

*Before Permod Kohli, J.*

**M/S PUNJAB ALLOYS(P) LTD,—Appellant**

*versus*

**PUNJAB STATE ELECTRICITY BOARD, PATIALA,—Respondent**

RSA No. 842 of 2007

24th September, 2007

*Code of Civil Procedure, 1908—O.7 RI.10 and S.20—Territorial jurisdiction—Suit for declaration against PSEB filed at Chandigarh on ground that plaintiff's head office situated at Chandigarh—Issue regarding territorial jurisdiction decided in favour of plaintiff—Plaintiff's factory situated at Lalru and head office of PSEB at Patiala—Findings of trial Court deciding issue with regard to jurisdiction of Chandigarh Court are erroneous—Trial Court deciding all issues including issue of jurisdiction simultaneously—No attempt by respondents to get issue of territorial jurisdiction treated as preliminary issue—Respondents contested suit and led entire evidence—No prejudice to respondents due to trial of suit in a Court having no jurisdiction—Order of lower Appellate Court reversing trial Court order on issue of territorial jurisdiction and directing return of plaint for presentation before Court of competent jurisdiction not sustainable and liable to be set aside—Case remanded back to lower Appellate Court for a fresh decision on merits.*

*Held*, that the learned lower Appellate Court should also have considered whether any prejudice has been caused to the respondent by not deciding the issue of jurisdiction as a preliminary issue. This question has not been considered at all. Even at the hearing of this appeal, learned counsel for the respondent was asked to show in what manner any prejudice has been caused to him. He has not been able to show any. The respondent has contested the suit and led entire evidence as was advised. Thus, there exists no circumstance which may show any prejudice to the respondents due to trial of suit at Chandigarh in a Court having no territorial jurisdiction.

(Para 8)

S.S. Virk, Advocate, *for the appellant.*

APS Mann, Adovate, *for the respondent.*

### JUDGMENT

#### **PERMOD KOHLI, J. (Oral)**

(1) This regular second appeal is directed against the judgment and order dated 15th December, 2006 passed by the learned Additional District Judge, Chandigarh, returning the plaint to the plaintiff for presentation before the Court of competent jurisdiction in terms of Order 7 Rule 10 of the Code of Civil Procedure.

(2) The appellant herein filed a suit for declaration against the Punjab State Electricity Board, Patiala. The suit was instituted in the Court of Civil Judge (Junior Division), Chandigarh. The defendant appeared and raised a specific objection regarding the territorial jurisdiction of the trial Court. Consequently, an issue with regard to the question of jurisdiction being issue No. 3 was framed. The learned trial Court, however, decided this issue in favour of the plaintiff-appellant on the ground that the plaintiffs head office is situated at Chandigarh.

(3) An appeal came to be preferred by the defendant in the Court of learned Additional District Judge, Chandigarh, who has reversed the findings on issue No. 3,—*vide* the impugned order directing the return of the plaint to the plaintiff for presentation before the Court of competent jurisdiction.

(4) I have heard the learned counsel for the parties at length and perused the record of the case carefully.

(5) The findings of the learned trial Court on the question of territorial jurisdiction is erroneous in view of Section 20 of the Code of Civil procedure. The suit could be filed (i) where the defendant or each of the defendants resides and works for gain at the time of the commencement of the suit (ii) where cause of action whole or in part arises. Even the learned trial Court has found that the defendants Head Office is at Patiala, whereas its Sub Office is at Lalru. However, the learned trial Court has held that since the plaintiff has its office at Chandigarh and bills were issued for local

office, the Court at Chandigarh has the jurisdiction. The learned Lower Appellate Court found that the territorial jurisdiction of Civil Court can be determined only in terms of Section 20 of the Code of Civil Procedure. Under this section, the Court in whose territorial jurisdiction the defendant resides or words for gain or cause of action in whole or in part arises will be the competent Court of jurisdiction. Admittedly, the plaintiffs factory is situated at Lalru and the bills were raised for the factory premises by local office at Lalru. Even Head Office of the Electricity Board is at Patiala. Thus, the Court at Chandigarh has/had no territorial jurisdiction, but the direction of the learned Lower Appellate Court to return the plaint for presentation before the proper Court is also not sustainable in view of the following circumstances :-

- (i) Though a question regarding territorial jurisdiction was raised in the written statement, an issue was framed, but the respondents never pressed the Court to decide the question of jurisdiction at the earliest.
- (ii) The trial Court decided all the issues including the issue of territorial jurisdiction at the time of final disposal of the suit. Both the parties continued with the trial and it was only at the time of deciding the suit, the question of jurisdiction was pressed.

