

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

+ **FAO (OS) No. 305/2008 & CM No.9509/2008 (stay)**

% Date of Decision : 18.05.2008

M/s. Rocklite Resins & Chemicals (P) Ltd., & Ors.

... .. Appellant
Through: Mr. K.K. Aggarwal,
Advocate

- V E R S U S -

M/s. Arinits Sales (P) Ltd.

... .. Respondent
Through: Counsel for the respondent.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISHRA

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

SANJAY KISHAN KAUL, J. (Oral)

1. The respondent instituted a suit under the provisions of Order 37 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the said Code') for recovery of Rs.20,37,684/- along with interest @18% per annum till 30.4.2006 totaling to Rs.33,32,335/- along with future interest against the appellant. The respondent

claims that the suit amount is the value of the goods supplied being Phenol. The supplies are stated to have been made under six invoices for which the orders were placed at New Delhi and the supplies were to be made by the respondent from New Delhi. The cheques are alleged to be given at New Delhi and the cheques were presented for encashment at New Delhi where they bounced. The cheques were drawn on the State Bank of Bikaner and Jaipur, Bahadurgarh.

2. The appellant filed an application under Order 7 Rule 10 (i) of the said Code seeking return of the plaint on the ground that this Court does not have territorial jurisdiction to entertain the suit as no part of cause of action had arisen at Delhi. It is the case of the appellant that everything happened at Bahadurgarh and not at Delhi.
3. It may be noticed that the invoices contained printed conditions at the back which are as under:-

“2. All disputes are subject to Delhi Jurisdiction only.

XXX XXX XXX XXX XXX XXX

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. The respondent thus claimed exclusive jurisdiction of Delhi Courts.

5. The learned Single Judge has found in favour of the respondent on the ground that at the stage of consideration of such an application only the averments in the plaint have to be seen and once the allegation is of orders being placed at Delhi, the plaint cannot be thrown out at threshold.
6. The substratum of the case of the appellant is that the respondent filed a similar suit against the sister concern of the appellant in which similar application was filed by such sister concern and the plaint was directed to be return to be presented to a competent court. The order dated 20.12.2007 of the learned Single Judge was challenged in appeal before the Division Bench and in terms of order dated 18.1.2008, the appeal has been dismissed. Learned counsel further emphasis that no part of cause of action has arisen in Delhi and thus even if the printed condition at the back of the invoices are considered, the Court having no jurisdiction cannot be conferred with jurisdiction through that modus operandi.
7. It is trite to say that exclusive jurisdiction can be conferred on any Court so long as that Court is one of the Courts where some cause of action arises. The legal position has been set forth succinctly in **A.B.C. Laminart Pvt. Ltd. Vs. A.P. Agencies, Salem, AIR 1989 SC 1239**. Thus even if the invoice contained the aforesaid clause for exclusive jurisdiction of Delhi

Courts, a suit can be maintained in Delhi only if some part of cause of action has arisen in Delhi.

8. The aforesaid is the rationale for the judgment delivered by the learned Single Judge and the Division Bench in the suit filed against the sister concern of the appellant.
9. If we peruse the impugned order, we find that what has weighed with the learned Single Judge is the scope of Order 7 Rule 10 of the said Code. It is once again trite to say that on examining an application under Order 7 Rule 10 or 11 of the said Code, the plaint alone along with the documents filed with the plaint can be considered. The defence of the defendant is not to be examined at that stage. It is always possible during the course of trial to establish that what is alleged in the plaint is factually incorrect and in that eventuality the plaint can be returned at that stage.
10. A reference in this regard can also be made to the observations of the Supreme Court in **Sajjan Sikaria & Ors. Vs. Shakuntala Devi Mishra & Ors.**, (2005) 13 SCC 687 where it was observed in para 3 as under:-

“3. We find that the directions for considering the question relating to Order 7 Rule 11 CPC as preliminary issue is not correct as that would necessitate filing of a written statement. It is a settled position in law that while dealing with an application under Order 7 Rule 11 CPC, consideration of written statement is not a condition precedent and only averments in the plaint have to be considered.”

11. In the present case, the clear averment made by the respondent is that the place where the order for supply

of goods were placed is at New Delhi. The learned Single Judge has examined the aspect of presentation of cheques for encashment at New Delhi to come to the conclusion that it would not itself conferred jurisdiction in the Courts at Delhi. It is this latter part which has weighed in the judgments relating to the sister concern of the appellant. However, the material aspect to be examined in the present case is the scope of scrutiny by the Court under Order 7 Rule 10 of the said Code. Learned counsel for the appellant has not been able to show to us any document where there is an admission that the orders for the goods were not placed at New Delhi. As to whether this averment is correct or not would have to be tested only during the course of trial. It cannot be at the stage of consideration of this application under Order 7 Rule 10 of the said Code be said that this allegation should be presumed to be incorrect and the application decided on that premise. If the allegation is correct that the orders were placed for supply at New Delhi, then some part of cause of action would arise at New Delhi and thus the clause contained in the invoice of exclusive jurisdiction at Delhi would come into force.

12. We are thus of the considered view that the reasoning of the learned Single Judge that allegation made by the respondent for supplies being made at Delhi would have to be presumed to be correct for consideration of the

application under Order 7 Rule 10 of the said Code is unexceptionable and thus we find no infirmity in the impugned order.

13. The appeal being without any merit is dismissed leaving the parties to bear their own costs.
14. Interim order stands vacated.

SANJAY KISHAN KAUL, J.

MAY 18, 2009
gm

SUDERSHAN KUMAR MISRA, J.