

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. 16893 OF 2018

M/S EXL CAREERS & ANR.

...PETITIONER(S)

Versus

FRANKFINN AVIATION SERVICES
PVT. LTD.

...RESPONDENT(S)

ORDER

DEEPAK GUPTA, J.

According to us, there is an apparent conflict between the judgment in ***Oil and Natural Gas Corporation Ltd. v. Modern Construction & Company***¹ and ***Joginder Tuli v. S. L. Bhatia***², which we feel should be resolved by a larger Bench.

¹ (2014) 1 SCC 648

² (1997) 1 SCC 502

2. The issue which needs to be resolved is “whether after a plaint is returned in terms of Order VII Rule 10 and Rule 10A, Code of Civil Procedure (CPC), should the trial in the Court where the plaint is now filed start *de novo* or from such stage at which the plaint was ordered to be returned?”

3. To appreciate the issue in hand, it would be necessary to give certain facts. The plaintiff (respondent herein) filed a civil suit at the Court at Gurgaon for recovery against the defendants (petitioners herein). On 26.08.2011, the defendant filed an application under Order VII Rule 10 CPC seeking return of the plaint for want of jurisdiction. It would be pertinent to mention that the ground taken was that the cause of action arose at Meerut and no cause of action arose at Gurgaon and further the defendants did not reside at Gurgaon. This application was contested and it was dismissed on 12.03.2015. The Court held that the evidence was required to be recorded and, therefore, it felt that the issue of jurisdiction should be framed separately as a preliminary issue. Thereafter, the parties filed their pleadings. Issues were framed on 01.10.2015 but at that stage, no preliminary issue was framed. Later, on 06.11.2015, a

preliminary issue with regard to jurisdiction of the trial court was framed. Parties led evidence on the preliminary issue and the trial court vide order dated 06.09.2016 decided the issue in favour of the plaintiff and against the defendants. The case was then fixed for the evidence of the plaintiff which was recorded on 17.03.2017. The evidence of the defendants was closed on 03.07.2017 and the matter was adjourned to 18.07.2017 for rebuttal evidence, if any, and for arguments.

4. In the meantime, the defendants had challenged the order dated 06.09.2016 before the High Court by filing Civil Revision No. 8026 of 2016. This civil revision was decided on 05.09.2017. The High Court held that in view of the clause in the agreement which was signed in Delhi conferring exclusive jurisdiction to the courts at Delhi, the Court at Gurgaon had no jurisdiction. The relevant portion of the judgment reads as follows:-

“In the present case, the parties with open eyes decided to confer exclusive territorial jurisdiction in the courts at Delhi. The agreement between the parties is admitted. It was a commercial contract between the parties. In these circumstances, the court at Gurgaon is found lacking in the territorial jurisdiction.

Learned counsel for the respondent has submitted that the trial has made substantial progress and, therefore, this Court should not interfere at this stage.

I have examined the contention of the learned counsel for the respondent. However, once the Court at Gurgaon is found to be lacking in territorial jurisdiction, therefore, it will not be possible for this Court to accept the contention.

In view of the above, the order under revision is set aside. The learned trial court shall take steps to return the file in accordance with the provisions of Order 7 Rule 10 and 10-A of the Code of Civil Procedure.

The revision petition is allowed.”

5. Thereafter, the plaintiff filed an application under Order VII Rule 10 and 10A praying that the entire file be returned for presenting the same to the District Judge, South West Dwarka, Delhi and a date be fixed for appearance before the said Court. This application was contested by the defendants. The trial court directed that the entire case file be sent to the Court at Dwarka, Delhi. A revision petition was filed and the main ground which was taken was that the trial should start *de novo* in the Court at Dwarka. The High Court dismissed the revision petition holding that the Court at Dwarka was a transferee court.

6. We have heard Shri Manoj Swarup, learned senior counsel for the defendants-petitioners and Shri P.S. Patwalia, learned senior counsel for the respondent-plaintiff. Shri Swarup submits that the order of the High Court in the earlier revision petition

being Civil Revision No. 8026 of 2016 having become final, only the plaint was ordered to be returned and under Order VII Rule 10 and 10A this matter cannot be reopened. His further contention is that in terms of the judgment of this Court in the case of **Modern Construction** (supra) when the Court orders return of the plaint, the Court in which the plaint is then presented has to proceed *de novo* and cannot take benefit of any actions which may have taken place in the Court from which the plaint was returned. On the other hand, Shri Patwalia has raised the contention that the petition should not be entertained because the petitioners are guilty of hiding material facts and trying to mislead this Court by doing so. His second submission is that the judgment in **Modern Construction** (supra) is not applicable and, in any event, it is contrary to the law earlier laid down in **Joginder Tuli case** (supra). He submits that the High Court, even while deciding Civil Revision No.8026 of 2016, had ordered return of the file and not the plaint which would indicate that the case was to be returned lock, stock and barrel to be re-filed before the appropriate Court at Delhi.

