

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) No.29/2008 and CM Nos.875-876/2008**

% **Date of Decision: 18th January, 2008**

M/S. ARINITS SALES PVT. LTD. Appellant
Through: Mr. Ajay Malviya, Advocate

versus

M/S. ROCKWELL PLASTIC PVT. LTD. & ORS. Respondents
Through

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

% **18.01.2008**

: **DR. MUKUNDAKAM SHARMA, C.J. (ORAL)**

1. This appeal is directed against the order dated 20.12.2007 passed by the learned Single Judge holding that Delhi Court shall have no jurisdiction to entertain and decide the suit which is instituted by the appellant as plaintiff. Having held thus, a direction was issued by the learned Single Judge to return the plaint to the appellant for presentation in the competent court of jurisdiction.

2. A suit was filed by the appellant herein as a summary suit seeking for recovery of Rs.20,53,944/- against the defendants and also for interest @ 18% per annum. The defendants entered appearance and thereafter the plaintiff moved an application for service of summons for judgment upon the defendants. Summons for judgment were duly served upon the defendants and immediately thereafter, they filed an application for leave to defend the present suit. The defendants also moved an application under Order VII Rule 10 of the Code of Civil Procedure taking up the plea that this Court has no

territorial jurisdiction to entertain the suit and, therefore, the plaint should be returned. Since an objection with regard to the territorial jurisdiction of Delhi Court was taken, the said plea was taken up for consideration and upon hearing the counsel for the parties at length, the learned Single Judge upheld the aforesaid preliminary objection regarding the maintainability of the suit in view of the facts and circumstances stated in the impugned order. Therefore, the plaint was directed to be returned for presentation in the competent court of jurisdiction. The learned Single Judge had taken notice of the fact that the plaintiff has supplied the goods and raised its invoices/bills from Faridabad. Notice was also taken of the fact that the defendant Company is situated at village Kassar, Tehsil Bahadurgarh, District Jhajjar, Haryana and works for gain at the same address. Cheques were also issued by the defendant Company in favour of the plaintiff drawn on State Bank of Bikaner and Jaipur, Delhi Rohtak Road, Bahadurgarh, District Rohtak in the State of Haryana. Those cheques, on presentation, were dishonoured by the drawee bank either for insufficiency of funds or payments stopped. In view of the said fact, it was also held that cause of action if any on dishonourment of cheques arose at Bahadurgarh. Reference was also made by the learned Single Judge to the fact that plaintiff has categorically averred in the plaint that the defendant Company had issued form ST-15 towards their liability to pay the sales tax for the goods received at Bahadurgarh. After referring to the aforesaid facts, it was held that merely because the aforesaid cheques were presented in the Delhi account of the appellant, the same would not vest any jurisdiction on this Court. Another plea raised by the appellant that the complaint under Section 138 of the Negotiable Instruments Act was filed at Delhi was dealt with by the learned Single Judge, stating that simply because such a complaint has been filed at Delhi would not confer any jurisdiction on the Civil Courts in Delhi.

3. The aforesaid findings and conclusions arrived at by the learned Single Judge are challenged in this appeal, on which we have heard the learned counsel appearing for the appellant. We have also been taken through the records. Counsel appearing for the

appellant has drawn our pointed attention to the notice which is annexed as Annexure I. Specific reference was made to Clause 2 of the terms and conditions of sale which states that all disputes are subject to Delhi Jurisdiction only. Our attention was also drawn to Clause 4 thereof, which provides as follows:

“4. All cheque/drafts are to be drawn in the name of the Company ARINITS SALES CORPORATION marked “A/C PAYEE” payable at Delhi only unless otherwise specified to be made through our Branch Office.”

4. Counsel appearing for the appellant, in support of the contention that Delhi Court will have jurisdiction because of the aforesaid stipulation in the terms and conditions of the sale, refers to and relies upon the decision of the Hon'ble Supreme Court in *A.B.C. Laminart Pvt. Ltd. vs. AP Agencies* reported in *AIR 1989 SC 1239*. It was also submitted by the counsel appearing for the appellant that since the cheque was presented in the bank account of the appellant in Delhi, therefore, Delhi Court will have jurisdiction. We have considered the aforesaid submissions in the light of the records which are placed before us. There is no denial of the fact that where cause of action has arisen at different places, the parties would be entitled to vest and confer jurisdiction on a particular Court where even a part of cause of action has arisen. The said proposition has been made clear in the aforesaid decision and the same is a settled position of law in view of the decision of the Hon'ble Supreme Court.

