

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

+ **RFA No. 180/2012**

% **17th April, 2012**

SAURABH AGGARWAL & ANR Appellants
Through : Mr. Gaurav Kumar Singh, Advocate.

versus

M/S SOBHIN INFRASTRUCTURE PVT. LTD. Respondent

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

C.M. No. 6697/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 180/2012

1. The challenge by means of this Regular First Appeal (RFA) filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 7.7.2011 decreeing the suit of the

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respondent/plaintiff for recovery of ₹12,30,519.50/- alongwith costs and interest @ 12% per annum. The suit has been decreed with respect to the amount of sales tax which the respondent/plaintiff was forced to pay, inasmuch as, the appellants/defendants did not supply the Sales Tax Forms (Form-3B), for an amount of ₹8,01,201/-. As a result of the failure of the appellants/defendants to give Form-3B, the respondent/plaintiff deposited an amount of ₹8,01,201/- alongwith interest of ₹2,64,397/- to the Sales Tax Department, i.e. a total of ₹10,65,598/-, and for recovery of which, alongwith interest, the subject suit came to be filed.

2. The facts of the case are that the respondent/plaintiff in an open auction conducted by this Court on 8.3.2007 purchased the plant and machinery, being the Milk & Ghee Plant, of M/s Sol Limited, Sikarpur Road, Bulandshaher (UP) as the respondent/plaintiff was the highest bidder. The respondent/plaintiff paid the bid amount and, thereafter, became the owner of the plant and machinery. The appellants/defendants approached the respondent/plaintiff to purchase the said plant and machinery and the plant and machinery in different parts were, thereafter, sold to the appellants. There was a sale agreement entered into between the parties dated 19.5.2007 which clearly provided "taxes as payable extra". Out of the total sale value of ₹2,12,60,433/- the respondent/plaintiff received a sum of ₹2,11,60,433/-,

leaving the balance of ₹1,00,000/-. The case of the respondent/plaintiff was that against the total sales the appellants/defendants deposited only sixteen Forms 3B valued at ₹51,10,069/- and did not deposit the tax forms for the sale of ₹1,56,31,817/-, and therefore, the Deputy Commissioner, Commercial Taxes (UP) passed an order directing the respondent/plaintiff to deposit a sum of ₹8,01,201/- alongwith interest of ₹2,64,397/-, totaling to ₹10,65,598/-. The respondent/plaintiff claimed recovery of this amount of ₹10,65,598/- which was deposited with the Sales Tax Department (UP). The respondent/plaintiff sent a legal notice dated 3.3.2010 to the appellants/defendants to which even a reply was not sent by the appellants/defendants, resulting in filing of the subject suit wherein the principal amount was claimed of ₹10,65,598/- with interest @ 24% per annum, however, the trial Court has decreed the suit at interest not @24% per annum but @12% per annum.

3. The appellants/defendants basically contested the suit with respect to defence of lack of territorial jurisdiction of the Courts at Delhi. Of course, there was an averment with respect to the appellants/defendants not having been supplied machinery worth ₹21,91,460/-, however, the appellants/defendants did not file a counter claim and said that they would file a separate suit for recovery of this amount.

4. After the completion of pleadings, the trial Court framed the following

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issues:-

- “1. Whether this court has no territorial jurisdiction as alleged in preliminary objection no.4 in WS? OPP
 2. To what amount, if any, is the plaintiff entitled from defendants? OPP.
 3. Whether the plaintiff is entitled to any interest if so, at what rate and to what amount? OPP.
 4. Relief.”
5. On the issue of territorial jurisdiction, the trial Court has held as under:-

“ISSUE NO.1 :-

16. The territorial jurisdiction of this court is challenged by the defendant. Undisputedly, the sale agreement dated 19.05.2007 Ex PW 1/5 was executed between the parties with regard to the sale of machinery mentioned in this agreement by plaintiff to defendant. Thereafter, the machinery which was lying at Milk & Ghee Plant at Bulandshahar (U.P) was transported by defendants to their premises at Bareilly (U.P). It is alleged that said agreement was entered at Bulandshahar and not in Delhi. Therefore, according to defendant the jurisdiction of Bulandshahar and Bareilly Court alone arises and no part of cause of action took place in Delhi within the jurisdiction of this court.

17. The case of plaintiff is that agreement Ex. PW1/5 between the parties was executed in the head office of plaintiff at Pitampura, New Delhi within the territorial jurisdiction of this court so part of cause of action arose here, so this court has jurisdiction to entertain and try the present suit.

18. The transactions between the parties being of movable property and the present suit being a money suit Section 20 CPC is attracted to ascertain the jurisdiction of the court. It is not disputed that neither of the defendants lives,

resides or work for gain or carries on business within the territorial jurisdiction of this court therefore, clauses (a) and (b) of the CPC are not attracted. The jurisdiction of the court or its bar can only be ascertained on the basis of clause (c). If cause of action wholly or in part arises within the territorial jurisdiction of this court then this court has jurisdiction to entertain and adjudicate the present suit otherwise not.

19. In the backdrop of the above legal position, the respective arguments of the parties are to be evaluated based on appreciation of evidence on record to ascertain jurisdiction of this court. It is, however, not disputed that if the sale agreement is executed between the parties within the territorial jurisdiction of North West District, Rohini Courts, Delhi then this court has jurisdiction to entertain the present suit.