7. At the outset, we may state that we are not deciding the first objection raised by Shri Patwalia and leave it open to be raised after decision of the larger Bench in the reference. Even if the reference is decided in favour of the defendants, the plaintiff-respondent will be at liberty to urge that the defendants-petitioners are not entitled to any relief and that issue shall be decided after hearing the parties.

8. We are mainly concerned with the jurisdictional aspect. Should the time of the Court, parties and witnesses spent in the Court not having jurisdiction, be set at naught or should that material be taken into consideration in the new Court and the proceedings proceed from the stage at which the return is ordered?

9. Normally, it would be expected that the application under Order VII Rule 10 will be decided even before framing of issues and if that is done then obviously the new Court can only proceed *de novo* but even there, supposing pleadings are complete, the question would arise whether the defendants should be allowed or required to file fresh written statement or

the same can be sent to the Court where the plaint is filed after return. In the scheme of CPC, it was apparently expected that application under Order VII Rule 10 would be decided expeditiously and before evidence is recorded. In ***Joginder Tuli case*** (supra), the suit had earlier been filed with a lower valuation before the appropriate Court. Thereafter, the plaint was amended and a higher relief was claimed which was beyond the pecuniary jurisdiction of the first court i.e. the Court of Sub-Judge. Accordingly, the plaint was returned for presentation to the proper Court having jurisdiction i.e. the Court of District Judge. On revision, the High Court directed that the case be taken up at the new Court i.e. the District Court, and proceeded from the stage at which it was returned. The relevant observations of this Court in ***Joginder Tuli case*** (supra) are as follows:

“5.....Normally, when the plaint is directed to be returned for presentation to the proper Court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that state at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”

10. In **Modern Construction** (supra) a two-Judge Bench of this Court relied upon the judgment of the Privy Council in **Ramdutt Ramkissendass v. F.D. Sassoon & Co.**³, and the judgments of this Court in **Amar Chand Inani v. Union of India**⁴, **Hanamanthappa v. Chandrashekharappa**⁵ and **Harshad Chimanlal Modi v. DLF Universal Ltd.**⁶ to come to the conclusion that the new Court should start the proceedings *de novo*. It was held, relying upon the judgment in **Harshad Chimanlal Modi** (supra) that the observations in **Joginder Tuli case** (supra) were in a peculiar fact situation. This Court held as follows:

“17. Thus, in view of the above, the law on the issue can be summarised to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted *de novo* even if it stood concluded before the court having no competence to try the same.”

3 AIR 1929 PC 103

4 (1973) 1 SCC 115

5 (1997) 9 SCC 688

6 (2006) 1 SCC 364

11. We are unable to subscribe to the view rendered in ***Modern Construction case*** (supra) and feel that this judgment may require reconsideration by a larger Bench. The only distinction, in so far as the ***Joginder Tuli case*** (supra) is concerned, is that in that case the Court had jurisdiction when the plaint was filed whereas in the present case and the other cases, the Court, where the plaint is filed, did not have jurisdiction even when the plaint was filed.

12. In our view, this will not make any difference in so far as the powers conferred on Court under Order VII Rule 10 and 10A of CPC are concerned. While sub-rule (1) of Rule 10 of Order VII envisages that a plaint can be returned at any stage of the suit to be presented to the Court in which the suit should have been instituted, the explanation thereto provides that the power of return of plaint can be exercised even by an appellate court or a revisional court after setting aside the decree passed in the Court. Order VII Rule 10A provides that where in any suit, after the defendant has appeared, the Court is of the opinion that the plaint should be returned, the plaintiff may make an application

specifying the Court in which he proposes to present the plaint after its return, pray that a date may be fixed for appearance of the party in the said Court and request that notice of the date fixed be given to the plaintiff as well as to the defendant. The Court can thereafter fix a date for appearance and the new Court need not summon the defendant again if such notice had been given. In ***Joginder Tuli case*** (supra), the Court directed that the evidence already recorded be taken into consideration whereas in ***Modern Construction case*** (supra) a different view was taken.

13. The Courts in India are burdened with a lot of litigation. We see no justifiable reason why the proceedings which may have taken place in a Court even if it has no jurisdiction, cannot be transferred to the new Court having jurisdiction. Unless a party can prove that it has been actually prejudiced by some proceedings before the Court not having jurisdiction, it would not be in the larger interest to start the proceedings *de novo*. We may refer to certain provisions of the CPC in this regard. Section 21 of the CPC provides that no objection as to the territorial or pecuniary jurisdiction shall be allowed to be raised in an

appellate or revisional court unless such objection was taken in the Court of first instance or at the earliest possible opportunity and, in any event, before the framing of issues. The further requirement is that there should be consequent failure of justice. It has repeatedly been held that the objections with regard to the pecuniary or territorial jurisdiction are technical objections and unless raised at the earliest possible opportunity, cannot be entertained in appeal or revision for the first time⁷.

