

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice Md. Ali Reza

Civil Miscellaneous Case No. 04 of 2021

Sk. Shahadat Hossain petitioner

-Versus-

Mr. Florian Baertsch represented by Subrata
Halder opposite party

Mr. Dipayan Saha, Advocate
..... for the petitioner

Mr. Biplop Goswami with
Ms. Konika Mondal, Advocates
..... for the opposite party

Judgment on 14.06.2023

Bhishmadev Chakrabortty, J:

In this rule the opposite party was called upon to show cause as to why Money Suit No. 114 of 2016 now pending in the Court of Joint District Judge, Court No. 1, Dhaka should not be transferred to any Court of Gopalganj district having jurisdiction of its trial and/or such other or further order or orders passed to this Court may seem fit and proper.

At the time of issuing the rule all further proceedings of the aforesaid money suit was stayed which still subsists.

Facts relevant for disposal of the rule, in brief, are that plaintiff Mr. Florian Baertsch, a man from Zuerich, Switzerland through his local representative Subrata Halder instituted the suit against the present petitioner praying for decree of recovery of money as detailed

in the schedule to the plaint. In the plaint it has been asserted that the plaintiff is a citizen of Switzerland and a renowned social worker. The plaintiff's mission is to support the rural marginalised people specially of christian community. For the aforesaid purpose he has been operating various projects in the world. The defendant made communication with him and requested to affirm him for development and social economic growth of the people of Bangladesh expressing him as a social worker and chairman of Bangladesh Isahi Society. The plaintiff then took decision to perform social works in Bangladesh through the defendant. Upon demand of the defendant, the plaintiff on different dates paid amount equivalent to taka 2,50,06,000/- to the defendant. It is stated in the plaint that the plaintiff entered into an agreement with the defendant on 30.04.2011 to assist the people of this country who are needy. However, the defendant cheated with the plaintiff and misappropriated the whole amount. Hence the suit was filed to pass a decree of compensation against the defendant of outstanding Taka 2,50,06,000/-. The suit has been filed in the Court of Joint District Judge, Court No. 1, Dhaka. The notice was sent upon the defendant. The defendant appeared in the suit on 22.03.2020 and prayed for time. Subsequently, he moved in this Court with this application under section 24 of the Code of Civil Procedure (the Code) for transferring the case from Joint District Judge, Court No. 1, Dhaka to any Court situated in Gopalganj district having jurisdiction

for its trial on the grounds that the authorised person of the plaintiff namely Subrata Halder resides at Jalirpar, Muksudpur within the district of Gopalganj and that the address of the defendant is at Gopalganj Sadar, Gopalganj, therefore, the Joint District Judge, Court No. 1, Dhaka has no territorial jurisdiction of trying the suit and as such it would be transferred to a competent Court of Gopalganj having jurisdiction for its trial.

Mr. Dipayan Saha, learned Advocate for the petitioner taking us through the provisions of section 20 and 24 of the Code submits that section 20 of the Code prescribes for institution of any suit in the Court within the local limits where the defendant resides or carries on business. Here the address in the plaint shows that the defendant permanently resides at Gopalganj district and as such there could be no reason of filing the suit in a Court situated in Dhaka. It must be and should have been filed in the Court situated at Gopalganj. He submits that, if the alleged transaction between the plaintiff and the defendant is considered, the cause of action of filing this suit has arisen within local limit of Gopalganj district Judge Court. He refers to the case of Managing Director Rupali Bank Limited and others Vs. Tafazal Hossain and others, 44 DLR (AD) 260 and the case of Anwar Hossain (Md) Vs. Lutfar Nahar and others, 71 DLR (AD) 324 and submits that the jurisdiction of a Court goes to the very root of a matter brought before it, and if the Court got no jurisdiction everything falls through.

The Court which got no jurisdiction over a matter shall not go into the merit of the matter. He further submits that since the petitioner wants to transfer the suit from one district to another, the only forum available to him is to file an application before the High Court Division under section 24 of the Code. Since the parties of the suit and cause of action of its filing are within the local limit of Gopalganj district, the suit pending before the Joint District Judge, Court No. 1, Dhaka is to be transferred to a competent Court of Gopalganj district. The rule, therefore, should be made absolute.

Mr. Biplop Goswami, learned Advocate for the opposite party opposes the rule and submits that the provisions of section 24 of the Code provides that a suit may be transferred from one district to another district, if the proceeding remains pending before it for trial. Here the petitioner brought allegation that the Joint District Judge, Court No. 1, Dhaka has no jurisdiction of trial of the instant suit, be that as it may the petitioner might have filed an application there alleging that it has no jurisdiction to receive the case. He might have filed an application under Order 7 Rule 10 of the Code for return of the plaint and to submit it before a competent Court having jurisdiction of its trial. He refers to the cases of *Neha Arun and Jugador and another Vs. Kumari Palak Diwan Ji* AIR 2011 SC 1164, *Mst. Razia Shafi Vs. Major MS Malik*, PLD 1971 SC, 247 and *B Kanhaiya Lal and others Vs. Hamid Ali* AIR 1940 Oudh 165 and

submits that transfer of a case cannot be ordered on the ground that Court where suit was pending have no jurisdiction of its trial. The party has to apply to the Court for dismissing the suit on that ground. He further submits that in view of the *ratio* laid in the aforesaid cases a suit cannot be transferred from one district to another unless former has jurisdiction to try it. He pointed to the cause title of the suit showing that the present address of the authorised person of the plaintiff is at 401/1, New Eskaton Road, Mogbazar, Dhaka and that the transaction between the plaintiff and the defendant took place in Dhaka in some occasions and submits that a suit may be filed in a Court where the cause of action arise. The plaintiff committed no wrong in filing the suit before the Joint District Judge, Court No. 1, Dhaka having territorial and pecuniary jurisdiction for trial of the suit. The rule, therefore, having no merit would be discharged.