5. However, in the present case, the ratio of the aforesaid decisions could not be applicable, for in our considered opinion, no part of cause of action has arisen in Delhi, which is proved from the evidence on record. The defendant Company is situated at Village Kassar, Tehsil Bahadurgarh, District Jhajjar, Haryana and is working for gain from the same address. The goods were supplied from Faridabad to Bahadurgarh, which is also the case of the appellant as stated in the reply filed to the application under Order VII Rule 10 CPC. It is, thus, established and proved that the goods were not supplied from Delhi. All the invoices/bills were also issued by the appellant at Faridabad in the name of the defendant No.1, who works for gain at Bahadurgarh and the goods were

delivered at Bahadurgarh, District Jhajjar, Haryana. Cheques issued by the defendant No.1 towards payment of the due amount are drawn on the State Bank of Bikaner and Jaipur, Bahadurgarh. The said cheques on presentation were dishonoured by the drawee bank either for insufficiency of funds or payments stopped at Bahadurgarh. The plea of the counsel appearing for the appellant that the cheques were presented for encashment at Delhi and, therefore, in view of the said position and the clauses in the invoices, i.e., Clause 4 and Clause 2, the appellant would be entitled to file, institute and continue the suit at Delhi is also considered by us.

6. In this connection, we may refer to a similar contention which was urged before us in the case of *Mountain Mist Agro India (Pvt.) Ltd. & Anr. vs. S. Subramaniam* disposed of on 14.01.2008. In the said case also, the territorial jurisdiction of Delhi Court was sought to be invoked on the ground that the cheque was deposited in a bank at Delhi, where the branch office of the company was located and, therefore, it was urged that cause of action arose partly in Delhi. The said contention was negated both by the Single Bench and also by the Division Bench. In the aforesaid decision, the Division Bench of this Court referred to the decision delivered by the Hon'ble Supreme Court in *Shri Ishar Alloy Steels Ltd. vs. Jayaswals Neco Ltd. (2001) 3 SCC 609*, wherein it was held that the bank referred to in clause (a) of the proviso to the Section 138 had reference to the drawee bank on which the cheque is drawn and not all banks where the cheque is presented for collection, including the bank of the payee in whose favour the cheque is issued. In the said decision, the Hon'ble Supreme Court in paragraphs 9 and 10 held as follows:

“9. The use of the words “a bank” and “the bank” in the Section is indicator of the intention of the Legislature. The former is indirect article and the latter is pre-fixed by direct article. If the Legislature intended to have the same meanings for “a bank” and “the bank”, there was no cause or occasion for mentioning it distinctly and differently by using two different articles. It is worth noticing that the word “banker” in Section 3 of the Act is pre-fixed by the indefinite article “a” and the word “bank” where the cheque is intended to be presented under Section 138 is pre-fixed by the definite article “the”. The same Section permits a person to issue a cheque on an account

maintained by him with “a bank” and makes him liable for criminal prosecution if it is returned by “the bank” unpaid. The payment of the cheque is contemplated by “the bank” meaning thereby where the person issuing the cheque has an account. “The” is the word used before nouns, with a specifying of particularising effect opposed to the indefinite or generalising force of “a” or “an”. It determines what particular thing is meant; that is, what particular thing we are to assume to be meant. “The” is always mentioned to denote particular thing or a person. “The” would, therefore, refer implicitly to a specified bank and not any bank. “The bank” referred to in clause (a) to the proviso to Section 138 of the Act would mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued.

10. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present the cheque in any bank including the collecting bank where he has his account but to attract the criminal liability of the drawer of the cheque such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque is drawn within the period of six months from the date on which it is shown to have been issued. In other words a cheque issued by (A) in favour of (B) drawn in a bank named (c) where the drawer has an account can be presented by the payee to the bank upon which it is drawn i.e. (c) bank with a period of six months or present it to any other bank for collection of the cheque amount provided such other bank including the collecting bank presents the cheque for collection to the (C) bank. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Section 2, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank of which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee.”

The decision of the Hon'ble Supreme Court in *I.T. Commr. vs. M/s. Ogale Glass*

Works Ltd. AIR 1954 SC 429 and of Patna High Court in *Gauri Shankar vs. Ram*

Banka AIR 1963 Patna 398 were also referred and distinguished. In the aforesaid

decisions of the Hon'ble Supreme Court, it was held that payment by a negotiable

instrument is a conditional payment and what is meant is that such payment is subject to

a condition subsequent that if the negotiable instrument is dishonoured on presentation,

the creditor may consider it as waste paper and resort to his original demand. As that

was a case of posting of the cheques in Delhi, it was held that the said decision has no

relevance to the facts of the present case.

7. So far as the clause 2 of the terms and conditions of sale is concerned which states that all disputes are subject to Delhi Jurisdiction, it is the settled position of law that Court cannot derive jurisdiction in respect of a matter in respect of which otherwise the said Court does not have jurisdiction merely because the parties have agreed to vest jurisdiction in the said Court (See *Harshad Chiman Lal Modi v. D.L.F. Universal Ltd.* Reported in *2000 (85) DLT 501*).

8. We are of the considered opinion that in view of the facts and circumstances of the case, the Delhi Court will have no jurisdiction. The reasons and the findings recorded by the learned Single Judge are found to be cogent, just and proper. We find no ground to interfere with the aforesaid order passed by the learned Single Judge.

FAO(OS) No.29/2008 and CM Nos.875-876/2008 have no merit and are accordingly dismissed.

CHIEF JUSTICE

REVA KHETRAPAL, J

JANUARY 18, 2008
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