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

+ **RSA No.40/2013 and CM 3203/2013(stay)**

% **5th March, 2014**

SATYAPAL

.....Appellant

Through: Mr. Deepak Tyagi, Advocate

VERSUS

SLICK AUTO ACCESSORIES PVT. LTD. & ORS..... Respondents

Through: Mr. T.K. Mukherjee, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? Yes

VALMIKI J. MEHTA, J (ORAL)

1. This second appeal is filed under Section 100 CPC impugning the judgment of the first appellate court dated 25.10.2012 by which the first appellate court has accepted the appeal filed by the defendants and set aside the judgment and decree dated 30.01.2012 passed by the trial court for an amount of Rs. 98,880/- along with interest @ 18% per annum on the amount of Rs. 32,960/- w.e.f 7.7.2007 and on Rs. 65,920/- w.e.f 16.7.2007 i.e. interest has been granted from the date of the bills. Pendente lite and future

interest is awarded @ 12% per annum simple. Suit has been decreed for goods which were supplied by the appellant/plaintiff to the respondent no. 1 herein/defendant no.1.

2. For the disposal of this regular second appeal, the following substantial question of law is framed:

“ Whether the judgment of the first appellate court holding that the courts at Delhi have no jurisdiction is totally perverse because it ignores the detailed, exhaustive and analytical conclusion arrived at by the trial court while dealing with the Issue no. 1 pertaining to territorial jurisdiction?”

3. The first appellate court by the impugned judgment has set aside the judgment of the trial court by holding that the courts at Delhi had no territorial jurisdiction because goods were supplied to respondent no.1/buyer at Bhiwadi in Rajasthan. The relevant observations of the first appellate court holding that the courts at Delhi have no territorial jurisdiction read as under :

“ Now the question is that whether the case of action has partly arisen in Delhi or not. The case of the respondent is that the goods were supplied from Delhi, therefore the cause of action has partly arisen in Delhi. The respondent has examined his son as PW-2 in the Trial Court who has stated that goods were delivered from the factory of the respondent to the authorized person of the appellants.

The perusal of the Trial Court Record shows that evidence of PW-2 is beyond the pleadings and the same cannot be read in evidence.

As per the pleadings, the good were supplied at Bhiwadi, in Rajasthan. The perusal of pleadings does not indicate that any part of cause of action accrued in favour of the plaintiff in Delhi.

The Hon'ble Delhi High Court in a case, reported as **177 (2011) DLT 789** was held that, a part of cause of action accrues at a place where the contract is executed. Each and every fact pleaded in the plaint does not ipso facto lead to the conclusion that those facts constitute cause of action vesting territorial jurisdiction with a Court to adjudicate upon a case. The expression "cause of action" consists of bundle of facts which the plaintiff must prove in order to entitle him to a judgment in his favour by the Court. Whether any part of cause of action has accrued within the jurisdiction of the a Court, would depend upon the facts and circumstances of the given case.

It was further held in **177 (2011) DLT 789 (Supra)** that, it is settled principle of law that by a contract or an agreement parties, cannot confer jurisdiction on a Court of otherwise does not have or where no part of cause of action has accrued in favour of the party claiming enforcement its claim.

It was further held in **177 (2011) DLT 789 (Supra)** that, the place where the plaintiff is carrying on its business or from where he is sending his legal notice is not relevant and is of no consequence as it does not constitute any cause of action within the meaning of Section 20 (c), CPC.

It was further held in **177 (2011) DLT 789 (Supra)** that, pleading are required to specifically contain all necessary details which are to be substantiated by way of evidence during trial. If the pleadings are silent on a particular material facts, a party cannot be allowed to prove the same later on by adducing evidence.

Therefore, in view of **177 (2011) DLT 789 (Supra)** it is clear that no part of cause of action arose in Delhi.

It was held by the Hon'ble Supreme Court in a case reported as **AIR 1966 Supreme Court 634**, that where the defendants neither resided nor carry on business, nor any part of the cause of action arises within the local limits of the jurisdiction of the Court, such courts do not have any territorial jurisdiction to try the suit under section 20 of the CPC.

So far as the case of the respondent that parties have decided that jurisdiction would be of Delhi Courts as mentioned the in bills, in my view the parties cannot decide about the territorial jurisdiction of courts.

The Hon'ble Punjab and Haryana High Court in a case reported as **2010 (1) Law Herald (P and H) 255 (Supra)**, the parties could not confer the exclusive jurisdiction of Delhi Courts.

The Hon'ble Supreme Court in a case reported as **AIR 1954 SC 340** has held that the decree passed without jurisdiction in nullity.

In view of the above discussion and case law discussed above, I am of the opinion that the Delhi Courts do not have any jurisdiction to try the suit as no cause of action or part of cause of action ever arose in Delhi, hence the judgment and decree passed by the Ld. Trial Court is without any jurisdiction and the same cannot be sustained.