We have considered the submissions of both the sides, gone through the materials on record including the counter affidavits and supplementary affidavits filed by the parties and consulted with the relevant provisions of law.

Sections 15-23 of the Code deals with the provisions of place of suing. Section 16 of the Code provides that a suit should be instituted where the subject matter is situated and section 17 deals with filing of the suit within the territorial jurisdiction where the property or any part thereof is situated. Section 18 of the Code deals with institution

of suit in any of the place where local limit or jurisdiction is uncertain. Section 19 of the same Code deals with the suits for compensation for wrong done to the person or to movable property, if the wrong is done in one place and the defendant resides in other jurisdiction, the suit may be filed in either of the place at the option of the plaintiff and section 20 deals with the other suits to be instituted where the defendant resides, or cause of action arises. Section 22 deals with power to transfer suits which may be instituted in more than one Court and instituted any one of them.

In this case we find that the plaintiff Mr. Florian Baertsch is the chairman of kingdom of Ministries, its head office is situated at Zuerich, Switzerland and he is a permanent citizen of Switzerland. He appointed one Subrata Halder of village Talbari, Jalirpar, Muksudpur, Gopalganj his attorney to take legal actions against the defendant who is a resident of Gopalganj. It appears from the plaint that the attorney has an address at 401/1, New Eskaton Road, Mogbazar, Ramna, Dhaka. The present address also has been used by the principal as his address in Bangladesh. On perusal of the document submitted by the parties, we find that it has been alleged that some deals of money between the plaintiff and defendant were held in the blanks situated at Dhaka.

It further appears that in the schedule of the plaint the plaintiff stated that the agreement between the plaintiff and the defendant was

signed on 30.04.2011. On going through the aforesaid agreement annexure 'A' to the counter affidavit, we find that it was signed in Heimberg, Switzerland, i.e., the contract was signed between the parties in Switzerland and, therefore, the plaintiff can file the suit in any district of Bangladesh including Dhaka. Although this fact of signing agreement is to be proved at the time of trial but at this stage *prima facie* we find the contract between the parties was signed in Switzerland.

A suit is to be instituted in a Court who has territorial jurisdiction of its trial. It appears that the present address of the plaintiff was mentioned at Dhaka-401/1, New Eskaton Road, Moghbazar, Ramna, Dhaka which is within the territorial jurisdiction of the Joint District Judge, Court No. 1, Dhaka. The cause of action of the filing of the suit to some extent arose in the head office of some banks situated in Dhaka. So in our view the suit has rightly been filed in the First Court of Joint District Judge, Dhaka although in the cause title of the plaint the permanent address of both the plaintiff and defendant have been mentioned at Gopalganj. It also appears from the annexures filed by the opposite parties with counter affidavit that a criminal case is pending in this country against the present defendant. The plaintiff himself came to this country and deposed in that case in the Magistrate Court of Dhaka. In this suit, if the plaintiff desires to

lead evidence by himself, it would be very difficult for him to go to Gopalganj.

In disposing an application filed under section 24 of the Code for transfer of a case from one district to another district balance of convenience and inconvenience of the parties has to be taken into consideration. Here the plaintiff did not file the transfer miscellaneous case bringing allegation against the Court or against the parties, but he has filed this case for transfer on the ground of having no territorial jurisdiction mainly stating the fact that both the attorney and the defendant permanently resides at Gopalganj which cannot be a ground to transfer the suit from Dhaka to Gopalganj. Section 21 of the Code reads as follows-

“No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice”.

In view of the aforesaid law, at best the defendant could have filed an application in the Court of Joint District Judge, Court No. 1, Dhaka for return of the plaint to file the suit to the Court as claimed by him or could have filed an application for dismissal of the suit on that ground. But here, we find no reason of its filing in any Court at Gopalganj or that it could be dismissed on that point. We find the place of suing of the suit correct. If we allow the petitioner to file an

application to the trial Court for return of the plaint or for its dismissal, it would cause unnecessary delay in disposal of the suit.

Considering all aspects of the case, the provisions of law and *ratio* of cases at referred to by Mr. Goswami, we find substance in his submission and the Rule bears no merit. The *ratio* of the cases referred to by Mr. Saha do not match this case considering the facts upon which the *ratio* is laid.

Accordingly, we find no merit in this rule. The rule is, therefore, discharged without any order as to costs. The order of stay stands vacated. The trial Court is directed to dispose of the suit expeditiously.

Communicate this judgment and order to the concerned Court.

Md. Ali Reza, J:

I agree.