

M/s. Nirula Brothers Private Ltd. v. Krishan Kumar Khurana
(Gopal Singh, J.)

REVISIONAL CIVIL

Before Prem Chand Pandit and Gopal Singh, JJ.

M/S. NIRULA BROTHERS PRIVATE LTD.,—*Petitioners.*

versus

KRISHAN KUMAR KHURANA,—*Respondent.*

Civil Revision No. 806 of 1970.

August 30, 1971.

Code of Civil Procedure (Act No. V of 1908)—Section 20, Explanation II—Plaintiff, an employee of a limited company—Subordinate office of the company situated at a place, where he works and receives salary—Suit for the recovery of the arrears of the salary—Whether entertainable at such place.

Held, that under second part of Explanation II appended to section 20 of the Code of Civil Procedure, a suit filed against a company registered under the Indian Companies Act would be entertainable in a civil Court exercising jurisdiction over the place where the subordinate office of the company is situate and where the cause of action arises to the plaintiff against the Company. When a plaintiff, an employee of a limited Company works at a place where the subordinate office of the Company is situate and is entitled to receive his salary there, his suit for the recovery of the arrears of the salary is entertainable in the civil Court of that place. (Para 7.)

Case referred by Hon'ble Mr. Justice Prem Chand Pandit on 20th May, 1971, to a larger Bench for deciding the important question of law. The Division Bench consisting of Hon'ble Mr. Justice Prem Chand Pandit and Hon'ble Mr. Justice Gopal Singh finally decided the case on 30th August, 1971.

Petition under Section 115 of Civil Procedure Code, for revision of the order of the Court of Sub Judge, Gurgaon dated 31st March, 1970, ordering that the case to come up for the evidence of the plaintiff on 4th May, 1970, PF and DM within a week.

K. L. Sachdeva, Advocate, for the petitioner.

H. L. Sarin, Advocate with K. T. S. Tulsi, Amrit Lal Bahl, M. L. Sarin, Advocates, for the respondent.

JUDGMENT

GOPAL SINGH, J.—(1) This reference to the Division Bench has arisen in revision petition filed by Messrs. Narula Brothers Private Limited, defendant against K. K. Khurana, plaintiff from the order of Sub-Judge 1st Class, Gurgaon, dated March 31, 1970, holding that that Court had jurisdiction to try the suit filed by the plaintiff against the defendant for recovery of Rs. 3,295.50 claimed on account of arrears of his salary.

(2) The defendant is a limited company registered under the Indian Companies Act. It has its Head Office at New Delhi. It runs a factory at Gurgaon. The plaintiff was employed by the defendant on October 25, 1966 as Administrative Officer in charge of the factory at Gurgaon. He resigned on September 18, 1968. The plaintiff filed the suit at Gurgaon on July 29, 1969. In para 7 of the plaint, the plaintiff stated that the cause of action arose to the plaintiff for recovery of the salary on the dates, when it had to be paid to the plaintiff, that the plaintiff had been appointed at Gurgaon and that he worked for gain there and consequently the Court at Gurgaon had jurisdiction to entertain the suit. In the written statement filed on behalf of the defendant, a preliminary objection was raised that the defendant was a limited company incorporated under the Indian Companies Act and that the plaintiff had been appointed at New Delhi and not at Gurgaon. It added that he used to receive salary from the office at New Delhi and hence the Court at Gurgaon had no jurisdiction.

(3) In the replication filed on behalf on the plaintiff, the reply of the defendant that the plaintiff had been appointed at New Delhi was repudiated and it was asserted that the plaintiff had been appointed at Gurgaon and that he was entitled to receive his salary at Gurgaon and had been receiving the same there.

(4) One of the issues framed on the pleadings of the parties was as to whether the Court at Gurgaon had no jurisdiction to try the suit. This issue was tried by the Court as a preliminary issue. Both the parties led evidence. Jitendar Mehta D.W. 1 appeared on behalf of the defendant-company. He is Manager of the Company. He stated that the factory of the defendant-company is situate at Gurgaon that right from the date the plaintiff was appointed as an Administrative Officer upto the date he resigned, he worked at