Therefore, the judgment and decree passed by the Ld. Trial Court are set aside and the appeal is allowed.

No order as to cost.

The copy of this judgment be sent to the Ld. Trial Court along with trial court record.

The appeal file be consigned to Record Room.”

4. The above observations of the first appellate court are indeed perverse

to say the least. This I say so because the trial court by a very exhaustive
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judgment held that the courts at Delhi had territorial jurisdiction for two reasons. Firstly, the trial court held that the courts at Delhi had territorial jurisdiction because the payment was to be made in Delhi inasmuch as once no place of payment is specified, the debtor has to seek the creditor, and since the creditor/plaintiff was at Delhi, therefore, payment has to be made at Delhi and part of the cause of action will accordingly arise at Delhi. The second reason for holding that civil courts at Delhi had territorial jurisdiction was because the contract is said to have been entered at Delhi because the order was placed upon the appellant/plaintiff at Delhi.

5. The first appellate court has surprisingly and illegally not at all referred to even remotely the detailed analysis and reasoning which has been given by the trial court to hold that the courts at Delhi have the territorial jurisdiction. Since the trial court has written, in my opinion, a very thorough and an excellent judgment, I would like to reproduce the relevant paras of the judgment of the trial court instead of using my words. The relevant paras of the trial court are 19 to 25 and the same read as under :

“ISSUE NO. 1:

“19. The question to be answered is as to whether this court has no territorial jurisdiction to try and entertain the present suit. The onus to prove this issue was upon the defendant.

20. The defendants have contended that the office/factory of the defendants is situated in Bhiwadi, District-Alwar, Rajasthan and the delivery of the goods was also made at Bhawadi, District-Alwar, Rajasthan at the office/factory of the defendants and therefore no part of the cause of action arose within the jurisdiction of this court. DW 1 has deposed on these lines.

21. There is no doubt the material was supplied by the plaintiff to the defendants at Bhiwadi, District-Alwar, Rajasthan. The same is clear from the invoices Ex. PW1/A and Ex. PW1/B. However even if the material was delivered at Bhiwadi, District-Alwar, Rajasthan it is clear that the material was supplied from the office/factory of the plaintiff situated at Jwala Nagar, Shahdara, Delhi-32 which falls within the jurisdiction of this court.

22. It is a well established principle of law that where, under a contract no place of payment is specified, the debtor must seek his creditor and therefore a suit for recovery is maintainable at the place where the creditor resides or works for gain, because a part of the cause of action arises at that place also with the contemplation of section 20 (c) of the Code of Civil Procedure. Reference may be made to the judgments titled as “**State of Punjab V. A. K. Raha**” reported as AIR 1964 CALCUTTA 418 (DB), “**Jose Paul v. Jose**” reported as AIR 2002 KERALA 397 (DB), “**Rajasthan State Electricity Board V. M/s Dayal Wood Works**” reported as AIR 1998 ANDHRA PRADESH 381, “**Munnisa Begum V. Noore Mohd.**” Reported as AIR 1965 ANDHRA PRADESH 231 and “**State of U.P.v. Raja Ram**” reported as AIR 1966 ALLAHABAD 159.

23. In the judgment titled as “**State of Punjab v. A. K. Raha**” reported as AIR 1964 CALCUTTA 418 (DB) it was clearly held:

“.....The general rule is that where no place of payment is specified in the contract either expressly or impliedly, the debtor must seek the creditor, see *The Eider* (1893) P 119 at p. 136, *Drexel v. Drexel*. (1916) 1 Ch 251 at p. 261, *North Bengal, Das Brothers Zemindary Co. Ltd V. Surendera Nath Das*, ILR (1957) 2 Cal 8. The obligation to pay the debt involves the obligation to find the creditor and to pay him at the place where he is when the money is payable. The application of the general rule is not excluded because the amount of debt is disputed....”

24. In the judgment titled as **Sreenivasa Pulvarising vs Jal Glass & Chemicals pvt. Ltd. reported as AIR 1985 Cal 74** it was also held:

“.....In a contract of the nature now under consideration performance of the contract consists not only of delivery of the goods but also of payment of the price. Therefore, cause of action for a suit on breach of such a contract would arise not only where the goods were to be delivered but also where the price would be payable on such delivery.....”

It was further held:

“.....9. Therefore, the law continues to remain the same and in a suit arising out of a contract, a part of the cause of action arises at the place where in performance of the contract any money to which the suit relates is payable....”