20. The argument on behalf of plaintiff is that the sale agreement Ex PW 1/5 was executed in the office of plaintiff at Pitampura, Delhi. It was signed and the seal was also affixed on it at Delhi in presence of parties and the witnesses. PW1 appearing on behalf of plaintiff has specifically stated in the cross examination that at places A, B and C in the agreement Ex PW 1/5, it is specified that it was executed in Delhi.

21. The contention on behalf of defendant is that the places A, B and C on agreement Ex PW 1/5 are portions of letter head, portion of stamp and it is not specifically mentioned in the agreement that this agreement was executed in Delhi. It is contended that this agreement was executed in Bulandshahar (U.P) on the day parties inspected the plant and machinery and, therefore, this court lacks territorial jurisdiction.

22. I have given considered thought to the respective contentions. The agreement Ex PW 1/5 nowhere specifically indicates that it was executed in Delhi. It is

true that the word "Delhi" or the address of head office of plaintiff at Delhi given in the agreement Ex PW 1/5 at places A, B and C indicates more that the office of plaintiff company is at Delhi rather it shows that the sale agreement Ex PW 1/5 was executed in Delhi. There is no indication at all in this agreement that it was executed in Bulandshahar. Therefore, oral evidence led by parties assumes importance on this point. But, the fact that the head office of plaintiff company is in Delhi and throughout the case of plaintiff is that this agreement was executed in the head office of plaintiff at Delhi in presence of witnesses is important. The plaintiff has also led oral evidence on this point raises inference that this agreement was executed at Delhi in the head office of plaintiff at Pitampura.

23. Although the case of plaintiff throughout remain rock solid that this agreement Ex PW 1/5 was executed between the parties at head office at Pitampura in plaintiff company but the case of defendant that it was executed at Bulandshahar at the site office is somewhat doubtful due to the evidence of DW2 Sh Jagmohan Gupta who in the affidavit Ex DW 2/A in para no.2 has stated that this sale agreement Ex PW 1/5 was executed at Bulandshahar (U.P) but in para no.4 of the same affidavit Ex DW 2/A, he stated that defendant and plaintiff put their respective signatures on the sale agreement in his presence at Bareilly and on their asking he also put his signatures upon the same as attesting witness of the said sale agreement Ex PW 1/5. In the same paragraph he again stated that the said agreement Ex PW 1/5 was entered into between plaintiff and defendant in Bulandshahar (U.P). Due to this contradictions in the affidavit in evidence of DW2 who is attesting witness of sale agreement Ex PW 1/5, the case of defendant that agreement was executed at Bulandshahar has become doubtful. As against this the case of plaintiff throughout is that this agreement was executed in Delhi at Pitampura head office of plaintiff company. Therefore, on preponderance and probability, the plaintiff company has

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been able to prove that the sale agreement has been executed between the parties at Pitampura head office of the plaintiff company. Hence, this court has territorial jurisdiction to entertain and adjudicate the present case. The issue is, therefore, decided in favour of plaintiff company and against the defendant.”

6. I completely agree with the aforesaid findings and conclusions of the trial Court with regard to the existence of territorial jurisdiction of Civil Courts at Delhi, inasmuch as, the sale agreement dated 19.5.2007, Ex.PW1/5 is on the letter head of the respondent/plaintiff with its address at Delhi. The witnesses of the respondent/plaintiff also deposed that the agreement was signed at Delhi. Of course, the appellants/defendants contended that the agreement was signed at Bulandshaher, however, since a civil case is to be decided on preponderance of probabilities, the trial Court arrived at the finding that Civil Courts at Delhi have territorial jurisdiction in view of the fact that the agreement is on the letter head of the respondent/plaintiff having its address at Delhi.

7. This Court in first appeal can only interfere with the findings and conclusions of the trial court if the same are illegal or perverse or the same causes injustice. In my opinion, there is no illegality or perversity in the impugned judgment and decree which calls for interference by this Court. In fact, this plea/defence was only a technical plea to avoid payment of the just

dues of the respondent/plaintiff, inasmuch as it cannot be disputed that in the agreement dated 19.5.2007, Ex.PW1/5, it is clearly mentioned that the taxes which would be payable would be extra.

8. Learned counsel for the appellants/defendants once again, before this Court, sought to argue that the Civil Courts at Delhi have no territorial jurisdiction, however, in view of my aforesaid findings and conclusions, I hold that the argument of the appellants/defendants that Civil Courts at Delhi do not have territorial jurisdiction, does not carry any force. In this RFA since the facts are otherwise admitted including the existence of the sale agreement dated 19.5.2007, Ex.PW1/5, as also the fact that the appellants/defendants admit not to have given Form 3B and also of not paying the sales tax to the respondent/plaintiff, there is no need to summon the records of the trial Court as all the requisite pleadings, documents and the deposition of the witnesses have already been filed in this appeal. For the sake of completion, I must mention that the respondent/plaintiff has filed and proved, in the trial Court, the documents being the payment challan and receipt of the deposit of sales tax as Ex.PW1/49 and PW1/50.

9. In view of the above, I do not find any merit in the appeal and the same is accordingly dismissed, leaving the parties to bear their own costs.

C.M. No. 6698/2012 (Delay)

There is a delay of 164 days in re-filing the appeal. Since I have heard the appeal on merits, the delay in re-filing the appeal is condoned.

C.M stands disposed of.


VALMIKI J. MEHTA, J.

APRIL 17, 2012

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