisdiction on the court below). Such being the position, the court below was fully justified in ordering return of the plaint for presentation before the proper Court.

We see no reason to interfere with the impugned order which is, accordingly confirmed and this appeal is consequently dismissed in limine.

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