(6) The learned Lower Appellate Court relied upon two judgments of the Hon'ble Apex Court reported as **Patel Roadways Limited, Bombay versus Prasad Trading Company, (1)** and **Union of India and others versus M/s Adani Exports Limited and another (2)**. In **Patel Roadways case (supra)** Hon'ble the Apex Court has ruled as follows :--

“.....a suit against a corporation could be instituted either at the place of its sole or principal office (whether or not the corporation carries on business at that place) or at any other place where the cause of action arises, the provisions of clauses (a), (b) and (c) together with the first part of the explanation would have completely achieved the purpose. Indeed the effect would have been wider. The suit could have been instituted at the place of the principal office because of the situation of such

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(1) 1993 (Suppl.) C.C.C. 349

(2) AIR 2002 S.C. 126

office (whether or not any actual business was carried on there). Alternatively, a suit could have been instituted at the place where the cause of action arose under clause (c) (irrespective of whether the corporation had a subordinate office in such place or not).”

(7) In *Adani Exports Limited's* case (*supra*) Hon'ble the Apex Court has held that the question of jurisdiction cannot be decided merely on the basis of the averments made in the plaint. The proposition laid down by the Apex Court in both these two cases, cannot be disputed. However, in the present case another important question is involved which is distinct from the question in the above said cases. In the present case, despite an objection raised in the written statement, the question of jurisdiction was not decided at the first opportunity. As a matter of fact, the Court should have treated the issue of jurisdiction as a preliminary issue and decided the same before proceeding with the trial, but the Court in its wisdom decided all the issues including the issue of jurisdiction simultaneously. Even no attempt was made by the respondents to get the issue treated as preliminary issue for early disposal of the controversy. A similar issue came up for consideration before the Hon'ble Apex Court in the case of **Koopilan Uneen's daughter Pathumma and others versus Koopilan Uneen's Son Kuntalan Kutty dead by Lrs. and others, (3)**, wherein the Apex Court has laid down essential ingredients for creating the bar of jurisdiction under Section 21 of the Code of Civil Procedure. It has been held :- --

“In order that an objection to the place of suing may be entertained by an appellate or revisional court, the fulfillment of the following three conditions is essential :—

- (1) The objection was taken in the Court of first instance.
- (2) It was taken at the earliest possible opportunity and in cases where issues are settled, at or before such settlement.
- (3) There has been a consequent failure of justice. All these three conditions must co-exist.

Now in the present case conditions Nos. 1 and 2 are no doubt, fully satisfied; but then before the two appellate Courts below could allow the objection to be taken, it was further necessary that a case of failure of justice on account of the place of during

having been wrongly selected was made out. Not only was no attention paid to this aspect of the matter but no material exists on the record from which such failure of justice may be inferred. We called upon learned counsel for the contesting respondents to point out to us even at this stage any reason why we should hold that a failure of justice had occurred by reason of Manjeri having been chosen as the place of suing but he was unable to put forward any. In this view of the matter, we must hold that the provisions of the sub-section above extracted made it imperative for the District Court and the High Court not to entertain the objection whether or not it was otherwise well founded. We, therefore, refrain from going into the question of the correctness of the finding arrived at by the High Court that the Manjeri Court had no territorial jurisdiction to take cognizance of the application praying for final decree.”

(8) The learned Lower Appellate Court should also have considered whether any prejudice has been caused to the respondent by not deciding the issue of jurisdiction as a preliminary issue. This question has not been considered at all. Even at the hearing of this appeal, learned counsel for the respondent was asked to show in what manner any prejudice has been caused to him. He has not been able to show any. The respondent has contested the suit and led entire evidence as was advised. Thus, there exists no circumstance which may show any prejudice to the respondents due to trial of suit at Chandigarh in a Court having no territorial jurisdiction.

(9) In view of the ratio of the judgment aforesaid, which is squarely applicable to the facts of the present case, the order impugned is not sustainable, the same is accordingly set aside and case is remanded back to the learned Lower Appellate Court for a fresh decision on merits.

(10) The appeal is disposed of with the above observations.

(11) The parties, through their counsel, are directed to appear before the learned Lower Appellate Court, Chandigarh, on 15th October, 2007.