

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 21.11.2011

Judgment delivered on: 23.12.2011

RSA No. 29/2007

Prestige Oriental Carpets Appellant.

Through: Mr.Diwan Singh Chauhan, Adv.

Vs.

Man Singh Saini & Ors.. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

KAILASH GAMBHIR, J.

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1. By this Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, the Appellant seeks to challenge the order dated 1.11.2006 passed by the Court of Additional District Judge in RCA No.94/2005 dismissing the first appeal filed by the appellant and the judgment and decree dated 28.10.2005 passed by the learned Civil Judge in Suit No.365/1998.

2. The brief facts of the case relevant for deciding the present appeal are that the respondent no.1 had filed a suit for recovery against the appellant for a sum of Rs. 76, 750 which was decreed vide order dated 28.10.05. The cause of dispute between the parties is that the appellant, who is in the business of manufacturing carpets had vide an invoice dated 16.12.93 sent 8 rolls of carpet to be dispatched to Germany via the respondent who are travel and cargo agents and the air freight and agency charges for the said order were borne by the respondent no.1/ plaintiff which were not reimbursed by the appellant and led him to file the said recovery suit. The appellant preferred an appeal against the said order which vide judgment and decree dated 1.11.2006 was dismissed. Feeling aggrieved with the said two orders, the appellant has preferred the present appeal.

3. Assailing the orders passed by both the Courts below, Mr. Diwan Singh Chauhan, learned counsel representing the appellant has mainly raised two contentions; firstly that the recovery suit filed by respondent no.1/plaintiff was barred by

limitation as the same was not filed by the respondent no.1 within the prescribed period of three years reckoned from the date of the invoice of bill dated 16.12.1993 and secondly; that the Delhi Courts have no jurisdiction to entertain and try the suit filed by respondent no.1 as no cause of action or part thereof had arisen in Delhi and the entire cause of action had arisen at Bhadhoi, Varanasi and, therefore, the recovery suit filed by respondent no.1/plaintiff could not have been entertained by a civil court at Delhi due to the lack of territorial jurisdiction. Elaborating his arguments on limitation, learned counsel submitted that the bill in question was dated 16.12.1993, which was proved on record as Exhibit PW-1/D1, while the suit for recovery was filed by respondent no.1/plaintiff on 17.12.1996 and, therefore, the said suit was clearly barred by limitation. Learned counsel further submitted that the appellant had raised the objection of limitation in paragraph 1 of the preliminary objections in written statement whereas the learned Courts below, ignoring the evidence and pleadings wrongly held that the

cause of action in filing the recovery suit began from 21.12.1993. Learned counsel also submitted that the limitation period in filing the recovery suit could only be counted from the date of the bill and not from the date when respondent no.1 had supplied the documents to respondent no.3.

4. On the aspect of jurisdiction, learned counsel submitted that the respondent no.1/plaintiff was having its office at Bhadhoi and even the appellant and other respondents were having their respective offices at Bhadhoi, Varanasi and the material was booked at the branch office of respondent no.1 at Bhadhoi and, therefore, the entire cause of action arose at Bhadhoi. Learned counsel further submitted that since there is no airport at Bhadhoi, therefore, the entire material for export was sent from Delhi and, therefore, Delhi was merely a transit station and merely because of the dispatch of the goods to Delhi, the same could not have determined the place of jurisdiction. Learned counsel thus submitted that both the Courts below have ignored the entire evidence on record,

both oral and documentary which clearly establishes the fact that only Bhadhoi Courts had the jurisdiction to entertain and try the present suit.

5. I have heard learned counsel for the appellant at considerable length and given my thoughtful consideration to the arguments advanced by him. Nobody has appeared on behalf of respondent to contest the present Regular Second Appeal.

6. The respondent no.1 was carrying on business of travel and cargo agent under the name and style of M/s Space Travel and Cargo from Delhi whereas the appellant/defendant no.1 was carrying on the business of manufacturing and export of Indian handmade woolen carpets and vide invoice number 37/93 dated 16.12.1993, had sent 8 rolls of carpets with the instruction to respondent no.1/plaintiff to dispatch the same to the consignee at Germany. Respondent no.1/plaintiff was also instructed to send the shipping documents through respondent No.3/Bank. It is also the case of the respondent no.1/plaintiff that in the letter dated

16.12.1993, addressed to the respondent no.3, it was specifically mentioned that the delivery of documents shall be made to respondent no.1 when the payment of the bills of the plaintiff/respondent no.1 amounting to Rupees 43,982/-, shall be made which letter of the respondent no.1 was duly acknowledged by the respondent No. 3 on 21.12.1993. Since respondent no.3 had neither sent the payment nor had returned the original documents, therefore, the respondent/plaintiff had sent a legal notice dated 19.9.1995 which was replied to by the appellant/defendant no.1 vide reply dated 6.10.1995. Due to the non-payment of the said amount, respondent no.1 had filed the said suit for recovery of an amount of Rupees 43,982/- towards the principal amount, Rupees 31,668/- towards the interest and Rupees 1100/- towards the notice fee charges against the appellant and respondent Nos. 2 and 3. The said suit was filed by respondent no.1/plaintiff on 17.12.1996 and was decreed against the appellant and dismissed against respondent Nos. 2 and 3.