Adverting to the facts of the present case office/factory of the Plaintiff is situated at Jwala nagar, Shahdara, Delhi-32. No place of payment has been specified in the contract/bills/invoices. The defendants are liable to make the payment for the goods supplied to them. No application was made by the defendants to the plaintiffs for fixing a place of payment and Sec. 49 of the Indian Contract Act cannot apply to the facts of the case. Therefore, the payment was to be made at the office of the plaintiff. Further the purchase order was placed at Jwala Nagar, Shahdara, Delhi-32 and the goods were supplied from Jwala nagar, Shahdara, Delhi-32 Therefore a part of the cause of action definitely arises at Jawala Nagar, Shahdara, Delhi-32. Hence the present suit for recovery of the sale price can be filed before this court as the office of the plaintiff is situated within the territorial limits of the jurisdiction of the court.

25. I therefore hold that this court has the territorial jurisdiction to try and entertain the present suit. This issue is therefore decided in favour of the plaintiff and against the defendants.”

(underlining added)

6. I completely agree with the conclusion of the trial court because it is settled law that the debtor has to seek the creditor and since no place of

payment was agreed upon, payment would have been made to the

seller/appellant who is residing and working for gain at New Delhi. Trial court has also rightly relied upon Section 49 of the Indian Contract Act, 1872 that it was upon the respondent no.1/defendant no. 1 to fix the place of payment and which has not been done, and therefore payment would have been made by the debtor to the creditor at the place of the creditor/plaintiff/appellant. As already stated the first appellate court has not even bothered to refer to the analysis and reasoning of the trial court for holding that the courts at Delhi have jurisdiction. Accordingly, the findings of the first appellate court are set aside and it is held that the courts at Delhi have territorial jurisdiction.

7. So far as the merits of the matter are concerned, the case of the respondent no. 1/defendant no. 1 was that the goods being PVC compound supplied by the appellant/plaintiff were defective, and therefore, appellant/plaintiff is not entitled to payment of the price of the goods supplied vide bill no. 107 for Rs. 32,960/- and bill no. 109 for Rs. 65,920/- dated 7.7.2007 and 16.7.2007 respectively. In this regard, again the trial court by its exhaustive, thorough and analytical judgment has held that respondent no.1/defendant no.1 failed to prove that the goods supplied were defective. For this purpose, the trial court has given various reasons. The

first reason which is given is that the respondent no. 1/defendant no. 1 relied upon a letter dated 18.9.2007 Ex. DW-1/B written to the appellant/plaintiff of the goods being defective, however, the said letter is not proved as having been served upon the appellant/plaintiff because neither there is any acknowledgement on the same of the plaintiff nor the letter was sent by post to the plaintiff and PW-1 has unequivocally denied the suggestion that the letter was received. Therefore, once there is absolutely no document filed and proved to show that the respondent no.1/defendant no.1 complained to the appellant/plaintiff of the goods being defective, trial court was justified in holding that the goods were not defective.

8. The relevant observations of the trial court are contained in paras 37 and 38 of the impugned judgment which read as under :

“37. Adverting to the facts of the present case the defendants have further contended that letter dated 18.09.2007 was handed over to the plaintiff, when he approached the defendants for the payment whereby the defendants complained regarding defective PVC beading supplied vide bills Ex. PW1/A and Ex. PW1/B. The said letter dated 18.09.2007 is Ex. DW1/B. There is nothing on record to show that the said letter was received by the plaintiff. The said letter does not bear any acknowledgement of the plaintiff. It is not the case of the defendant that the said letter was sent by post to the plaintiff. PW-1 has unequivocally denied the suggestion that he had received the said letter.

38. Moreover DW-1 had admitted in his cross-examination that Ex. DW1/B does not bear the signatures of the plaintiff. He further stated that the letter dated 18.09.2007 was not issued in his presence.

Once the letter was not issued in his presence it is clear that DW-1 is not competent to prove the said letter. Moreover, at any rate even from the testimony of the DW-1 it is not established that the said letter was in fact delivered to/received by the plaintiff and hence there is no evidence to show that the defendants had informed the plaintiff that they are not accepting the goods or they have rejected the goods supplied by the plaintiff.” (underlining added)

9. The second reason given by the trial court to hold that the goods supplied were not defective was that the respondent no.1/defendant no. 1 has not filed any document on record showing complaints from buyers of the finished products prepared by using of PVC material of goods being defective, and who would have complained if the goods were defective. The PVC compound supplied was used for preparing helmets and no communication was there besides from the dealers of the respondent no.1/defendant no. 1 also from any helmet user of any defect. I completely agree with this conclusion of the trial court and which is contained in para 32 of the impugned judgment and which read as under :