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Gurgaon as Administrative Officer. He stated that the plaintiff used to be issued receipts for the salary. He admitted that he personally never paid any salary to the plaintiff. This witness also admitted that the factory situate at Gurgaon was registered under the Indian Factories Act, 1948 and that all labour disputes pertaining to the factory were referred to the Conciliation Officer at Gurgaon and that all industrial and labour returns were submitted from the office of the factory at Gurgaon. The plaintiff himself went into the witness box as P.W. 1. He stated that he was incharge of the factory in the capacity of its Administrative Officer at Gurgaon that while functioning there right from the date of his appointment, he was paid his salary at Gurgaon and that he used to issue receipts to the defendant-company for the salary received by him at Gurgaon. In course of his cross-examination, he emphatically denied the suggestion put to him that he used to go to Delhi to receive his salary. It is the defendant-company, who were in custody of the various documents pointing out to the place where the plaintiff was receiving his salary. They have withheld those documents from the Court. The burden of this preliminary issue was upon the defendant to show that the Court at Gurgaon had no jurisdiction to entertain the suit and, therefore, the defendant had to establish that the salary was not being received by and paid to the plaintiff at Gurgaon but at New Delhi. It has been averred on behalf of the defendant-company that the salary was being paid to the plaintiff by cheques in their Head Office at New Delhi. No such documentary evidence has been produced. The documentary evidence relating to this issue having been withheld by the defendant-company, no importance could be attached to the oral assertion of Jitendar Mehta that the salary was being paid to the plaintiff at New Delhi. It is admittedly the case of the defendant-company that the plaintiff right from the date of his appointment to the date of resignation worked as Administrative Officer at Gurgaon. Being Administrative Officer, he was in charge of the administrative work of the office pertaining to the factory set up by the defendant-company at Gurgaon. In the absence of any contract to the contrary and none has been proved on the file on behalf of the defendant-company, the salary would be payable to the plaintiff at the place, where he carried on his work as an Administrative Officer. It has also been stated by the plaintiff that he had been allotted a house at Gurgaon and that he resided there in that house and the rent of that house was being paid by the defendant-company.

(5) According to letter dated December 22, 1966 addressed by the Managing Director of the defendant-company to the Chief Inspector of Factories, Haryana State, Chandigarh, Exhibit P. 2, the latter was communicated that the plaintiff would be working as a Factory Manager with effect from January 1, 1967 for the purpose of the provisions of the various labour laws. This has reference to the factory being run by the defendant-company at Gurgaon, for which the plaintiff had been appointed as Administrative Officer. This letter also shows that the plaintiff was the principal officer appointed as Administrative Officer and described in this letter as Factory Manager and was administratively in charge of the affairs pertaining to the factory. This letter leaves no doubt that the plaintiff was running the administrative office of the factory at Gurgaon.

(6) The above evidence leads to the conclusion that the defendant-company was running an office at Gurgaon and the plaintiff had been appointed as Administrative Officer in-charge of that company. That office being obviously under the control and supervision of the Head-Office was nothing but an office subordinate to the Head Office of the Company situate at New Delhi. Taking into consideration the cumulative effect of the evidence of Jitendar Mehta, D.W. 3 trial Court drew the inference that the defendant-company had its subordinate office at Gurgaon. The correctness of that view taken by the trial Court has not been challenged by any ground in the grounds of appeal. Thus, the defendant-company has treated as correct the finding of the trial Court that it had a subordinate Office at Gurgaon.

(7) From the above discussion, the following two facts follow:—

- (1) The defendant-company had its subordinate office at Gurgaon.
- (2) The plaintiff was in charge of that office as Administrative Officer and was to be paid his salary there.

The question that arises for determination is as to whether by virtue of Explanation II appended to Section 20 of the Code of Civil Procedure, cause of action cannot arise to the plaintiff for filing the suit at Gurgaon, when on the basis of these findings of fact it has been found that the subordinate office of the defendant-company is situate at Gurgaon and the plaintiff is entitled to the payment of

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salary there. The relevant part of Section 20 along with Explanation II runs as follows :—

“Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

(a) the defendant, or each 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; or

(b)

(c) the cause of action, wholly or in part, arises.

Explanation I.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.”

Under second part of Explanation II, a suit filed against the defendant-company would be entertainable in a civil Court exercising jurisdiction over the place, where the subordinate office of the defendant-company is situate and where the cause of action arose to the plaintiff against that company. We have found that the subordinate office of the company is situate at Gurgaon and the cause of action arose to the plaintiff at Gurgaon consequent upon failure of the defendant-company to pay salary to the plaintiff there. Thus, both the conditions pertaining to the maintainability of the suit against the defendant-company as referred to in second part of Explanation II of Section 20 of the Code of Civil Procedure being satisfied, civil Court at Gurgaon has jurisdiction.

(8) For the foregoing reasons, we dismiss the revision petition and uphold the order of the trial Court. There will, however, be no order as to costs. The counsel for the parties have undertaken that the parties shall appear before the trial Court on October 5, 1971.

PANDIT, J.—I agree.

B. S. G.