7. The issue of limitation and the jurisdiction can be either pure question of law and depending on the facts of the case, the same can be a mixed question of law and fact. In the facts of the present case, the stand taken by the appellant is that the suit filed by respondent no.1/plaintiff is barred by limitation as the period of limitation is to be reckoned from the date of the bill i.e. 16.12.93 and not from the date of the entrustment of the documents by the respondent no.1/plaintiff. This Court does not find any merit in the contention of learned counsel for the appellant as the present is not a recovery suit filed by the seller against the purchaser of the goods but the same has been filed by a cargo agent. On a bare perusal of Exhibit PW1/D2, through which letter the shipping documents were entrusted by the respondent no.1/plaintiff to the Union Bank of India/respondent no.3, it would be evident that they had raised the agency bill for a sum of Rupees 43,982/- vide bill no.2346/12/93 dated 18.12.1993 proved on record as Ex. PW1/2. It would, therefore, be quite evident that even if the date of the

entrustment of 21.12.1993 is not taken into consideration, then at least the agency bill dated 18.12.1993 would be relevant date from which date the limitation can be safely reckoned. Taking into account the said date of limitation, then also the filing of the suit by respondent no.1/plaintiff on 17.12.1993 was well within the period of limitation and hence the findings on the issue of limitation of both the Courts below are upheld.

8. Coming to the next contention of learned counsel for the appellant on the issue of jurisdiction, the plea raised by learned counsel for the appellant is equally devoid of any force. It has come on record that the goods were never delivered at Bhadhoi but the same were delivered at Delhi and from Delhi alone the goods were thereafter sent to Germany by air and even in the bill proved on record, Exhibit PW1/2, it has been clearly mentioned that all the disputes were subject to Delhi jurisdiction. Considering the fact that the goods were received by the plaintiff at Delhi and the same were dispatched from Delhi to Germany it cannot be said that

the part of the cause of action had not arisen in Delhi and the learned Trial Court has given valid and sound reasoning to deal with the issue of jurisdiction and the relevant paragraph 9 of the same is reproduced below:-

9. Regarding the issue of jurisdiction, I also do feel that Courts at Delhi have clearcut jurisdiction. It has been argued by Id counsel for the appellant that though plaintiff was having its office in Delhi yet no cause of action had arisen in Delhi. It has been argued that both i.e. plaintiff and defendant no.1 were having their offices at Bhadhoi and the material in question was booked at the branch office of the plaintiff situated at Bhadhoi and the entire transaction had taken place at Bhadhoi. It has also been claimed that even document Ex.PW1/D1 was bearing the stamp of the Bhadhoi office of the plaintiff which was even admitted by the plaintiff and since the entire transaction had taken place at Bhadhoi and since the bill was also prepared at Bhadhoi office, suit could have been filed in Bhadhoi only. This contention is also devoid of merit. Carpets in question were dispatched by defendant no.1 to plaintiff through truck and bill in this regard has been proved as Ex.PW1/4. This document clearly reveals that eight rolls of carpets had been dispatched by the consigner i.e. M/s. Prestige Oriental Carpets, Bhadhoi and these were to be delivered to the plaintiff at New Delhi. There might be some dealing at the office level at Bhadhoi between the representatives of the plaintiff and defendant no.1 but the aforesaid bill Ex.PW1/4 clearly reveals that the carpets were sent by none other than defendant no.1. These carpets were never sent by the Bhadhoi office of the plaintiff. It clearly reveals that the goods were not delivered by defendant no.1 at the branch office of the plaintiff and rather the goods were transported by defendant no.1 itself and all the goods were accordingly received at New Delhi by the plaintiff. This stands corroborated even otherwise by the notice sent by defendant no.1 which has been proved as Ex.PW1/1/0 and in his such notice, defendant no.1/appellant admitted that as per the order, defendant no.1 firm had sent woolen carpets by truck to Delhi. Thus the goods were never delivered at Bhadhoi Office and rather the goods were received by the plaintiff at his Delhi Office and the goods were thereafter sent to Germany by air from Delhi. Moreover, the document Ex.PW1/2 is also very important in this regard. After receiving the goods in Delhi, bill was raised and this bill is Ex.PW1/2 and it has been mentioned in the bill that all the disputes were subject to Delhi jurisdiction. Since part of the cause of action had arisen at Delhi as the goods were received in Delhi and

goods were air shipped to Germany from Delhi, it becomes clear that the Courts at Delhi had clearcut jurisdiction.

9. This Court does not find any infirmity or illegality in the said reasoning given by the First Appellate Court.

10. The legal position is settled that for entertaining an appeal under section 100 of the Code of Civil Procedure, 1908, existence of a substantial question of law is a sine qua non. It is not only the existence of a question of law but a substantial question of law that should exist. In the facts of the case at hand, the question that from what date the limitation is to be reckoned is a mixed question of law and fact and does not warrant the court to entertain it under section 100 of the CPC. The jurisdiction of the court under Section 100 is specified and limited and cannot be exercised ordinarily. The court does not interfere in the concurrent finding of facts arrived at by both the courts below till the time a substantial question of law has not arisen for its consideration. The question whether the courts at Delhi had jurisdiction or not in the present case was a factual exercise

which was rightly determined by the courts below and does not warrant any interference at this stage.

In light of the above discussion, this Court does not find that any substantial question of law arises in the present Regular Second Appeal. There is no merit in the appeal and the same is hereby dismissed.

December 23, 2011

KAILASH GAMBHIR, J