“ 32. No documents have been placed on record to establish this fact. No communication between the defendants and their respective dealers in this respect has been proved. No communication between the helmet users and the dealers of the defendants has been proved. No complaint registered by any helmet user or by any dealer of the defendants has been proved. Further more DW-1 stated in his cross examination that he cannot tell the time and date when he came to know that the PVC beading was defective. He further stated that he cannot tell the exact time and date when the PVC beadings were used and returned by the users and dealers of the defendants. No

statements of account or other documentary evidence has been proved to show that the defendants refunded any amount to the dealers on account of defective helmets or that any defective helmets were returned to the defendants by their dealers or any helmet users.”
(underling added)

10. The third reason which has been given by the trial court to hold that the goods were defective is by placing reliance under Sections 41 and 42 of the Sales of Goods Act, 1930 as per which once after a reasonable period of time the buyer does not complain about the goods but in fact utilizes the goods, the buyer such as the respondent no. 1/defendant no. 1 is prevented from raising any objection as to the quality of the goods.

11. The relevant observations of the trial court in this regard are paras 34 to 36 of the judgment of trial court and which read as under :

“34. Another important question which arises is as to whether the material is deemed to have been accepted by the defendants or the same was rejected. In this respect it is also necessary to refer to sections 41 and Section 42 of the Sale of Goods Act which read as under:-

41. Buyer’s right of examining the goods –

(1) Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

(2) Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the

goods for the purpose of ascertaining whether they are in conformity with the contract.

42. Acceptance – The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

35. In the judgment titled as **Lohmann Rausher GmbH vs Medisphere Marketing Pvt. Ltd. reported as 117(2004) DLT 95** it was held by the Hon'ble High Court of Delhi:

“.....21. As per the mandate of Section 41 of the Sale of Goods Act, the defendant not having inspected the goods in question prior to delivery, had a right to inspect the case on delivery and report defects within a reasonable time of delivery. If not rejected within reasonable time, mandate of Section 42 stipulates that the defendant would be deemed to have accepted the goods.

22. Undisputedly, goods under first invoice were received in the month of May, 2000 and under the second invoice in the month of September, 2000. Defendant, on receipt of the goods, did not indicate to the plaintiff that the goods were defective till as late as 31.12.2001. This was when the plaintiff had served upon the defendant a legal notice in the month of October, 2001.

23. Rejection of the goods predicated on a stand that the goods were sub-standard and defective on 31st December, 2001 is not within a reasonable period of time considering the fact that the goods under the first invoice were received in the month of May, 2000 and under the second invoice were received in the month of September, 2000. Rejection indicated on 31st December, 2001 was after one year and seven months of receipt of goods under the first invoice and one year and three months after receipt of goods under the second invoice. Defendant, as per mandate of Section 42 of the Sale of Goods Act is, therefore, deemed to have accepted the goods.....”

36. Further in the judgment titled as “**Mohanlal Manilal v. Firm Dhirubhai Bavajibhai**” reported as AIR 1962 GUJARAT 56 it was held that the act of the defendant/buyer in selling and delivering a part of the goods to the sub-purchasers was an act in relation to the goods which was inconsistent with the ownership of the plaintiffs/sellers and the defendant/buyer was, therefore, deemed to have accepted the goods by selling and delivering a part of the goods to the sub-purchasers. The subsequent rejection of the goods by the defendant/buyer on the ground that the goods are not in conformity with the contract was, therefore, invalid and not binding on the plaintiffs/sellers and the goods being deemed to have been accepted by the defendant/buyer, the plaintiffs/sellers were entitled to claim the balance of the price from the defendant/buyer.”

12. The fourth reason which is given by the trial court to hold that the goods were defective was that the goods were supplied in the month of July 2007 and C-Forms were supplied by the respondent no. 1/defendant no. 1 to the plaintiff much later on 17.11.2007 and which would not have been done if the goods supplied would have been defective. I once again agree with this conclusion of the trial court and which is contained in para 40 of the judgment of the trial court which reads as under:

“40. In case the defendants later found out that they had suffered some losses on account of any lapse on the part of the plaintiff or on account of the defective material supplied by the plaintiff the only option available with the defendants was to sue for damages which they have not done till date. Even no counter claim for damages was filed by the defendants. Moreover the defendants have failed to establish that the goods in question was defective. The goods were supplied in the month of July 2007 and C-Forms were supplied by the defendants to the plaintiff on 17.11.2007 and therefore the version of the defendants appears to be improbable because had the goods been

defective the defendants would not have issue C Forms to the plaintiff in November 2007.”

13. In view of the above, this regular second appeal is allowed by answering the substantial question of law in favour of the appellant/plaintiff and against the respondent no.1/defendant no. 1. I am of the opinion that the trial court was justified in holding that appellant/plaintiff was entitled to recovery of the price of the goods supplied totaling to Rs. 98,880/- along with interest. The trial court judgment dated 30.1.2012 is accordingly restored. Parties are left to bear their own costs.

MARCH 5, 2014
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VALMIKI J. MEHTA, J