14. We may also refer to Order XIV, Rule 2 of CPC which provides that notwithstanding that a case may be disposed of on a preliminary issue, the Court, subject to provisions of sub-rule (2), should pronounce judgment on all issues. Sub-rule (2) provides that the Court can dispose of a suit on an issue of law only, which it may try first if that issue relates to the jurisdiction of the Court or a bar to the suit created by any law for the time in force and in that eventuality, it must, normally postpone the settlement of other issues until such preliminary issue is determined.

⁷ Seth Hiralal Patni v. Sri Kali Nath, AIR 1962 SC 199, R.S.D.V. Finance Co. Pvt. Ltd v. Vallabh Glass Works Ltd, AIR 1993 SC 2094

15. In the present case, the trial court found that one of the defendants resided at Gurgaon and, therefore, the Court had jurisdiction. The High Court held that because of the exclusive jurisdiction clause in the agreement with regard to the Courts at Delhi, it was only the Courts at Delhi which had jurisdiction. There is no lack of inherent jurisdiction in the Court at Gurgaon but the Court lacks jurisdiction because of agreement between the parties giving exclusive jurisdiction to Courts at Delhi where the agreement was executed.

16. The earlier law was that a Court having no jurisdiction should not give a finding on merits but now the mandate of the law is that if all issues are decided together, a duty is cast on the Court to give findings on all issues. The reason for this is simple. If the finding of the trial court on the preliminary issue, holding that it had no jurisdiction, is set aside, then the matter need not be remanded and the appellate or revisional court will have the benefit of the findings of the other issues.

17. In our view, the same principles which govern Section 21 and Order XIV CPC should apply to Order VII Rule 10 and 10A CPC also and the time of the Court, the parties and the witnesses should not be wasted. When the Court orders a return of the plaint, we *prima facie* feel that the Court exercising its inherent jurisdiction should return the plaint, which is the property of the plaintiff, to the plaintiff but should also transfer the other material on record to the Court to which the plaintiff applies for transfer in terms of Order VII Rule 10A. This would avoid duplicity of proceedings, evidence and contradictions in pleadings and evidence, if two sets of pleadings and evidence are allowed in the same set of proceedings. In the case in hand, the case was fixed for rebuttal evidence, if any, and arguments. Pleadings and evidence are over. Why should the clock be turned back by 6 years, which it took to reach this stage?

18. Therefore, in view of the above apparent conflict between the case of ***Modern Construction*** (supra) and ***Joginder Tuli case*** (supra), we refer the question framed in the beginning of the

order for decision of a larger Bench. The matter be placed before the Hon'ble the Chief Justice of India for appropriate directions.

.....J.
(Deepak Gupta)

.....J.
(Aniruddha Bose)

New Delhi
September 13, 2019

ITEM NO.55

COURT NO.13

SECTION IV-B

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 16893/2018

(Arising out of impugned final judgment and order dated 13-03-2018 in CR No. 1602/2018 passed by the High Court Of Punjab & Haryana At Chandigarh)

M/S EXL CAREERS & ANR.

Petitioner(s)

VERSUS

FRANKFINN AVIATION SERVICES PVT. LTD.

Respondent(s)

Date : 13-09-2019 This petition was called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE DEEPAK GUPTA
 HON'BLE MR. JUSTICE ANIRUDDHA BOSE**

**For Petitioner(s) Mr. Manoj Swarup, Sr. Adv.
 Mr. Ankit Swarup, AOR
 Mr. Jawad Tariq, Adv.**

**For Respondent(s) Mr. P.S. Patwalia, Sr. Adv.
 Ms. K.S. Kohli, Adv.
 Ms. Meenakshi Midha, Adv.
 Mr. Kapil Midha, Adv.
 Ms. Abhivandana, Adv.
 Ms. Pritika Juneja, Adv.
 Mr. Chander Shekhar Ashri, AOR
 Mr. Amandeep Singh, Adv.**

UPON hearing the counsel the Court made the following

O R D E R

The Court made the following observation in terms of the signed non-reportable order:

“18. Therefore, in view of the above apparent conflict between the case of *Modern Construction* (supra) and *Joginder Tuli case* (supra), we refer the question framed in the beginning of the order for decision of a larger Bench. The matter be placed before the Hon’ble the Chief Justice of India for appropriate directions. “

**(MEENAKSHI KOHLI)
COURT MASTER**

**(RENU KAPOOR)
COURT MASTER**

[Signed non-reportable order is placed on the file]